

SUPREME COURT OF QUEENSLAND

CITATION: *Davis v Janjolly Pty Ltd t/a Western Tree and Weed Control* [2004] QSC 362

PARTIES: **DANIEL ALAN DAVIS**
(Plaintiff)
v
JANJOLLY PTY LTD (ACN 055 931 112)
TRADING AS WESTERN TREE AND WEED CONTROL
(Defendant)

FILE NO: 70/2003 (Mackay)

DIVISION: Trial Division

DELIVERED ON: 18 October 2004

DELIVERED AT: Mackay

HEARING DATES: 19, 20, 21 and 23 July 2004

JUDGE: Dutney J

ORDERS: **1. Judgment for the defendant against the plaintiff.**

CATCHWORDS: NEGLIGENCE – MASTER AND SERVANT - BREACH OF DUTY – where plaintiff carried out basaling and tordoning work for the defendant – where plaintiff suffered a back injury – where plaintiff asserts his condition is as a result of spending long periods of time in bent over postures carrying out work for the defendant – where the defendant provided the plaintiff with no safety instructions as to how to carry out the work – whether lack of safety instructions was causative of the plaintiff's injury – whether plaintiff conducted himself in a dishonest manner – whether plaintiff has failed to prove his case against the defendant

COUNSEL: Mr GF Crow for the plaintiff
Mr MT O'Sullivan for the defendant

SOLICITORS: Macrossan and Amiet for the plaintiff
Bruce Thomas Lawyers for the defendant

- [1] The plaintiff claims to have suffered injury in the course of his employment with Western Tree and Weed Control during the period from October 2000 until March 2002.
- [2] Western Tree and Weed Control was the trading name of a business operated by the defendant. As its name suggests the activity conducted by the business was the clearing and poisoning of regrowth under power lines and in other access corridors.
- [3] Most matters were in issue. The only matter not really contested was that the plaintiff had indeed worked for the defendant during the period claimed.
- [4] The plaintiff was employed for the periods set out in exhibit 1. These were made up of 6 days in November 2000, 21 days in December 2000, 15 days in February 2001, 28 days in March 2001, 3 days in April 2001, 16 days in May 2001, 11 days in June 2001, 14 days in July 2001, 11 days in August 2001, 12 days in September 2001, 10 days in January 2002, 4 days in February 2002 and 7 days in March 2002. This totals 194 days in 17 months. Although the days employed was 194, the days worked was less. Some days were lost through rain. There were some rest days on the longer jobs. As can be seen the work carried out by the plaintiff was intermittent. Over the whole period of the employment it averaged about two and a half days per week.
- [5] Mr Davis' account of his employment with the defendant is set out as follows. Mr Davis' first employment by the defendant was at a site near Proserpine. The defendant had a contract with Ergon Energy to clear regrowth from the access corridor under power lines. When Mr Davis arrived on site the work had already commenced and the camp for the workers was already set up.
- [6] Mr Davis said that he was not given any training. He picked up what was required by observing the other workers.
- [7] The work at Proserpine was what was described as "tordoning" work. Mr Davis said that he was issued with an axe, a back pack of tordon and a chain saw. The work initially involved cutting trees at a height of 600 to 900 mm from the ground. The trees were up to 10 inches in diameter. Trees cut down in watercourses had to be cut up into lengths capable of being manhandled by the worker and removed from the watercourse. Larger trees cut down on the open country were similarly cut into manageable pieces and removed to the edge of the cleared area. Smaller saplings were left where they fell.
- [8] After the trees were cut the stumps were poisoned with tordon from the backpack. Smaller saplings which did not need to be cut with the chain saw were scored with the axe and poison injected into them.
- [9] The tordon back pack was a 5 litre container.
- [10] Mr Davis had no problems with his back at Proserpine.

