SUPREME COURT OF QUEENSLAND

CITATION:	*Workers' Compensation Regulator v Glass* [2020] QCA 133
PARTIES:	**WORKERS' COMPENSATION REGULATOR** **(applicant)** **v** **GERALDINE GLASS** (respondent)
FILE NOS:	Appeal No 1247 of 2020 ICQ No C/2019/10
DIVISION:	Court of Appeal
PROCEEDING:	Application to Strike Out
ORIGINATING COURT:	Industrial Court at Brisbane – [2020] ICQ 1 (Martin J)
DELIVERED ON:	16 June 2020
DELIVERED AT:	Brisbane
HEARING DATE:	17 April 2020
JUDGES:	Sofronoff P
ORDER:	**Notice of appeal is struck out with costs.**
CATCHWORDS:	PROCEDURE – STATE AND TERRITORY COURTS: JURISDICTION, POWERS AND GENERALLY – JURISDICTION – COURT AND CHAMBERS – where Ms Glass was supervising a school trip to Vanuatu – where she was injured – where she made an application for compensation to WorkCover Queensland which was unsuccessful – where she sought a review by the applicant Regulator – where the Regulator affirmed the decision to reject Ms Glass' claim – where Ms Glass appealed to the Queensland Industrial Relations Commission which dismissed the appeal – where she then appealed to the Industrial Court – where the appeal was dismissed by Martin J sitting as the President of the Industrial Court – where she then filed a notice of appeal against a decision of the Industrial Court – where the Regulator filed an application to strike out the notice of appeal – where the Regulator submitted that there can be no appeal in this case from a decision of the Industrial Court to the Court of Appeal – whether a decision made by the Industrial Court is final – whether the Court of Appeal has jurisdiction to hear an appeal of a decision of the Industrial Court *Industrial Relations Act* 1999 (Qld), s 340 *Industrial Relations Act* 2016 (Qld), s 554 *Workers' Compensation and Rehabilitation Act* 2003 (Qld),

s 542, s 561

COUNSEL: C J Murdoch QC, with P B O'Neill, for the applicant
S A McLeod QC, with R M O'Gorman, for the respondent

SOLICITORS: Workers' Compensation Regulator for the applicant
Holding Redlich for the respondent

[1] **SOFRONOFF P:** The appellant in the appeal and the respondent in this application, Ms Glass, to whom I shall refer as the "appellant", filed a notice of appeal against a decision of Martin J sitting as President of the Industrial Court of Queensland. The respondent in the appeal and the applicant in this application, to whom I shall refer as the "Regulator", has applied to strike out the notice of appeal on the ground that no appeal lies from a decision of the President of the Industrial Court.

[2] The appellant was a teacher employed by Brisbane Catholic Education at a school in Hervey Bay. She accompanied a group of students on a school sponsored trip to Vanuatu. A planned afternoon excursion to a local waterfall, which was arranged for the benefit of the pupils and at which the appellant was to supervise them, was cancelled. The supervising teachers decided to take the pupils instead to a different waterfall. While the appellant was participating with the students at the waterfall during the afternoon she injured her shoulder.

[3] She made an application for compensation to WorkCover Queensland. Her claim was rejected. The appellant sought a review by the Regulator of that rejection pursuant to s 542 of the *Workers' Compensation and Rehabilitation Act* 2003 (Qld). The decision to reject the claim was affirmed. The appellant appealed to the Queensland Industrial Relations Commission which dismissed the appeal. The appellant then appealed to the Industrial Court under s 561 of the Act. Such an appeal is an appeal by way of rehearing. Martin J dismissed the appeal.[1] The appellant has sought to appeal to the Court of Appeal from that decision.

[4] The grounds of appeal stated in the appellant's notice of appeal are as follows:

(a) "The Industrial Court erred in finding that the appellant did not suffer an "injury" within the meaning of s.32 of the *Workers' Compensation and Rehabilitation Act* 2003 (Qld) because the personal injury did not arise out of, or in the course of, employment: (at Reasons [49])";

(b) "Further, the Industrial Court erred in finding that the appellant's employment was not a significant contributing factor to her injury because there was "nothing [namely, the appellant's employment] that required [her] to use the rope swing" and "there was no urgency arising out of her employment which lead (*sic*) her to use the rope swing": (at Reasons [51])."

[5] Ground 1 raises a question about the application of a statutory provision to facts as found. Ground 2 raises a question of fact.

[6] Section 561 of the Act provides:

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[1] [2020] ICQ 1.

