

IN THE SUPREME COURT OF QUEENSLAND

No. 191 of 1986

ROCKHAMPTON

BETWEEN:

FREDERICK GEORGE LAWSON

(Plaintiff)

AND:

QUEENSLAND ALUMINA LIMITED

(Defendant)

JUDGMENT - DEMACK J.

DELIVERED the Twentieth day of March 1989.

CATHCWORDS:

Discovery - Interrogatories.

COUNSEL: MR McMEEKIN For the Applicant

MR BRITTON For the Respondent

SOLICITORS:

HEARING DATES: 13th March, 1989

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DELIVERED the 20th day of March 1989.

This is an application for further answers to
interrogatories.

The plaintiff alleges in his statement of claim that he was injured while trying to avoid a solution of hot water and caustic soda which escaped from the 4B washer overflow manifold at the defendant's plant. The alleged reason for the emission is that a gland follower blew out. The allegations have been particularised in considerable detail, and I do not intend to set them out in full. Ten interrogatories are involved in the application and I shall deal with these one by one.

Interrogatory 5 is in the following terms:

"5. What instructions, if any were given to the Plaintiff by the Defendant, its servants or agents, as to the actions the Plaintiff should take on the occurrence of a sudden blow out involving the spray of hot water and/or caustic solution towards him when standing on a pump platform in "the vicinity of 4B washer overflow manifold?"

The defendant's answer is in these terms:

"In answer to Interrogatory number 5 the Defendant says that it is not necessary to answer this Interrogatory upon the basis that none of the employees of the Defendant had knowledge of the occurrence of a sudden blowout involving the spray of hot water and/or caustic solution towards the Plaintiff when the Plaintiff was standing on a pump platform in the vicinity of 4B washer overflow manifold."

This is clearly not a responsive answer. The interrogatory is relevant to the issues raised in the statement of claim, and should be answered.

Interrogatory 6 is consequential upon interrogatory 5. The answer given is not responsive to the question, and a responsive answer should be given, consequent upon the answer to interrogatory 5.

Interrogatory 7 is in the following terms:-

"7. What steps, if any, were taken by the Defendant to ensure that the Plaintiff was not likely to be sprayed

with a solution of hot water and caustic soda whilst carrying out his duties at the pump platform?"

The defendant's answer is in these terms:-

"7. In answer to Interrogatory number 7 the Defendant says that the Plaintiff received training in the following:-

Hazards recognition and hazard control and wearing protective equipment

The action to be taken in the case of a blowout and/or discharge from a pump or valve.

The Plaintiff had himself been responsible for the conduct of training of the employees of the Company under his supervision and control in hazards recognition and hazard control."

It is obvious that what the question sought was the details unexpressed in the second sentence. These details should now be given.

Interrogatory 9 is in the following terms:-

"9. What system of work was laid down by the Defendant which employees were to follow in circumstances of a gland follower blowing out whilst an employee was standing on a pump platform in the vicinity of 4B washer overflow manifold?"

The defendant's answer is in these terms:-

"9. In answer to Interrogatory number 9 the Defendant says that it takes objection to answering this Interrogatory upon the basis that the Interrogatory assumes the existence of a fact which is not admitted in the pleadings or in the Defendant's answers to these Interrogatories, namely that there was a system of work laid down by the Defendant which employees of the Defendant were to follow in the circumstances of a gland follower blowing out whilst an employee was standing on a pump platform in the vicinity of 4B washer overflow manifold."

The interrogatory is relevant to the issues, and it is not dependent upon an admission that there was a system of work laid down. The law casts a responsibility on the defendant in that regard, independently of any admission in the pleadings. The question concerns the system that was in fact laid down, and it should be answered.

Interrogatory 12 was in the following terms:-

"12. Has the Defendant at any time carried out any investigation as to the expense of:-

- (a) providing protective equipment to employees sufficient to protect them from solutions of hot water and caustic soda;
- (b) providing a system of warning or alarm sufficient to warn employees of the possibility of a blowout of a gland follower;
- (c) providing guards around pumps sufficient to protect employees from a sudden blowout from a gland follower?"