- [11] After Proserpine Mr Davis moved to a job at Nebo. Again this was a contract for Ergon Energy and the work was tordoning of regrowth under power lines. Mr Davis was involved in this contract from the start. Before work could commence Mr Davis said he had to help load the trailers of equipment for the camp, unload the trailers at the camp site and help set up the camp.
- [12] Loading of the trailers took place at Mr Mossman's house at Charters Towers. Mr Mossman was the proprietor of the defendant company. The equipment Mr Davis said he loaded included gas bottles, fridges, a diesel generator, a welder weighing about 60 kg or more, washing machines and various sized drums of poisons. The gas bottles were of a commercial size. Mr Davis estimated that they were 5 feet in height and weighed about 35 kg. The diesel generator weighed about 60 to 70 kg and the fridges about 45 to 50 kg. Mr Davis said that on occasions he was required to lift these things onto the trailer by himself without any mechanical aids.
- [13] At the camp site Mr Davis described unloading this equipment. Everything that was loaded had to be unloaded. The main tent also had to be erected.
- [14] The work at Nebo was essentially the same as at Proserpine. Initially the regrowth was cut at 600 to 900 mm but after a period it was discovered that the contract required cutting at 50 mm above the ground. The only exception was in the watercourses. The work already completed had to be redone.
- [15] To cut the trees at 50 mm required the worker to kneel down at the base of the tree and lean forward holding the chain saw extended in front and with the tordon backpack on the wearer's bent back. To avoid jamming the chain on the chain saw larger trees had to be cut around rather than straight through from one side. This involved shuffling around the base of the tree while kneeling. Larger trees according to Mr Davis took up to 2 minutes to cut. The worker had to maintain the bent posture for that period.
- [16] Mr Davis described getting up at 4am, leaving camp for the work site at 5am and not returning until 5:30 or 6:30pm. Mr Davis estimated he spent about 70% of the working day bent over.
- [17] At Nebo, Mr Davis said he did suffer some back discomfort and reported it to his supervisor, Wayne Reef. Mr Reef cautioned Mr Davis not to mention the problem to Mr Mossman. It was indicated to Mr Davis that if he complained to Mr Mossman of any problem he would be sacked.
- [18] At about this time Mr Davis suffered a problem with his groin. Initially Mr Davis tried to work through the pain. When he mentioned it to Mr Reef he was again cautioned not to tell Mr Mossman or he would be sacked. Eventually, Mr Davis was unable to cope and spoke to Mr Mossman. Mr Mossman's response was, "Well, I want another bloke here tomorrow."
- [19] Mr Davis did not persist with his complaint at that time. The next time Mr Mossman was on site he was with his wife and Mr Davis raised the matter again. Mr Mossman's response was the same. Mrs Mossman, however, said

that they would take Mr Davis with them to the Gladstone hospital. Mr Davis did in fact go to the Gladstone hospital where he was treated for an enlarged lymph node on 18 February 2001. After receiving treatment and being released on the same day, Mr Davis stayed with the Mossman's in Gladstone until he returned to Nebo.

- [20] Apart from tordoning, Mr Davis also did some over spraying work at Nebo. This involved going out to the site on a motor bike and spraying weed patches. The poison was in a tank on the motor bike. Mr Davis estimated he spent about 30% of his time at Nebo doing this.
- [21] After the work at Nebo was completed, Mr Davis moved to a job at Collinsville. Mr Davis had no part in the set up of the camp at Collinsville. The work was tordoning with stumps cut at 50 mm except in creeks where the stumps were cut at 900 mm. Mr Davis estimated that about 35% to 40% of the working day at Collinsville was spent shifting cut timber. Tordon backpacks were worn all day except at lunch and smoko. Mr Davis estimated the weight of the packs at 10.5 kg. The packs were filled to capacity. The pieces of timber shifted weighed 20 to 35 kg.
- [22] The job following Collinsville was at Charters Towers. There was no need for a camp because the work site was close enough to town to permit commuting. The work here was described as "basaling". For basaling the worker wore a 15 litre backpack. He carried a wand connected to the backpack through which the poison was injected into the plant. He also carried an implement called a debris rake. The vegetation being cleared was predominantly prickly acacia, mimosa and rubber vine. Workers would form a line about 15 to 20 metres apart and advance in a line poisoning the vegetation. Mr Davis estimated the basal backpack weighed about 20 kg. As the workers reached each plant they would use the debris rake to clear around the base and spray basal in a circle about 20 cm out from the trunk. The debris rake was about 60 or 70 cm long with a hook at one end. Mr Davis demonstrated bending almost 45 degrees to use the debris rake. No chain saw work was involved.
- [23] The only other work at Charters Towers involved clearing chinee apple trees. These are trees about the size of an orange tree with thorns like fish hooks. Mr Davis described crouching low under the tree to avoid the thorns and using the chain saw to cut the tree down.
- [24] Mr Davis said that he did not suffer any back problems while working at Charters Towers.
- [25] After Charters Towers, Mr Davis worked at Cape Upstart. There he helped set up the camp, including the lifting of heavy equipment. Cape Upstart was tordoning work. On one occasion, Mr Davis suffered some back discomfort from walking over uneven terrain carrying equipment. That equipment consisted of the tordon backpack, the axe and the chain saw. On this particular occasion, the workers had to carry between them their lunches, a 10 litre drum of petrol and a 10 litre drum of oil. The workers carrying the extra items did not carry a chain saw. That was carried for them by one of the