> "(1) A party aggrieved by the industrial magistrate's or the industrial commission's decision may appeal to the industrial court.
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> (2) The *Industrial Relations Act 2016* applies to the appeal.
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> (3) The appeal is by way of rehearing on the evidence and proceedings before the industrial magistrate or the industrial commission, unless the court orders additional evidence be heard.
>
> (4) The court's decision is final."

[7] The Regulator contends that the effect of s 561(4) is that there can be no appeal in this case from a decision of the Industrial Court to the Court of Appeal. The appellant submits that, because s 561(2) of the *Workers' Compensation and Rehabilitation Act* 2003 (Qld) engages the provisions of the *Industrial Relations Act* 2016 (Qld), s 554(1) of the latter Act applies to confer such a right. Section 554(1) provides:

> "A person aggrieved by a decision of the court, or the full bench constituted by the president and 2 or more other members, may appeal to the Court of Appeal on the ground of –
>
> (a) error of law; or
>
> (b) excess, or want, of jurisdiction."

[8] The appellant submits that despite s 561(4) of the *Workers' Compensation and Rehabilitation Act*, the effect of s 561(2) of the *Industrial Relations Act* confers a right of appeal.

[9] Before 2016, when the current *Industrial Relations Act* was passed, s 561(2) of the *Workers' Compensation and Rehabilitation Act* referred to the *Industrial Relations Act* 1999 (Qld) which provided in s 340 for a right of appeal to the Court of Appeal only from decisions of the Industrial Court made under ss 248(1)(c) and 251 of the *Industrial Relations Act* 1999. Otherwise, ss 349(1) and (2) of the 1999 Act provided that decisions of the Industrial Court were "final and conclusive". It follows that until 2016, although s 561(2) of the *Workers' Compensation and Rehabilitation Act* engaged the *Industrial Relations Act*, none of the provisions of that Act conferred any right of appeal from a workers' compensation decision made by the Industrial Court and s 561(2) of the *Workers' Compensation and Rehabilitation Act* rendered decisions in such cases final.

[10] When the 2016 Act was passed, the scope for an appeal to the Court of Appeal under the new Act was widened by s 554. Henceforth, any decision could be made the subject of appeal to the Court of Appeal, albeit on limited grounds.

[11] The appellant submits that that widening had the effect of removing the privative effect of s 561(4). That submission cannot be accepted.

[12] Prior to 2016 it was plain that any limitation on appeals from decisions of the Industrial Court in matters arising under the *Industrial Relations Act* 1999 were to be found in that Act. Likewise, any limitation upon appeals to the Court of Appeal in relation to decisions of the Industrial Court in matters arising under the *Workers'*

Compensation and Rehabilitation Act were to be found in that Act and not in the *Industrial Relations Act* 1999.

[13] The only reason for having s 561(2) engage the provisions of the *Industrial Relations Act* 1999 was that the legislature wished to confer jurisdiction upon an existing tribunal to determine disputes arising under the workers' compensation legislation. The workers' compensation legislation invoked the provisions of the industrial relations legislation because it was that legislation that created a court, constituted it and made provision for procedure within it. However, each Act made provision for whether, how and to what extent there could be any appeal from decisions made under the two Acts. When the new *Industrial Relations Act* 2016 was passed, in this respect, nothing changed.

[14] The subject matter of s 561(2) of the *Workers' Compensation and Rehabilitation Act* is the "appeal" that is referred to in it. The section therefore applies the *Industrial Relations Act* 2016 to the proceeding by which a decision of the industrial commission under chapter 4 part 6 of the *Workers' Compensation and Rehabilitation Act* or a decision of an industrial magistrate or the industrial commission under division 1 of that Act is challenged in the Industrial Court. Those are the "decisions" mentioned in ss 560A and 561(1). Consequently, the provisions of the *Industrial Relations Act* 2016 that can be applied are those that apply to the "appeal" to the Industrial Court. Once the "appeal" has been concluded by a decision of the Industrial Court, there is no longer any "appeal". The rights of the parties that supported the appeal have been merged in the decision. Section 561(4) of the *Workers' Compensation and Rehabilitation Act* makes the resulting "decision", which is the outcome of the "appeal", final.

[15] Section 554 of the *Industrial Relations Act* 2016 is not concerned with an "appeal" from a decision referred to in ss 560A or 561(1). It is concerned with "a decision of the court". Consequently, it is not a provision that can apply by force of s 561(2) of the *Workers' Compensation and Rehabilitation Act* which engages the provisions of the *Industrial Relations Act* only insofar as they affect "appeals".

[16] For these reasons, the notice of appeal should be struck out with costs.