SUPREME COURT OF QUEENSLAND

CITATION:	*Thompson v WorkCover Queensland & Anor* [2002] QSC 119
PARTIES:	**SUZANNE GWYNNETH THOMPSON** (applicant) **v** **WORKCOVER QUEENSLAND** **AND** **THE GENERAL MEDICAL ASSESSEMNT TRIBUNAL** (respondent)
FILE NO/S:	S 844 of 2000
DIVISION:	Trial
PROCEEDING:	Application for Statutory Order of Review
ORIGINATING COURT:	Supreme Court at Townsville
DELIVERED ON:	8 May 2002
DELIVERED AT:	Townsville
HEARING DATE:	1 May 2002
JUDGES:	Cullinane J
ORDER:	**Application dismissed with costs to be assessed.**
CATCHWORDS:	ADMINISTRATIVE LAW - JUDICIAL REVIEW LEGISLATION - where Applicant sought damages certificate pursuant to s.265 of the WorkCover Queensland Act 1996 - whether the General Medical Assessment Tribunal erred in determining that the Applicant had not suffered an injury for the purpose of the WorkCover Queensland Act as amended.
COUNSEL:	A J H Morris QC, C McLennan for the applicant S A McLeod for the respondent
SOLICITORS:	Dempseys for the applicant Boulton Cleary & Kern acting as Town Agents for Bradley & Co for the respondent

[1] By this application for judicial review, the Applicant seeks the setting aside of a decision of the Second Respondent dated 1.12.00 that the Applicant had not suffered an injury for the purposes of the WorkCover Queensland Act as amended. The Applicant had sought a damages certificate pursuant to s.265 of the Act.

[2] The Applicant's application to the First Respondent for a certificate was based upon a psychiatric injury which she claimed to have suffered in the course of her employment with the Federated Clerks Union at Townsville between October 1996 and February 1998.

[3] It was the Applicant's case that her psychiatric problems had been caused by aggressive behaviour and harassment by her superior in the Union office.

[4] The matter was referred to the General Medical Assessment Tribunal and it is the determination of the Tribunal that the Applicant did not suffer an injury for the purposes of the Act which is the subject of this application for review.

[5] It was accepted by the Respondent that the court had the power to entertain an application of this kind in respect of such a decision.

[6] The Tribunal had earlier given what purported to be a statement of reasons. These plainly did not comply with the requirements of the relevant legislation. It was ordered to provide a compliant statement of reasons and this is Exhibit A to an affidavit of Merinda Lynn Slaughter filed on 29 January 2002.

[7] An injury was defined at the relevant time by s.34(1) in the following way:

"An '*injury*' is personal injury arising out of, or in the course of, employment if the employment is the major significant factor causing the injury." Sub paragraphs 4 and 5 go on to provide:

> *"(4)* ***'Injury'*** *does not include a personal injury, disease, or aggravation of a disease sustained by a worker if the injury is a psychiatric or psychological disorder arising out of, or in the course of, any of the following circumstances--*
>
> *(a) reasonable management action taken in a reasonable way by the employer in connection with the worker's employment;*
>
> *(b) the worker's expectation or perception of reasonable management action being taken against the worker;*
>
> *(c) action by WorkCover or a self-insurer in connection with the worker's application for compensation;*
>
> *(d) circumstances in which a reasonable person, in the same employment as the worker, would not have been expected to sustain the injury.*

Examples of actions that may be reasonable management actions taken in a reasonable way--

- *action taken to transfer, demote, discipline, redeploy, retrench or dismiss the worker*

- *a decision not to award or provide promotion, reclassification or transfer of, or leave of absence or benefit in connection with, the worker's employment".*

[8] There was plainly an issue raised between the Applicant and the First Respondent as to whether what occurred in the workplace during the relevant time came within sub paragraph 4 (a) and perhaps (b). There were statements by the Applicant's former superior and a co-worker which gave a different account to that given by the Applicant as to what occurred. Some attack was made upon the performance of her tasks and the effect of the statements was that her treatment by her superior had been reasonable, notwithstanding the alleged failure by the Applicant to perform her duties in an adequate fashion.

[9] The Tribunal was constituted by three members. The chairman was a physician. One of the other members was a psychiatrist and the other was also a physician. The jurisdiction of the Tribunal is provided for in part 3 of Chapter 6A of the Act. *Section 447(1) of the Act provides:*

> ***"447.(1)*** *On a reference to a tribunal about a non fatal injury, the tribunal --*
> *(a) may make a personal examination of the worker at any time;*

[10] This power was exercised here.