others. Mr Davis claims to have done more than his fair share of carrying the drums. Mr Davis described the discomfort as being like muscle spasms.

- [26] After Cape Upstart, Mr Davis worked at Dotswood Station. He was not involved in setting up the camp. The job was all tordoning. The timber was cut at 900 mm.
- [27] From Dotswood, Mr Davis went to Ravenswood. Mr Davis helped set up the camp. This included loading 44 gallon drums onto the trailer to take to the site. The work was basaling. The vegetation was mainly chinee apple trees. The work on this occasion was performed in teams of 2. One worker was equipped with an aluminium rake described by Mr Davis as 4 or 5 metres long with a head about 1.2 metres wide. It was used to push the lower branches aside so that the worker with the chain saw could get under the tree to cut it without injury from the thorns. When the tree was cut the rake was used to push the falling tree away from the man with the chain saw. According to Mr Davis using the rake involved constant pressure in a bent over position. The chinee apple trees were being cut at 50 mm above the ground. Mr Davis said that he used both the rake and the chain saw on different occasions. There was also some limited tordoning work.
- [28] At Ravenswood Mr Davis said that he suffered bad muscle spasms on both sides of his back.
- [29] The contract at Ravenswood was followed by a contract at Dredgehorn Station. This involved tordoning and some over spraying. The stumps were cut to 50 mm. Mr Davis did not assist with the camp set up. Mr Davis did not recollect having any back problems in the 4 days he was at Dredgehorn Station.
- [30] Following Dredgehorn Station Mr Davis went to Greenvale for 4 days. This was what is called recovery work. The area had been treated some months before. The exercise was to recover the same ground to remove trees overlooked on the previous occasion. It was not intense work and Mr Davis said he did not have any back problems while he was there.
- [31] From Greenvale Mr Davis went to Yabulu nickel refinery. At Yabulu Mr Davis described lopping large trees. Mr Mossman in a cherry picker would cut the braches from 30 or 40 metre high trees. Mr Davis and another workman would follow to clear up the cut timber. This involved cutting the logs into sections small enough to be handled and move them out of the cleared area. Mr Davis described this as “gut busting” work. The timber had to be moved about 6 metres from where it fell.
- [32] At one point Mr Davis and the other man working with him fell a little behind the cherry picker. They were then pressured to work faster and catch up. The cut pieces of the logs that Mr Davis had to shift were estimated by him at between 40 and 60 kg.

