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NO EMPLOYMENT CONNECTION FOR JUICER INJURY

JULY 11, 2017 | EMPLOYER'S LIABILITY

An injury suffered by an employee visiting work premises on a day off was not 'in the course of' or 'arising out of' employment and her right to commence common law proceedings was consequently not restricted.

In Issue

Whether an injury arose out of, or in the course of, a shop attendant's employment in circumstances where it was her day off and she was trying to buy a drink but a fellow employee asked for her assistance.

The Background

The respondent was a casual employee at a dessert shop in Cabramatta, Sydney. On her day off she went into the store to buy a drink. While there, she was asked by a fellow employee to assist with cleaning the floor, which she did. During the course of the cleaning, the respondent slipped on wet tiles and her hand came into contact with a juicing machine.

The Decision at Trial

The respondent sued the shop owners as the owner occupiers and was successful in recovering damages because the juicer ought to have had an interlocking guard.

An issue also arose as to whether the injury arose out of, or in the course of, the respondent's employment with the shop. If it did, the claim would have been subject to the NSW workers' compensation scheme, which prevents a person from recovering damages against an employer unless they have complied with the relevant pre-court procedures and the permanent impairment threshold. After reviewing the evidence, the court found that the injury did not arise out of, or in the course of, the respondent's employment with the shop.

The Issues on Appeal

The main issue in the appeal was whether the injury was subject to the NSW workers' compensation scheme.

The Court of Appeal confirmed that where an injury occurs during an interval in a person's employment, the test for determining whether the injury occurred 'in the course of their employment' is whether the employer induced or encouraged them to spend the interval at a particular place or perform a particular activity. Relevant to the respondent's case, she never worked Mondays (when this accident occurred), she only worked when the owners called her in (which they did not) and the employee who asked her for help did so of her own accord. Given there was no evidence of any inducement or encouragement on the part of the owners, the Court of Appeal confirmed the trial judge's finding that the injury did not occur in the course of her employment.

As to whether the injury 'arose out of' the respondent's employment with the shop, the Court of Appeal affirmed that there needs to be a causal connection between employment duties and the injury. As the respondent was at the shop to buy a drink, and had not been asked by the owners to work or perform the cleaning, the Court of Appeal agreed with the trial judge that the injury did not arise out of her employment.

Implications for you

The Court of Appeal's decision is a win for common sense. It confirms that employers cannot be held responsible for injuries sustained by employees who have not been rostered on to work and have not been asked or encouraged by the employer to perform a particular task or be at a particular place.

Tran v Vo [2017] NSWCA 134

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