

# INDUSTRIAL COURT OF QUEENSLAND

CITATION: *St Jacques v Workers' Compensation Regulator* [2019] ICQ 13

PARTIES: **IAN ST JACQUES**  
(appellant)  
**v**  
**WORKERS' COMPENSATION REGULATOR**  
(respondent)

FILE NO: C/2019/9

PROCEEDING: Appeal

DELIVERED ON: 7 November 2019

HEARING DATE: 12 June 2019

MEMBER: Martin J, President

ORDER: **The appeal is dismissed.**

CATCHWORDS: APPEAL AND NEW TRIAL – APPEAL - GENERAL PRINCIPLES – RIGHT OF APPEAL – NATURE OF RIGHT – APPEALS IN THE STRICT SENSE AND APPEALS BY WAY OF REHEARING – APPEALS BY WAY OF REHEARING – SCOPE AND EFFECT OF REHEARING – where the appellant contends that the Deputy President should have preferred other evidence to that which she did accept – where the appellant further contends that he was not allowed to ask questions of one of his witnesses during proceedings in the Queensland Industrial Relations Commission – where the respondent submits that no error of law has been established by the appellant – whether the appellant has demonstrated any error

*Workers' Compensation and Rehabilitation Act 2003*

CASES: *Gambaro v Workers' Compensation Regulator* [2017] ICQ 005, cited

APPEARANCES: Appellant in person  
S McLeod directly instructed by the Workers' Compensation Regulator for the respondent

[1] Mr St Jacques was employed by the hardware retailer Bunnings. He was a project manager at one of their stores when his employment was terminated. He made a claim for workers' compensation on the basis, putting it simply, that he suffered from anxiety due to an excessively large workload.

[2] At the hearing before the Commission the Regulator accepted that Mr St Jacques was an employee for the purposes of the *Workers' Compensation and Rehabilitation Act 2003* and that he had suffered an injury within the meaning of the Act. The issue before the Commission was whether that injury was compensable because of the provisions of s 32(5) of the Act.

[3] Section 32 relevantly provides:

“(1) An *injury* is personal injury arising out of, or in the course of, employment if—

- (a) for an injury other than a psychiatric or psychological disorder—the employment is a significant contributing factor to the injury; or
- (b) for a psychiatric or psychological disorder—the employment is the major significant contributing factor to the injury.

(2) However, employment need not be a contributing factor to the injury if section 34(2) or 35(2) applies.

...

(5) Despite subsections (1) and (3), *injury* does not include 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 the Regulator or an insurer in connection with the worker's application for compensation.”

[4] The Deputy President concluded “that in all of the processes undertaken by management towards the appellant, reasonableness has prevailed”. Although the Deputy President did not use the precise words of the Act, there is no dispute that she dismissed the appeal on the basis that s 32(5) applied. So far as it is possible to assess, the application to appeal is against that finding.

### **The application to appeal**

[5] The application to appeal does not comply in any way with the requirements of the *Industrial Relations (Tribunals) Rules 2011*. Rule 139(2) requires that the application to appeal must state the concise grounds of appeal. As was said in *Gambaro v Workers' Compensation Regulator*:<sup>1</sup>

“The requirement that grounds of appeal be stated concisely encompasses not only a demand for brevity, but also clarity. It is a breach of r 139 to inadequately articulate the actual basis of each ground of appeal.”

---

<sup>1</sup> [2017] ICQ 005 at [12].

- [6] The submissions filed in support of the application do not, in any way, assist in identifying or articulating the grounds of appeal. They are in a narrative form and are diffuse.
- [7] Mr St Jacques was represented by Ms Foran (a relative) at the hearing before the Commission but he appeared for himself in this court. Notwithstanding that the application to appeal did not comply with the requirements of the rules, I allowed Mr St Jacques to address the court on his application and, on numerous occasions, reminded him that he was participating in an appeal and that his task was, so far as he could, to identify what he said were the errors in the Deputy President's reasoning. In spite of substantial guidance and numerous opportunities, he could not. His arguments were, for the most part, that the Deputy President should have preferred other evidence to that which she did accept. But he could not show any error in the manner in which the Deputy President had arrived at her conclusion.
- [8] Apart from complaints about not accepting evidence or not, it would seem, drawing inferences, his case appeared to be that he had not been treated fairly below and, in particular, that he had not been allowed to ask questions of one of his witnesses – Mr Grant.