- [33] Mr Davis said that he experienced severe back pain at and after working at Yabulu. Mr Davis said he reported the problems to Mr Reef who simply told him that if he couldn't do the work Mr Mossman would get someone else.
- [34] That same night Mr Davis said that he was moved out of his girlfriend's house in Townsville and moved in with Mr Reef and his wife. Mr Reef helped him to shift. Mr Davis said that his back was too sore to lift things and his belongings, including a large television set, had to be shifted by Mr Reef and a Ms Colligan, the girl out of whose house Mr Davis was moving.
- [35] Mr Davis only worked on one more contract after Yabulu. That was at Fletchervale. Mr Davis helped set up the camp including loading the trailers. The work was basaling. Mr Davis described the working conditions as 7 days on and 3 days off. This is not consistent with the periods Mr Davis said he worked as set out in exhibit 1. It seems that Mr Davis concedes that after 3 days on this site they were forced to abandon the job because of rain and did not return for some time and then only for about a week. Mr Davis described getting up at 4 am to start at 5 am and working to 5:30 pm or later. He estimated he spent 65% to 70% of the day bent over. Mr Davis said the work at Fletchervale caused him considerable pain and he was not able to continue thereafter. Mr Davis says that he has suffered disabling back pain since the Fletchervale contract.
- [36] Mr Nissen was called to support Mr Davis' case. Mr Nissen worked on the jobs at Proserpine and Nebo. He confirmed that no safety induction or instructions were given. He confirmed that timber cut in the creeks had to be thrown out on the bank and that was hard work. He confirmed that at Proserpine the timber was cut at 600 to 900 mm. At Proserpine there were about 2 creeks a day where the timber had to be moved. At Nebo the trees were generally smaller than at Proserpine and the creeks less frequent. At some stage the timber height was reduced to 60 to 90 mm. Sometimes the worker wore the backpack while cutting with the chain saw and in sparser country, where trees were widely spaced, the worker travelled on a four wheeled motor bike. Mr Nissen agreed that loading equipment onto trailers was heavy work usually performed by more than one man at a time.
- [37] Mr Nissen recalled workers complaining of sore backs at the end of a day's work. He recalled Mr Mossman on occasions saying to Mr Davis that if he wasn't capable of doing the work he would be replaced.
- [38] The brother of Mr Davis' current partner was called on behalf of the plaintiff. Mr Burgess worked on the contract at Fletchervale. He spoke of the impact on his back of having to bend over at 45 degrees for what he said was 80% of the day. He and Mr Davis had Deep Heat rubbed into their backs each evening.
- [39] Ms Lewis, Mr Davis' current partner and Mr Burgess' sister, was also called and confirmed complaints of back pain by Mr Davis at Fletchervale. She also spoke of washing machines, a chest freezer and gas bottles having to be unloaded from the trailer.

- [40] Finally, Ms Colligan, Mr Davis' former girlfriend corroborated his evidence in relation to moving out of her place and in with Mr Reef.
- [41] I accept that the work Mr Davis did for the defendant was heavy. I accept that on occasions he suffered back pain. I do not accept that the work was as heavy or constant as Mr Davis asserted. I do not accept that he has suffered any significant or lasting back condition as a result of working for the defendant. In reaching this conclusion I have been influenced by four bodies of evidence. First, there is the evidence of Mr and Mrs Mossman and Mr Reef which contradicts that of Mr Davis in several important respects. Subject to some reservations about the extent to which Mr Mossman understated the difficulty of the work Mr Davis performed, I prefer their evidence to that of Mr Davis where there are conflicts. Second, there is evidence of general dishonesty on the part of Mr Davis. This relates to his claiming the new start allowance from Centre Link at times when he was employed, to his dealings with the two orthopaedic surgeons who gave evidence and to his failure to disclose to WorkCover the very matters of which he now complains. Third, the evidence suggests that Mr Davis' work pattern after the period he worked for the defendant was not noticeably different from the pattern during and before the time he worked for the defendant. Fourth, the medical evidence I accept does not support any permanent work related disability.
- [42] Mr Mossman spoke of the tordon backpacks. His evidence, which was supported by Mr Reef, was that the packs were only ever half filled because that was all the poison required. In any event a utility accompanied the workers in the field with a tank on the back from which the workers could refill their packs at any time. I accept that on the occasions Mr Reef was on site he filled the packs for the men and he filled them to the level he indicated. Mr Reef was not always on site and I accept that there were probably some occasions when the men filled their own backpacks and may have overfilled them.
- [43] In relation to the work at Proserpine Mr Mossman described the work as light. The country was mostly cane. There was timber in the creeks but usually only between 2 and 10 trees which needed to be cut. The only timber which he said he instructed the men to shift was timber actually in the water on the vehicular crossing. That was likely to cause punctures. He gave instructions that that timber was to be cut into small pieces and thrown off the track. Mr Mossman estimated that most of the day was spent moving from creek to creek. The bulk of the timber cut was not moved and is still on site today. Similar work was carried out at Nebo and at Collinsville. Mr Mossman's evidence was that employees did not carry both a chain saw and an axe at the same time. The axe used was a three quarter axe. I accept this evidence.
- [44] At Collinsville an incident occurred in which Mr Davis felled a tree incorrectly and damaged the power lines. Power workers had to attend from Townsville to repair the damage. Thereafter Mr Mossman directed that Mr Davis not use a chain saw again and to the best of his knowledge Mr Davis did not.

