

Friday, 25 September 2020

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)

Randall v Chief of the Defence Force (FCA) - evidence - judicial review - ruling on respondent's objection to admissibility of evidence - evidence admissible - costs to follow event

Russel v Macquarie Bank Limited (FCA) - discovery - industrial law - applicant sought extension of time to seek leave to appeal from disclosure orders - extension of time granted - appeal allowed

Kyne v CIMIC Group Limited (FCA) - corporations - interlocutory application - applicant sought reinstatement of second respondent's registration - application granted

Srikantha v Commonwealth of Australia (No 2) (FCA) - summary dismissal - pleadings - employment - torts - respondent sought proceeding's summarily dismissal or that amended statement of claim be struck out - interlocutory application dismissed

Davies v Whitehaven Coal Mining Limited (NSWCA) - negligence - appellant employed by respondent - appellant injured when he 'slipped while climbing down from the top of a load haul dump machine' - respondent liable - contributory negligence not established - appeal allowed

Devaney v Crown Melbourne Ltd & Ors (VSC) - judicial review - plaintiff sought to quash decision of Medical Panel - proceedings dismissed

Belgrave Heights Christian School v Moore (VSCA) - pleadings - accident compensation - primary judge struck out paragraphs of defence - appeal allowed

Summaries With Link (Five Minute Read)

Randall v Chief of the Defence Force [2020] FCA 1327

Federal Court of Australia

Collier J

Evidence - judicial review - applicant sought review of decision of respondent's delegate to terminate his service in Australian Defence Force - s24(1)(c) *Defence Regulation 2016* (Cth) - respondent objected to 'admissibility of certain evidence' ('RCM material') - parties sought Court's ruling on objection - relevance - *Prasad v Minister for Immigration & Ethnic Affairs* (1985) 6 FCR 155 - ss91 & 136 *Evidence Act 1995* (Cth) - issue estoppel - held: evidence admissible - costs to follow event.

[Randall](#)

[From Benchmark Monday, 21 September 2020]

Russel v Macquarie Bank Limited [2020] FCA 1332

Federal Court of Australia

Thawley J

Discovery - industrial law - applicant sought extension of time to seek leave to appeal from disclosure orders - whether primary judge 'acted upon wrong principle' - *House v The King* (1936) 55 CLR 499 - whether primary judge erroneously concluded that sought documents 'were sufficiently relevant to warrant' disclosure order under r14.02 *Federal Circuit Court Rules 2001* (Cth) - held: extension of time granted - appeal allowed.

[Russel](#)

[From Benchmark Monday, 21 September 2020]

Kyne v CIMIC Group Limited [2020] FCA 1341

Federal Court of Australia

Katzmann J

Corporations - superannuation - guarantee - trade practices - interlocutory application - applicant sought reinstatement of second respondent's registration - whether applicant was "a person aggrieved by the deregistration" - whether just to reinstate second respondent - s601AH(2) *Corporations Act 2001* (Cth) - *Arnold World Trading Pty Ltd v ACN 133 427 335 Pty Ltd* [2010] NSWSC 1369 - *James v Leighton Holdings Limited* [2013] FCA 1115 - held: interlocutory application granted.

[Kyne](#)

[From Benchmark Tuesday, 22 September 2020]

Srikantha v Commonwealth of Australia (No 2) [2020] FCA 134

Federal Court of Australia

Snaden J

Summary dismissal - pleadings - employment - torts - applicant was Commonwealth agency's former employee - applicant sought relief against respondent concerning end of his employment

- applicant contended 'Dismissal' contravened 'two statutory injunctions' - applicant sought 'damages in tort' - respondent, by interlocutory application, sought proceeding's summarily dismissal or that amended statement of claim be struck out - r26.01 *Federal Court Rules 2011* (Cth) - s31A *Federal Court of Australia Act 1976* (Cth) - *Superannuation Act 1990* (Cth) - *Calveley v Chief Constable of Merseyside Police* [1989] AC 1228 - whether 'reasonable cause of action' disclosed - whether abuse of process - held: interlocutory application dismissed.