The defendant's answer was in the following terms:-

"12. In answer to Interrogatory number 12 the Defendant says that:-

- (a) the Defendant provides protective equipment to employees sufficient to protect them from any solution of hot water and caustic soda;
- (b) the Defendant takes objection to answering this part of Interrogatory number 12 upon the basis that it is unduly wide and vexatious;
- (c) the Defendant has not at any time carried out any investigation as to the expense of providing guards around pumps sufficient to protect employees from a sudden blowout of a gland follower."

This interrogatory deals with an issue that is relevant to the pleadings, namely the expense of providing certain matters which, it is alleged, are necessary if the

system of work is to be safe. The answer 12(a) is not responsive to that question, and should be answered responsively. So far as 12(b) is concerned, this is relevant to the issues raised in the notice of further and better particulars of the statement of claim, clause 1(b) which reads:-

"The system of warnings or alarms as to the possibility of a blow out occurring that the Defendant failed to install was an alarm system which would indicate that hot caustic soda solution had escaped from the pump or was likely to escape thereby injuring workers;"

This then is one of the matters raised in the pleadings and the investigation of the cost of such a matter is also relevant. The question should be answered. Answer 12(c) is a responsive answer and a complete one.

Interrogatory 13 is consequential upon the answers given to interrogatory 12, and a further answer should be given, dependent on the content of the further answers to 12.

Interrogatory 21 concerns the plaintiff's gross weekly wage at the date of the termination of his employment. This was answered, but the plaintiff's solicitors contends that other material from the defendant indicates the answer is wrong. In the circumstances, where the assertions are based on income in previous years, I am not satisfied there is material sufficient to justify ordering a further answer.

Interrogatory 22 is in the following terms:-

"22. What gross wages, including allowances and identifying same, by reference to employees of commensurate seniority and efficiency, would the plaintiff have earned with the Defendant during the following periods:-

- (a) from the date of termination of his employment to the 30th June next following the date of such termination;

- (b) each year ending the 30th June next following the period referred to in subparagraph (a) hereof;
- (c) the period from the 1st July next preceding the date of the Defendant's answers to these Interrogatories to the date of its answers to these Interrogatories."

The defendant's answer is in the following terms:-

"22. In answer to Interrogatory number 22 the Defendant says that it objects to answering this Interrogatory upon the basis that it assumes the existence of a fact not admitted by the Defendant in the pleadings or in previous answers by the Defendant to these Interrogatories, namely that the Plaintiff would have remained in employment with the Defendant during the following periods:-

- (a) from the date of termination of the Plaintiff's employment to the 30th June next following the date of such termination;
- (b) each year ending the 30th day of June, next following the period referred to in subparagraph (a) hereof;
- (c) the period from the 1st July next preceding the date of the Defendants answers to these Interrogatories to the date of its answers to these Interrogatories."

The objection taken is valid. However, the issue with which the interrogatory attempted to deal is relevant to the question of damages and, indeed, is of major importance on that issue. The plaintiff should have leave to deliver a further interrogatory which has inserted in interrogatory 22 after the word "earned" the words "if he had worked".

Interrogatories 25 and 26 ask questions about any superannuation scheme associated with the plaintiff's employment with the defendant. The defendant has objected to answer on the basis that the matter is not relevant to the matters in issue in the pleadings. This is not so. The plaintiff claims to be completely incapacitated from earning an income and to have lost earnings. Superannuation for employees has long been regarded as part of the total wages package which an employee earns and which is part of

his income. This has now firmly part of the wages structure in Australia with the 3% productivity superannuation scheme. Consequently, it would be an archaic use of language to say that matters of superannuation, sick leave, holiday pay and long service leave are not embraced within the words "earning an income". The two interrogatories should be answered.

I order that within 28 days of this date the defendant make further answers to interrogatories numbered 5, 6, 7, 9, 12(a), 12 (b), 13, 25 and 26 of the interrogatories delivered by the plaintiff on 15th July, 1988. I further order that it be specially ordered that the plaintiff may deliver a further interrogatory in the following terms:-

"27. What gross wages, including allowances and identifying same, by reference to employees of commensurate seniority and efficiency, would the Plaintiff have earned if he had worked with the Defendant during the following periods:-

- (a) from the date of termination of his employment to the 30th June next following the date of such termination;
- (b) each year ending the 30th June next following the period referred to in subparagraph (a) hereof;
- (c) the period from the 1st July next preceding the date of the defendant's answers to these interrogatories to the date of its answers to these interrogatories."

I order that the defendant pay the plaintiff's costs of this application.