

IN THE SUPREME COURT OF QUEENSLAND

No. 55 of 1993

TOWNSVELLE

BETWEEN:

RODNEY RAY ALCHIN

Plaintiff

AND

GEOFFREY MICHAEL PEASE & GUISEPPINA SANTINA
PEASE trading as TULLY GENERAL CARRIERS

First
Defendant

AND

CARPENTARIA TRANSPORT PTY LIMITED (ACN 009
683 4521) trading as NORTH QUEENSLAND
EXPRESS

Second
Defendant

AND

WORKCOVER QUEENSLAND

Third Party

REASONS FOR JUDGMENT - CULLINANE J

DELIVERED THE 14TH DECEMBER 1998

1 In this matter the Plaintiff's claim against the Defendants and the Defendants' claims against each other in respect of contribution have been compromised. The remaining issue is the claim by the Second Defendant against the Third Party, WorkCover Queensland, for an indemnity.

2 I heard the Plaintiffs evidence as to the circumstances in which the accident occurred and there are a number of admitted facts relevant to this issue.

3 Exhibit 8, I am informed, is the contract between the First Defendant and the Second Defendant for the carriage of goods from Melbourne to Cairns. Clause 9(i) required delivery in accordance with instructions. It was

not suggested that the delivery which took place was not in accordance with the contract.

4 It is agreed that the Plaintiff left Melbourne on 18 January 1991 and that the goods which he had transported were being unloaded at the time he was injured. It is also common ground that the Plaintiff was an employee of the First Defendant and performing work pursuant to his contract of employment with the First Defendant. It is further agreed that the Second Defendant paid the First Defendant the sum of \$3,630 for the transportation of the goods.

5 The other relevant admission is that the Second Defendant has a legal liability to pay damages to the Plaintiff in respect of the injury sustained by him.

6 According to the Plaintiff, when the truck arrived at the depot in Cairns, he took it to an unloading area where an employee or employees of the Second Defendant commenced to perform the unloading. It was no part of the First Defendant's contract with the Second Defendant to carry out unloading.

7 For the purposes of unloading the goods it was necessary to remove certain items which had been placed in position to secure and protect the load. These included a tarpaulin, curtains and gates.

8 At the time the Plaintiff was injured, there remained one item still to be unloaded. An employee of the Second Defendant brought the gates back to the truck on a forklift and in the course of attempting to place them on the trailer, the gates became dislodged and struck the Plaintiff. The Plaintiff intended to secure the gates by means of a rope for the purposes of the journey from the Second Defendant's depot back to the First Defendant's depot at Tully. They were not to be placed back in the position they were in when the truck had arrived except, as I understand things, for the rear gates. He was standing on

the back of the trailer for the purposes of receiving the gates and securing them.

9 Section 47 of the Workers' Compensation Act 1990 provides as follows:-

47. (1) In this section-

"contractor" means a person who by a contract undertakes to carry out, or to secure the carrying out of, work for another.

"principal" means a person for whom work is to be carried out by another under a contract to which the person is a contracting party.

(2) A contractor under a contract for performance of work can also be a principal under any other contract for performance of the same work or any part of that work.

(3) When a contract is made between a principal and a contractor for work to be carried out and workers are used in carrying out the work, or any part of it-

- (a) the principal is declared to be an employer of every such worker used in carrying out work in performance of the contract, or in performance of any other contract made with a view to carrying out the work for which the first contract is made, or any part of that work; and
- (b) the cover of a policy maintained by the principal with the board extends to indemnify the principal against the principal's legal liability existing independently of this Act to pay damages in respect of injury to any such worker while used in carrying out work for which the contract is entered into, or any part of that work.

(4) The declaration of a principal to be an employer of a worker by subsection (3)(a) does not affect the relationship of employer and employee existing between the worker and the actual employer of the worker.

(5) If in the case of a contract such as is referred to in subsection (3) the principal is not indemnified

against the legal liability referred to in subsection (3) (b), under-

- (a) a policy maintained by the principal with the board;
or
- (b) a contract of insurance made independently of this Act;

the cover of a policy maintained with the board by the contractor extends to indemnify the principal against the principal's legal liability referred to in subsection (3) (b).

10 The Second Defendant claims to be entitled to be indemnified by the Third Party against its liability to the Plaintiff on the grounds that at the time the Plaintiff was injured he was carrying out the work contracted for by his employer to the principal, the Second Defendant.

11 The Third Party denies it is obliged to indemnify the Second Defendant pleading:

- "(a) There is no contract between the First Defendant and the Second Defendant pursuant to which work was being performed by the Plaintiff.
- (b) The Plaintiff was not performing work at the time that he was injured.
- (c) Any contract between the First Defendant and the Second Defendant had been performed completely prior to the Plaintiff being injured.

12 In argument the Third Party focussed on the terms of s.47(3) (b) and in particular the somewhat awkwardly expressed reference to an injury to a worker, "while used in carrying out work which the contract is entered into".

13 It was submitted that this provides a significant limitation upon the extent of the right of a principal, such as the Second Defendant in this case, to be indemnified by the Third Party against a legal liability to

a contractor's employee. It was submitted that it is only in respect of a legal liability to pay damages to a worker for an injury sustained whilst carrying out the very work for which the contract provides and nothing incidental or ancillary thereto that the cover subsists. The Third Party contends that s.47 is expressed in more restrictive terms than the provision under consideration in *Maroochydore Black Swan Rugby League Limited -v- Workers' Compensation Board of Queensland* [1994] 2 Qd R 531.

14 On this argument the cover would apply whilst the Plaintiff was driving the vehicle from Melbourne to Cairns but not when the vehicle was at the Second Defendant's depot at Cairns whilst the goods were being unloaded. During this time the Plaintiff was present while the gates, tarpaulin and curtains were removed to enable unloading to take place. At the time of his injury he was on the trailer to receive and secure the gates.

15 It seems to me that the legislative policy expressed in s.47 is to ensure that a worker injured in the circumstances for which it provides will have access to the statutory fund to satisfy a judgment where he/she has been injured by the negligence of his/her employer's contractor or someone for whom the contractor is responsible. It also protects the principal by providing an indemnity. It is expansive of the rights of the worker and also the principal.

16 Such a provision should not be afforded a narrow or technical construction and, in my view, this is what acceptance of the Third Party's argument would do.

17 In the present case, the Plaintiff had brought the vehicle to the Second Defendant's premises for the purposes of unloading the goods which his employer, the First Defendant, had contracted to transport. Upon the completion of the unloading, the Plaintiff would proceed to take the vehicle from the premises. The unloading was not complete at the time he sustained his injuries. I think that the Plaintiff should be regarded as engaged in the work the

subject of the contract whilst he was the driver remained with the truck whilst it was being unloaded and whilst receiving the gates back onto the trailer in order to secure them. In being on the trailer, when the Second Defendant's employee brought the gates back to the trailer to reload them onto it, the Plaintiff, in my view was a worker used in carrying out work in performance of the contract between the First Defendant and the Second Defendant. Accordingly I find that the Plaintiff sustained his injury "whilst used in carrying out work" for which the relevant contract had been entered into.

18 The Second Defendant is entitled to be indemnified by the Third Party.

19 I order that the Third Party indemnify the Second Defendant against the Second Defendant's legal liability to pay damages to the Plaintiff in respect of personal injuries sustained by him on 22 January 1991. I give the parties liberty to apply.