CITATION: *Thomas James Turner v The Granites Goldmine* [2004] NTMC 057

PARTIES:	THOMAS JAMES TURNER
	v
	THE GRANITES GOLDMINE
TITLE OF COURT:	Work Health
JURISDICTION:	Work Health – Alice Springs
FILE NO(s):	20111581
DELIVERED ON:	14 May 2003
DELIVERED AT:	Alice Spring
HEARING DATE(s):	15 April 2004
JUDGMENT OF:	M Ward

CATCHWORDS:

Workers compensation. Work Health Act s.49 (2).
"Normal weekly earnings". "District Allowance". "Area Allowance".
"General Allowance". "Accomodation Allowance". "Meal Allowance".

REPRESENTATION:

Counsel:

Worker:	Waters QC
Employer:	Grant

Solicitors:

Worker:	Povey Stirk
Employer:	Cridlands

Judgment category classification:	
Judgment ID number:	[2004] NTMC 057
Number of paragraphs:	33

IN THE WORK HEALTH COURT
AT ALICE SPRINGS IN THE NORTHERN
TERRITORY OF AUSTRALIA

No. 20111581

BETWEEN:

THOMAS JAMES TURNER
Worker

AND:

THE GRANITES GOLDMINE
Employer

REASONS FOR JUDGMENT

(Delivered 14 May 2003)

Mr M WARD SM:

1. On 7 December 2001, the following orders were made by the Court

    1. The worker's entitlement… which was suspended on or about 9 February 2000 be reinstated forthwith and arrears that have been accrued to date be paid.

    2. The worker's entitlements to weekly compensation be indexed accordingly to the Work Health Act and the arrears thus calculated be paid forthwith.

    3. Penalty interest on the payments referred to in 1 and2 (above) [be paid] pursuant to section 89 of the Act.

    4. Costs of the application are to be paid by the employer to the worker.

2. This was an adjudication on the original worker's application. The original application sought the following order:

That the worker be entitled to compensation pursuant to the Work Health Act for weekly and other benefits.

3. It will be noted from the above pleading and the orders made on that pleading that the Court was not asked to, and did not adjudicate upon the quantum of the applicant's entitlement. Indeed, the transcript of the hearing in late October 2001, at pages 2 and 3, reveals that I was specifically asked not to adjudicate upon quantum, because it was then thought that the parties would be able to sort that out for themselves. Unfortunately, this has not turned out to be so, and in March 2003 the Court was requested to adjudicate upon the quantum of the applicant worker's entitlements pursuant to the order made in December 2001.

4. In the upshot, there were four areas of contention between the parties. They were (and are) the worker's claims that amounts for area allowance, general allowance, accommodation allowance and meal remuneration be included in the worker's normal weekly earnings.

5. Area allowance

According to the applicant's written submissions, this is payable pursuant to s.49 (2) of the Work Health Act. That sub-section provides:

> For the purpose of the definition of "Normal weekly earnings" (NWE) and "ordinary time rate of pay" in sub-section (1), a workers remuneration includes [a]… district allowance… but does not include any other allowance.

6. The applicant goes on to urge that "district allowance" is the same things as "area allowance".

7. The wages and condition agreement between the employer and it employees has the following clause:

> 11. Allowances
>
> 3. Area Allowance:
>
> Employees shall be paid an allowance of $8.32 per day.

8. I do not believe it to be in dispute that the area allowance averages out at $36.05 per week. (The calculation is somewhat complicated because employees work a rotating shift).

9. The only rationale appearing in the award is in clause 9 headed “Contract of Employment”. The Granites Goldmine is operated on remote Aboriginal lands. Employees need to understand the necessity for cordial relations with traditional landowners, be sensitive to significant and sacred sites and the environment generally… observe camp rules…

10. The question, then, is a “district allowance” the same thing as an “area allowance”?

11. The arguments in support of the equation and against it were mercifully short. The worker said they were the same things because the words “district” and “area” meant the same thing. He relied upon dictionary definitions.

12. The employer argued that “district allowance” had a special meaning, being a special allowance for public servants. (No explanation was forthcoming as to why public servants were so blessed. However, it is reasonable to speculate that a career public servant is not always free to choose his or her location, and such an allowance may be reasonable to compensate for compulsory work away from home).

13. The only authority (apart from dictionary definitions) came from the worker, who cited Bird v C&A (1988) 165 CLR 1. The passage relied upon (at p.6) was that which pointed out that the WL legislation is remedial in nature, and ought not to be narrowly construed.