[11] The obligation of the Tribunal on a reference of this kind is contained in s.440(2) which provides as follows:

> *"If WorkCover has not admitted that an injury was sustained by a worker, and the nature of the injury, the Tribunal must decide whether the matters alleged for the purpose of seeking damages constitute an injury to the worker and, if so, the nature of the injury".*

[12] It will be seen therefore that the hearing involved the application by the members of the Tribunal of their professional expertise. The members of the Tribunal examine the Applicant and the conclusions formed by them as a result of such examination form part of the material which the Tribunal takes into account for the purposes of discharging its function.

[13] There were in the present case a number of reports provided by the Applicant to the Tribunal. These included reports from three psychiatrists, and two psychologists as well as statements from the Applicant. I have already mentioned the statements from the secretary of the union and a co-employee of the Applicant which were also before the Tribunal.

[14] Before turning to the specific grounds relied upon I should mention that at the outset a challenge was made to the bona fides of the Tribunal in preparing the statement of

reasons provided pursuant to the order of the Court. It was contended that the statement of reasons were in effect contrived or constituted a sham prepared for the purposes of justifying a decision adverse to the Applicant and did not genuinely reflect the reasons for the Tribunal's decision. There is, in my view, no evidence to support such a serious allegation. The matters relied upon in argument in this regard which focussed on a number of isolated parts of the reasons do not in my view provide any support of any kind for the claim.

[15] The statement of reasons should be accepted on their face as constituting the reasons of the Tribunal.

[16] An Applicant who challenges a finding of a Tribunal in a case of this kind on the grounds of unreasonableness or on the grounds that the Tribunal had regard to considerations which were irrelevant or failed to take into account relevant considerations has a difficult task given the role which the expertise of the members of the Tribunal itself plays in the determination of the issue before it.

[17] The Court, of course, does not have the specialist expertise of the Tribunal and it is axiomatic that it cannot substitute any views it might hold for those of the Tribunal based upon an assessment of the material before the Tribunal.

[18] The reasons given by the Tribunal extend over some four pages. The Tribunal reviewed the evidence placed before it and as I have said the members brought their own independent expertise to bear following an examination of the Applicant.

[19] The Tribunal referred to the evidence that the Applicant had suffered from depression prior to the commencement of her employment with the union and that she has since ceasing her employment continued to suffer psychiatric problems and to take anti-depressant medication.

[20] The Tribunal rejected a diagnosis of an adjustment disorder advanced by psychiatrists whose reports were placed before it on behalf of the Applicant expressing the view that an adjustment order does not persist beyond six months unless there are ongoing stresses and that the presence of her ongoing symptoms some 33 months after ceasing work meant that a diagnosis of adjustment disorder was no longer appropriate.

[21] The Tribunal summarised its findings in the following way:

> *"The Tribunal were of the opinion that the matters alleged for the purpose of seeking damages do not constitute an injury.*
>
> *In summary the Tribunal considered that the claimant was suffering from depression prior to starting her employment with the Federated Clerks Union and this depression worsened during the course of her employment but not because of her employment".*

[22] This it would seem clearly enough, was a finding that the injury of which the Applicant complained did not arise out of or in the course of her employment as the employment was not the major significant factor causing the injury or indeed a factor.

[23] The Tribunal had earlier set out the effect of what was said in response to the Applicant's claims of numerous episodes of harassment. This generally related to the alleged unsatisfactory performance of her tasks but also included a reference by a co-employee that the secretary had not acted or spoken to the Applicant in an unreasonable manner. A finding of the Tribunal upon which a good deal of argument focussed appears at page 3 in the following terms.

> *"Her symptoms increased under circumstances concerning issues of a relatively minor nature which the members of the Tribunal considered would occur under normal office working conditions".*

[24] One of the grounds advanced was that the Tribunal had made an error of law. The argument was that if the Applicant's symptoms increased as a result of events in the office then this was sufficient to bring her condition within the definition of injury and that it is irrelevant that the events concerned might occur under normal office working conditions. This finding it was said was contrary to the ultimate finding that her depression worsened during the course of her employment "but not because of her employment".

[25] I do not think that the finding should be read in this way. The reasons have to be read as a whole. What in my view the Tribunal is saying is that at the time her symptoms increased there was nothing about the circumstances then subsisting in the union office which would justify a finding that the increase in the symptoms were linked to her employment in the way required by s.34(1).

[26] It is important to bear in mind when considering the words used in a statement of reasons by a Tribunal of this kind what was said by Davies JA and McPherson JA in *Cypressvale Pty Ltd v Retail Shop Lease Tribunal* (1996) 2 QdR 462 at p.484-485.