- [45] For the purpose of setting up camp Mr Mossman had a specially equipped drop sided trailer. Upright fridges, the stove, the gas bottles and freezer were generally left on the trailer. On two occasions at Charters Towers the freezer was removed from the trailer but on each occasion it was empty. Gas cylinders were only taken off the trailer when empty and were not reloaded by Mr Davis. Drums were pumped out before moving them. Whenever other equipment was moved it was moved by means of a team lift.
- [46] Mr Mossman's recollection of the incident in which Mr Davis was taken to Gladstone hospital differs significantly from Mr Davis version. Mr Mossman did not recall what had been wrong with Mr Davis but offered to take him to Gladstone hospital since he and Mrs Mossman were travelling to Gladstone in any event. According to Mr Mossman, rather than insisting on Mr Davis being taken to hospital Mrs Mossman queried why he was going with them. Mrs Mossman confirmed this version in her evidence. I found Mrs Mossman an impressive witness and have no hesitation accepting her version. Mr Mossman denied ever threatening any worker with the sack if they were injured.
- [47] Of less significance is the evidence of Mr Mossman that the rake used with the chinee apple trees was only about 2 metres long and not 4 or 5 metres. Nothing turns on this. In my opinion, the concept of workers using a 4 or 5 metre rake in the manner described by Mr Davis was improbable.
- [48] Of particular significance is the difference in the versions of Mr Davis and Mr Mossman concerning the contract at Yabulu. This contract was on behalf of BHP who operated the nickel refinery. BHP was particularly safety conscious. The defendant's workers were not permitted on site on any day unless they first received a safety induction. On one day the safety officer failed to appear and no work was able to be done on that day.
- [49] The work involved was the lopping of large trees and some stem injection of saplings. In relation to the large trees Mr Mossman cut them himself from a 25 metre cherry picker. Mr Davis' only role in relation to that was to help erect barricades around the work area and to do some stem injection work. Otherwise he stood around. Some of the lopped branches were cut up by another worker, a Mr Mathieson, with a chain saw. The pieces were not moved by hand, but were piled up by a piece of machinery. Mr Mossman said that BHP would not have permitted the timber to be moved by hand.
- [50] Mr Reef's evidence in relation to Yabulu largely corresponded with that of Mr Mossman. Mr Reef recalled Mr Mossman cutting the large trees from a cherry picker and Mr Davis and Mr Mathieson clearing some light vegetation around the trees so that the cherry picker could manoeuvre near them. Mr Davis did some tordoning work. He spent a lot of the time standing and observing. Mr Reef did not recall Mr Davis being involved in the erection of the barricades. In any event the barricades comprised bunting hung between pickets and some warning signs.