#### **Fairness of the hearing**

- [9] A large part of the contentions filed by the appellant concerned a misunderstanding of the litigation process. He frequently asserts that witnesses who gave evidence lied and that they should not have been believed. The basis for that assertion was that he disagreed with their versions of events. He claimed that some evidence had been unfair in that it favoured the other side. He also asserted that the Deputy President overlooked certain evidence. That latter point is one which might give rise to a ground of appeal were it not for the fact that it is inaccurate. The Deputy President did consider the grounds raised by Mr St Jacques when she dealt with each of the stressors which were the foundation of his claim. The circumstances which preceded the hearing were not matters which were relevant to the decision for the Commission.

#### **The examination of Mr Grant**

- [10] When this matter first came on for hearing in May 2018 there was a problem about the ability of Mr Grant to give evidence due to a medical condition. He was to be called on behalf of the applicant in the Commission, Mr St Jacques. There was considerable discussion about how that would affect the hearing. The matter was adjourned and resumed in October 2018. Both in May and in October Mr St Jacques was represented by Ms Foran. From what I can understand on the material, Mr Grant's evidence was relevant, among other things, to a meeting that took place in July 2013.
- [11] Mr St Jacques maintained before me that he had told the Deputy President that he, rather than Ms Foran, was to ask the questions of Mr Grant when he gave evidence. Mr St Jacques was not able to direct me to anything in the transcript which would support that. On the day following the hearing of this appeal Ms Foran provided the Registry and the Regulator with transcript references which she said concerned "the Appellant's contention about not being able to question his witness and how the commission was aware of his intention to do so." All of the transcript references concern exchanges which took place on either the fourth or fifth day of the hearing. There was no reference to any transcript which supported Mr St Jacques'

assertion before me that he had told the Deputy President “several times ... at the beginning of the trial” that he was going to examine Mr Grant.

- [12] There was some discussion about Mr Grant’s availability on day 4 of the hearing and Mr St Jacques relies on this exchange. It does not refer to Mr Grant’s examination in chief.

“MR McLEOD: And I will sit down very soon, but just to let you know, because I’ve had discussions with Ms Foran, as I understand how the appellant will run his case, Ms Foran will lead evidence from Mr St Jacques, and then Mr St Jacques will be cross-examining all of our – all of the respondent’s witnesses. So just to let you know.

DEPUTY PRESIDENT: I see. Mr St Jacques will.

MR McLEOD: Yes.”<sup>2</sup>

- [13] Arrangements had been made for Mr Grant to give evidence at a particular time but, when that time arrived, Mr St Jacques was still giving his evidence in chief. The transcript reveals that there was discussion between the Deputy President and the parties about how this might be managed. At T5-3 it was suggested by Mr McLeod that “Mr Grant ... give his evidence at 2.15pm or earlier on the basis that all the contentions raised by Mr St Jacques in relation to Mr Grant [be] given in his evidence during the course of the morning up until lunchtime. ... when Mr Grant gives his evidence, I’ll naturally cross-examine, and then we’ll resume with Mr St Jacques’ evidence.” Ms Foran said that she was happy to proceed in that way.

- [14] The first time the Deputy President appears to have said anything about who was to examine Mr Grant was at T5-28:

“DEPUTY PRESIDENT: Yes. Just go and see if he’s there, thanks, Amy – Mr Grant. So you’re now – as I understand it now, questioning Mr Jacques, aren’t you?---Mr Grant, yeah.

Mr Grant, I’m sorry?---Yes.

No, not yourself?---No. No worries.

No, that’s okay?---If – yeah, are you familiar with that, Lorain<sup>3</sup>? Yeah. And in advance I’d – your Honour, I might be emotional at the start because I haven’t seen Charlie for a while.

- [15] It is not clear who was being addressed and who was responding in that exchange.

- [16] Soon after that Mr McLeod raised the problem of allowing Mr St Jacques (whose evidence hadn’t finished and who had not been cross-examined) to examine Mr Grant on matters which were an important part of Mr St Jacques’ evidence. The following exchange took place:

---

<sup>2</sup> Hearing T4-22.