> "*However, before turning to the particular matters decided by the Tribunal, it is necessary to add that virtually all of the decisions which have been referred to here involved appeals from courts exercising judicial power in the full sense, and not administrative or quasi-judicial bodies or tribunals. The second and third of the three purposes identified by McHugh J. in* Soulemezis*, which are to maintain judicial accountability and to furnish precedents for the future, obviously have little or much less force in the case of a tribunal whose members and functions are not strictly judicial. The calibre, legal training and experience of members of the judiciary raise expectations that reasons they give for their decisions will attain a high level of sophistication. The same would not always be true of decisions of persons whose primary qualification for decision-making consists of specialist knowledge or experience rather than ability to produce reasons conforming to accepted judicial tradition. Reasons that would not be considered adequate if given by a judge may nevertheless suffice for some other decision-makers not chosen for their task because of their resemblance to the judiciary. In the end, the question whether reasons are "adequate" falls to be considered in the context afforded by the nature of the question which has to be decided and other factors, including the functions, talents and attributes of the tribunal members or the individual in whom the duty of deciding questions of that kind has been vested. Considerations of the cost to litigants and the general public in requiring*

> *reasons to be given is another factor which must be weighed:* Soulemezis v. Dudley Holdings Pty Ltd *(1987) 1987- N.S.W.L.R. 247,279, per McHugh J".*

[27] It should be added that if the finding at p.3 was to be understood in the way that senior counsel for the Applicant contended, s.34(4)(d) would probably have in any case precluded the finding contended for.

[28] The other grounds advanced were:

Firstly, that the finding that the Applicant did not sustain an injury for the purposes of the Act was unreasonable in the Wednesbury sense. It was also contended that the Tribunal had failed to take into account a relevant consideration or that it had taken into account irrelevant considerations. In one way or another with one exception to which I will refer shortly, each of these grounds is directed towards a failure to accept the evidence of the psychiatrists and psychologists placed before the Tribunal on behalf of the Applicant. It is obvious from the statement of reasons that all of that material was before the Tribunal and there is nothing to suggest that the Tribunal did not take it into account. The Tribunal was not bound to accept that evidence which was in any case to a substantial degree based upon the account given by the Applicant of what had occurred in the workplace, something the Tribunal plainly did not accept.

[29] I have already referred to the important consideration in a case of this kind that the members of the Tribunal themselves have expertise in the relevant field and are entitled to and did make use of it in the determination of the issue before it.

[30] Each of the grounds must be rejected. There is no basis in my view for any of them. They amount to an attempt to revisit the merits of the decision something impermissible on any application of this kind but containing a special validity in this type of case given the expertise of the members of the Tribunal.

[31] The Tribunal in the final paragraph of the statement of reasons said:

> *"The Tribunal is of the opinion that the failure to improve almost three years after leaving the alleged stressful situation was in a significant degree perpetuated by her seeking, spurred on by her legal advisers, satisfaction of her feelings of injustice and fairness, inculcated in her childhood and continuing in her adult life as indicated by J. Clayton psychologist and her unremitting depressive illness".*

[32] Obviously the persistence of the Applicant's psychiatric problems so long after she had left the relevant employment was a relevant consideration. Objection was taken to the statement that she had been spurred on by her legal advisers. It was said that there was no evidence to support this. It may be that this is correct and that it was purely gratuitous. However, as has been mentioned, the Applicant was examined by the members of the Tribunal and it is impossible to be satisfied about this. However, what is clear is that this is in no way central to the finding that the Applicant did not suffer an injury within the meaning of the Act.

[33] Finally, there was a claim advanced that the Tribunal had failed to afford the Applicant natural justice.

[34] The failure was said to be constituted by the Tribunal's failure to bring to the Applicant's attention an inclination to find that her symptoms had been exacerbated during her employment but that these symptoms were not related to the employment so that she might address this. It was said that this obligation arose because such a state of affairs had not been agitated.

[35] It seems to me, with respect, that the very issue which brought the Applicant before the Tribunal was whether she had suffered an injury which necessarily involved the issue of whether her employment caused the injury as required by the definition.

[36] She appeared legally represented and was able to present a substantial body of evidence to the Tribunal.

[37] It is settled that a body in the position of the Tribunal is not obliged to give notice of any impressions it might have formed of the evidence or of the lines along which it might be thinking so that a party might have the chance to persuade it otherwise.

[38] See *La Roche & Co v. Secretary of State for Trade and Industry* (1975) AC 295. However it is put, this is essentially what the Applicant suggests should have been done.

[39] There is in my view nothing in the contention that the Applicant was denied natural justice in this case.

[40] The application is dismissed with costs to be assessed.