- [51] Mr Reef's recollection of the Gladstone hospital incident accorded with that of Mr and Mrs Mossman. He denied knowing of any back complaint suffered by Mr Davis even though Mr Davis had lived with him for a period. Mr Reef remembered helping Mr Davis move out of his girlfriend's house in Townsville but thought that Mr Davis had helped him lift things, including the television set. He did not recall lifting anything with Ms Colligan.
- [52] Mr Reef denied Mr Mossman had threatened sick or injured workers with the sack. Mr Reef denied workers worked more than 8 hours a day regardless of the time they left or returned to camp. If they were away longer the workers took longer breaks and the time included travel from the camp to the work site. Mr Reef said the greater part of the workers' day was spent walking. Timber was mainly in the creeks because the access roads had been bulldozed and there was rarely timber on them.
- [53] The impression I am left with from this evidence is that although the work was heavy it was neither as heavy nor as constant as Mr Davis sought to make out. On the other hand, I accept that Mr Mossman was understating the level of effort involved. In relation to Yabulu I find that Mr Davis did not do the heavy work with the tree branches which he claims. I am satisfied that the evidence of Mr Mossman and Mr Reef is a more accurate account of what was involved. This is a significant finding because it was the work at Yabulu which Mr Davis claims triggered his severe symptoms.
- [54] Mr Davis' work patterns bear on my ultimate finding. Mr Davis was born on 26 August 1976. He left school in 1992 when he was about 16. After leaving school Mr Davis worked for the Tanagra Council as a night patrolman. He worked for the council for about 18 months. Mr Davis then worked for some time as a night watchman for Aboriginal Hostels Pty Ltd. In 1995 he spent time as a car detailer before getting work with the Oodnadatta Community Council. Mr Davis was not employed between April 1996 and March 1999. Mr Davis spent 2 years and 3 months of this period in prison for an offence. In the result, Mr Davis was out of prison but unemployed from about July 1998 until March 1999.
- [55] From March 1999 until September 1999 Mr Davis worked as a driller's off-sider. This was heavy work but Mr Davis suffered no back problems. After about 5 weeks without employment Mr Davis was employed as a meatworker for 2 months until December 1999. Mr Davis was then unemployed for 11 months until he started work with the defendant. As is apparent from the dates on which Mr Davis worked, his work for the next 17 months for the defendant was intermittent. The longest gaps were about 6 weeks between Proserpine and Nebo and 4 months between Greenvale and Yabulu. After leaving the defendant's employ, Mr Davis was on WorkCover benefits for the 5 and a half months until September 2002. In November 2002 Mr Davis was employed, inter alia, to do fencing work for Circle View Cattle Company for about 3 or 4 weeks. In March 2003 he was employed as a fencer by a Mr Arnold near Moura for a few weeks. From May 2003 until April 2004 Mr Davis was employed firstly as a painter's assistant and then as an apprentice painter by a Mr Duffy at Biloela.

- [56] This means that Mr Davis has worked more than 50% of the period since he ceased receiving WorkCover benefits. At least 6 weeks of this was fencing which is generally regarded as extremely hard work. This level of work compares favourably with the amount of time Mr Davis actually worked during the 17 months he was employed by the defendant. It also compares favourably with the 3 years preceding Mr Davis' employment by the defendant.
- [57] From February 2000 to October 2003 Mr Davis was in receipt of the new start allowance from Centre Link except for the periods 8 February 2001 to 8 October 2001 and 1 July 2002 to 20 September 2002. This means that at the time of the Proserpine, Yabulu and Fletchervale work for the defendant Mr Davis was in receipt of the new start allowance. From March until June 2002 while Mr Davis was receiving WorkCover benefits he was also receiving the new start allowance. Similarly, Mr Davis was receiving the new start allowance while he was working for Circle View Cattle Co, Mr Arnold and for the first 5 months of his employment with Mr Duffy. On each of these occasions Mr Davis was earning more than \$300 nett per week. This anomaly gives rise to a degree of scepticism about Mr Davis' honesty. On its own this would not be critical evidence but there is other evidence of lack of honesty, specifically in relation to this claim.
- [58] Independently of any dealings with Centre Link Mr Davis has not been honest with the doctors who examined him for the purposes of this claim. On 3 March 2003 Mr Davis was seen by Dr Steadman. On 31 March 2003 he was seen by Dr Cook. Both doctors were told that Mr Davis had not worked since the Fletchervale contract. This was, of course, untrue. Both doctors noted the inconsistency between the facts stated by Mr Davis and the objective evidence of his calloused hands. By the time he saw Dr Cook we now know that Mr Davis had spent 3 weeks fencing. We do not know what work he had been doing just before seeing Dr Steadman.
- [59] Dr Cook ultimately supported Mr Davis' claim but partly, at least, on the basis of the heavy lifting work at Yabulu, which I find Mr Davis did not undertake. According to the conference notes with Dr Cook it was the Yabulu work which was the direct cause of the present claimed disability. For the purpose of expressing this opinion, Dr Cook was asked to assume that Mr Davis had accurately described his work at Yabulu.
- [60] Dr Steadman did not believe any of Mr Davis' symptoms were attributable to the employment with the defendant. Both doctors agreed Mr Davis had a normal back for a person of his age. Neither could identify an obvious physiological cause of the complaints.
- [61] The significant point here in relation to Mr Davis' credibility is his willingness to attempt to deceive the doctors as to his capacity to work after leaving the defendant's employ. This could only be deliberate and an attempt to inflate the present claim. Combined with his general approach to disclosing his work activities to Centre Link it causes me to have grave doubts as to Mr Davis'