<sup>3</sup> Ms Foran.

“DEPUTY PRESIDENT: There is a – there really is a problem with it too. I just thought it was agreed.

MR McLEOD: Well, there is, but I forgot – and it’s my mistake. I forgot that Mr Grant – sorry, Mr St Jacques is going to call Mr Grant and lead the evidence and ask the questions.

DEPUTY PRESIDENT: Yes.

MR McLEOD: So I haven’t cross-examined Mr St Jacques on - - -

DEPUTY PRESIDENT: No. It’s complicated.

MR McLEOD: On - - -

DEPUTY PRESIDENT: And I think probably problematic in the sense that if – it probably would be preferable for you to – are you across the issues with Mr Grant?

MS FORAN: I - - -

MR McLEOD: I apologise. It was me trying to be - - -

DEPUTY PRESIDENT: No, no, everyone’s trying to be accommodating - - -

MR McLEOD: - - - too smart to try and – yeah, accommodate.

DEPUTY PRESIDENT: Yes. No, no - - -

MR McLEOD: And I’ve - - -

DEPUTY PRESIDENT: There’s no concern about that. I think everyone’s tried very hard to make sure it runs smoothly. Would you be able to do that?

MS FORAN: As long as he can sit beside me - - -

DEPUTY PRESIDENT: Well, let me see.

MR McLEOD: No, I don’t – see, he would hear the evidence. That’s the difficulty.

DEPUTY PRESIDENT: You see, what often happens when someone’s representing themselves, it’s just them and they have a support person there, but you’re also going to be doing that, and he is still theoretically before the Commission, so he really should be outside. It is a complex thing, but that’s all for the purpose of trying to get through all of this. So - - -

MR McLEOD: I think the – sorry to interrupt. I think the only way forward is really, because there are some contentious issues potentially that arise on the applicant and respondent’s case in respect of Mr Grant’s involvement, but it – with respect, Ms Foran’s led the evidence from – or asked the questions about - - -

DEPUTY PRESIDENT: Just wait outside, thanks.

MR McLEOD: She’s asked Mr St Jacques the questions about Mr Grant’s involvement.

DEPUTY PRESIDENT: Yes.

MR McLEOD: She's gone off the facts and contentions. She can lead that evidence, with respect, from Mr Grant, without Mr St Jacques (a) hearing the evidence and being involved in the evidence. And then - - -

DEPUTY PRESIDENT: Well, you've already been drawn to those areas, so – and I do think – look, it is the more sound and appropriate way to proceed. It was just that trying to find a way to accommodate all the problems. We looked at a range of possibilities, but I think that's probably the most sensible one and I feel also that you're not disadvantaged in this sense: that you've already undertaken that process. So you know where to go to. So I think that might be the way to go. That's the fairest way to go, but not with Mr St Jacques in the room as he's still going to be giving evidence.

MS FORAN: I'll just – can I confirm with that – with him – with Mr St Jacques, that he's okay to proceed that way?

DEPUTY PRESIDENT: Yes, just go down with Amy and Amy can go around with you. Okay.

ASSOCIATE: Sorry. Who do you want to come in, sorry? Mr Grant?

DEPUTY PRESIDENT: Yes. That's fine. Yes, thanks. Ta."<sup>4</sup>

- [17] Ms Foran sought to “confirm ... with Mr St Jacques, that he's okay to proceed that way.” There is no recorded response but, as the matter proceeded without further comment I feel safe in assuming that his consent was given. I was not referred to any complaint made by Mr St Jacques at the hearing about this arrangement.
- [18] There is nothing unfair in interposing a witness in the manner which occurred. The situation came about because of the limited time available to examine Mr Grant. In his written submissions, Mr St Jacques speaks about thinking of questions while he was later being asked questions, but none of that amounts to an error on the part of the Deputy President.

### **Conclusion**

- [19] The arguments mounted by Mr St Jacques on this application to appeal were not directed in any way to establishing any error of fact or error of law. Rather, it was a litany of complaints and concerns about the hearing which he had lost. The process in this court is not to rerun arguments which were mounted below and hope that a different conclusion will emerge. In the absence of any error having been shown, the application is dismissed.

---

<sup>4</sup> Hearing T4-30, 31.