

Friday, 3 May 2019

Weekly Employment Law A Weekly Bulletin listing Decisions of Superior Courts of Australia covering Employment Law

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Executive Summary (1 minute read)

United Voice v Wilson Security Pty Ltd (FCAFC) - industrial law - interpretation of Security Services Industry Award 2010 - allocation of overtime - appeal dismissed

Pascoe v Mechita Pty Ltd (NSWSC) - workers compensation - judicial review - 'degree of impairment' - challenges to Medical Panel's decision upheld

Moore v Tatura Milk Industries & Anor (VSC) - accident compensation - insurance - contract - negligence - statutory duty - Victorian Workcover Authority obliged to indemnify defendant for its liability to independent contractor

Total Transport Pty Ltd v Tasiopoulos (VSC) - judicial review - plaintiff sought to quash opinion of Medical Panel that worker had 'work-related incapacity for his pre-injury employment' - proceedings dismissed

Summaries With Link (Five Minute Read)

United Voice v Wilson Security Pty Ltd [2019] FCAFC 66

Full Court of the Federal Court of Australia
Collier, Bromwich & Wheelahan JJ

Industrial law - respondent employed first second appellant as security guard - second appellant was member of first appellant Union - appellants challenged respondent's interpretation of Security Services Industry Award 2010's terms concerning overtime and penalty rates -

appellants contended appellant was underpaid - appellants sought that 'pecuniary penalty' be imposed on respondent and also sought orders under s545(1) *Fair Work Act 2009* (Cth) - primary judge dismissed application - "overtime" - interpretation of Award - whether respondent entitled to 'allocate overtime to Sundays before ordinary hours had been worked' - held: appeal dismissed.

[United Voice](#)

[From Benchmark Friday, 3 May 2019]

Pascoe v Mechita Pty Ltd [2019] NSWSC 454

Supreme Court of New South Wales

Button J

Workers compensation - judicial review - plaintiff brought proceedings against first defendant under *Workers Compensation Act 1987* (NSW) - plaintiff challenged Medical Appeal Panel's decision concerning 'degree of impairment' - whether Panel denied plaintiff procedural fairness by taking 'scientific material adverse to him' into account without giving notice - whether Panel 'impermissibly reasoned' in relation to 'mean observations pertaining to large cohorts of persons' - held: grounds of review upheld - decision set aside - matter remitted.

[View Decision](#)

[From Benchmark Friday, 3 May 2019]

Moore v Tatura Milk Industries & Anor [2019] VSC 259

Supreme Court of Victoria

McDonald J

Accident compensation - contract - insurance - negligence - plaintiff was working as independent contractor under contract between defendant and company - plaintiff injured while at work - proceedings concerned whether Victorian Workcover Authority (VWA) obliged to indemnify defendant for its liability to plaintiff - VWA contended it was not obliged to indemnify defendant for its 'liability at common law and for breach of statutory duty' because worker was not an employee - whether VWA relieved from liability on basis worker was independent contractor when he was injured - construction of 'WorkCover insurance policy' - estoppel - election - *Accident Compensation Act 1985* (Vic) - *Accident Compensation (WorkCover Insurance) Act 1993* (Vic) - held: VWA liable to indemnify defendant.

[Moore](#)

[From Benchmark Friday, 3 May 2019]

Total Transport Pty Ltd v Tasiopoulos [2019] VSC 266

Supreme Court of Victoria

Richards J

Judicial review - plaintiff sought to quash opinion of Medical Panel that worker had 'work-related incapacity for his pre-injury employment' - plaintiff contended Panel's opinion was incompatible with its conclusion worker's 'physical injuries had resolved' - plaintiff also contended jurisdictional error in respect of the opinion - *Workplace Injury Rehabilitation and Compensation*



Act 2013 (Vic) - whether opinion 'not open, illogical or irrational' - 'injury' - 'incapacity for work' - reasons' adequacy - held: proceedings dismissed.

[Total Transport](#)

[From Benchmark Friday, 3 May 2019]



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Why I Love Thee?

By: Sadakichi Hartmann

Why I love thee?

Ask why the seawind wanders,
Why the shore is aflush with the tide,
Why the moon through heaven meanders
Like seafaring ships that ride
On a sullen, motionless deep;
Why the seabirds are fluttering the strand
Where the waves sing themselves to sleep
And starshine lives in the curves of the sand!

https://en.wikipedia.org/wiki/Sadakichi_Hartmann

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