history generally in relation to his claimed back injury. The fact that he could undertake fencing work at all is inconsistent with his alleged symptoms. I note further that my impression of Ms Lewis, Mr Davis present partner, was that she was very reluctant to say anything about Mr Davis' work activities which she was not sure the defendant already knew.

[62] Mr Davis was interviewed at length by Ms Matheson from WorkCover in relation to his claim. In the statement prepared by Ms Matheson and signed by Mr Davis on 1 May 2002, Mr Davis says that he suffered the onset of pain over a period from September 2001. He was unable to attribute any specific cause to the onset of the symptoms. He described the duties as physically demanding due to their repetitive nature and the requirement for a lot of rapid walking over steep inclines and declines, sandy patches and over uneven surfaces. This activity bears no similarity to the principal activity to which Mr Davis now attributes his condition. Before me he asserted that his condition was caused by heavy lifting of logs and equipment, and bent over work postures. The complaint about work postures was that he was required to spend most of the day in a bent over position with the weight of the backpack on his back. He was often simultaneously required to support the weight of a chain saw or rake extended in front of him.

[63] Finally, I prefer the evidence of Dr Steadman to Dr Cook on this occasion. Dr Cook's evidence was in part affected by the assumptions he was asked to make. Those assumptions are contrary to my findings of fact. Dr Steadman opined that whatever the cause of Mr Davis' complaints they are not work related.

[64] In relation to the factual disputes between the lay witnesses I generally accept the evidence of Mr Reef. He seemed to be the most independent of the witnesses called by either side. I accept that Mr Davis made no complaint to him about back pain. I do not accept Mr Davis' account of the work he did at Yabulu. In that instance I accept the evidence of Mr Reef and Mr Mossman. I accept Mr Mossman's evidence that Mr Davis did not do chain saw work after he was directed not to at Collinsville. I prefer the evidence of Mr Mossman and Mr Reef in relation to the necessity to lift heavy equipment to load and unload the trailer. I accept Mr Reef's evidence as to the density of timber to cut and the frequency of bending. I accept that Mr Davis was not given any safety induction or safety instructions, but I am not satisfied that that has been causative of any injury.

[65] In the result, I have not been persuaded that Mr Davis did the work he claimed. I am satisfied that he has exaggerated the work and the difficulty involved. I am satisfied his evidence in relation to Yabulu is wrong. I am not persuaded that he suffered an injury as a result of the work. I am unable to assess what the injury might be worth if it was as a result of work related activity because not having accepted Mr Davis' evidence, I cannot determine what his condition is. The doctors are of little help because they rely on Mr Davis' subjective reporting of matters which I do not accept.

[66] In the end, the plaintiff has failed to prove his case and I give judgment in the action for the defendant against the plaintiff.