[Srikantha](#)

[From Benchmark Friday, 25 September 2020]

Davies v Whitehaven Coal Mining Limited [2020] NSWCA 219

Court of Appeal of New South Wales

Macfarlan & McCallum JJA; Simpson AJA

Negligence - appellant employed by respondent - appellant injured when he 'slipped while climbing down from the top of a load haul dump machine' - appellant sued respondent, contending respondent breached duty to him as its employee - primary judge found appellant failed to establish breach of duty - primary also calculated appellant's contributory negligence at 30% - appellant appealed - appellant had suffered 'subsequent injury' before he left employment with respondent - primary judge did not resolve issue of application of *Kempsey District Hospital v Thackham* (1995) 36 NSWLR 492 to proceeding - 'creation of unnecessary risk' - 'failure to carry out a risk assessment' - 'adequate safeguards' - contributory negligence - *Workers Compensation Act 1987* (NSW) - 3B(1)(f) *Civil Liability Act 2002* (NSW) - held: negligence established - contributory negligence not established - appeal allowed - matter remitted for assessment of damages.

[View Decision](#)

[From Benchmark Tuesday, 22 September 2020]

Devaney v Crown Melbourne Ltd & Ors [2020] VSC 594

Supreme Court of Victoria

Macaulay J

Judicial review - plaintiff sought to quash Medical Panel's decision concerning 'particular injuries' - plaintiff contended Panel made factual findings not open to it, made 'irrational or illogical' factual findings, 'failed to treat certain conditions as constituting "injury"' under *Workplace Injury and Rehabilitation Act 2013* (Vic), and gave inadequate reasons - *Maimonis v Bourke* [2019] VSCA 302 - *Wingfoot Australia Partners Pty Ltd v Kocak* [2013] HCA 43 - held: proceeding dismissed.

[Devaney](#)

[From Benchmark Monday, 21 September 2020]

Belgrave Heights Christian School v Moore [2020] VSCA 240

Court of Appeal of Victoria

Beach, Kaye & Sifris JJA

Pleadings - accident compensation - plaintiff sought to strike out paragraphs of defence -



primary judge granted application - defendant sought to appeal - whether erroneous construction of s93 *Transport Accident Act 1986* (Vic) and/or Certificate which Transport Accident Commission granted - whether erroneous finding that Certificate entitled plaintiff to bring proceedings - whether paragraphs erroneously struck out on 'summary basis' - 134AB *Accident Compensation Act 1985* (Vic) - *Petkovski v Galletti* [1994] VicRp 32 - held: grounds of appeal upheld - appeal allowed.

[Belgrave](#)

[From Benchmark Monday, 21 September 2020]



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From: Ode to the Moon

By Thomas Hood

I
MOTHER of light! how fairly dost thou go
Over those hoary crests, divinely led!—
Art thou that huntress of the silver bow
Fabled of old? Or rather dost thou tread
Those cloudy summits thence to gaze below, 5
Like the wild Chamois from her Alpine snow,
Where hunter never climb'd,—secure from dread?
How many antique fancies have I read
Of that mild presence! and how many wrought!
 Wondrous and bright, 10
 Upon the silver light,
Chasing fair figures with the artist, Thought!

II
What art thou like? Sometimes I see thee ride
A far-bound galley on its perilous way,
Whilst breezy waves toss up their silvery spray;—
15
 Sometimes behold thee glide,
 Cluster'd by all thy family of stars,
 Like a lone widow, through the welkin wide,
 Whose pallid cheek the midnight sorrow mars;—
 Sometimes I watch thee on from steep to steep, 20
 Timidly lighted by thy vestal torch,
 Till in some Latmian cave I see thee creep,
 To catch the young Endymion asleep,—
 Leaving thy splendour at the jagged porch!

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

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