14. As the award suggests, the $8.32 is compensation for the hardships arising from living and working in a remote area, due to the flies, isolation, and restrictions on movement and behaviour. That is the obvious rationale for the “area allowance”.

15. In the 3rd edition of the Macquarie dictionary, "district allowance" is defined as:

> An allowance paid above the usual rate of pay as compensation for hardships arising from working in a particular district, as isolation, heat etc. also "Zone allowance".

16. And, one might add "Area allowance".

17. I can see no reason in logic why such an allowance should be paid to an injured worker no longer residing in the "area". The applicant worker now resides in Alice Springs. Why should he be paid compensation as if he is still living and working in the Granites Goldmine? The short answer is that s.49 (2) says he should be.

18. General allowance

S.49 (2) says that NWE is to include an over award payment, climate allowance, district allowance, leading hand allowance, qualification allowance, shift allowance and service grant.

The award under which the worker was employed provides:

> 11. Allowances
>
> (2) General Allowance
>
> Single employees shall be paid an allowance of $112.65 each fortnight.

19. The worker argues that the general allowance picked up any other allowance under s.49 (2) not obviously excluded on its terms. It wrapped up climate allowance, remote area allowance etc.

20. It includes, so it was argued, climate allowance, qualification allowance, shift allowance and service grant. It could not mean an over award payment, because there is no evidence that the worker was paid at a rate above the award, and in any event, an over award payment is a very specific thing, and does not fit in with the concept of a "general allowance".

21. No guidance is given in the award itself for the meaning of "general allowance".

22. "Climate allowance" is included at least in the rationale for "district allowance". Re "qualification allowance", it was not suggested that the worker was specially qualified, and it was not suggested in argument the "qualification allowance" was picked up in the phrase "general allowance".

23. It can't include service grant, because the award specifically includes a service increment in the calculation of the worker's wages (clause 11(9)). It is not obvious to me that the "general allowance" of the award picked up anything in s.49 (2). It follows that s.49 (2) excludes compensation for that general allowance, because it is, on its terms "any other allowance", that is to say, an allowance other than the payments or allowances specifically mentioned in ss.49 (2).

24. Meals

While working for the employer, the applicant worker was supplied with all his meals. The worker's affidavit of 21 February 2002 at paragraph 11 defines the type of meals and food supplied. Under s.110 A (3) of the Work Health Act the Court is entitled to inform itself on any matter in such manner, as it thinks fit.

25. In my view, the cost to the employer of supplying such meals in such location could be around $50 per day, $10 for breakfast and lunch each, $20 for dinner, and $10 for the in betweens. This by large accords with the taxation commissioner's ruling ($47.40) and the amount claimed.

26. Objection was taken by the employer to the admission into evidence of the Taxation ruling, or the Court acting upon the ruling, on the ground that the ruling proved nothing or may have had nothing to do with the actual cost of the meals. The ruling could not have been made upon anything else other than the commissioner's estimate of the cost of such meals – it is not a figure plucked from the air.

27. Carol's case (16 October 2002 Full Court NT) is indistinguishable, and I order that the employer is to pay $223.33 per week to the worker for meals as part of his remuneration.

28. Accommodation

For 35 weeks of each year, while he was on site working for the employer, the worker was supplied with accommodation. The accommodation is as described in the worker's affidavit of 21 February 2003. LJ Hookers property manager has expressed the opinion that the value of such accommodation is $80 per week. Spread over a year, it translated to an average of $53.85 per week (to allow for the fact that the worker only spent 35 weeks on site enjoying the benefit of the free accommodation).

29. The employer objected to this on two grounds. One was that the case was distinguishable from Carol's case. Here, the worker only spent 35 weeks at the Granites Goldmine. Carol was employed full time as a stockman.

30. It was argued that because the Granites Goldmine was so remote, the only way the employer could attract employees was by providing then with accommodation. The accommodation, therefore, so it was argued, was for the benefit of the employer, not the employee.

31. No doubt even stockmen get some weeks holiday each year, and apart from the length of leave, the two situations are indistinguishable. I cannot follow the argument about the provision of accommodation being for the benefit of the employer, not the worker. It is surely for the benefit of the worker.

32. The second objection was that the real estate valuation was unconvincing. It may not be the best valuation I have ever seen, but it is the only one I have in this case. If the employer disputes it, let it get an alternative valuation.

33. I agree that the employer is to pay arrears in respect of distinct (area) allowance ($36.05 per week); meals ($223.33 per week) and accommodation ($53.85 per week).

Dated this 14th day of May 2003.

_____

M Ward
STIPENDIARY MAGISTRATE