

CITATION: *Cochran v CouncilBiz No. 2* [2022] NTWHC008

PARTIES: Bertha Cochran  
v  
CouncilBiz

TITLE OF COURT: WORK HEALTH COURT

JURISDICTION: CIVIL

FILE NO(s): 2021-01087-LC

DELIVERED ON: 19 October 2022

DELIVERED AT: Darwin

HEARING DATE(s): 13 September 2022

DECISION OF: Acting Judge O'Loughlin

**CATCHWORDS:**

*Indemnity Costs, S. 109 (2) Interest, undue prolongation*

*Return to Work Act 1986*

*BAE Systems Australia v Rothwell* (2013) 275 FLR 244

**REPRESENTATION:**

*Counsel:*

Worker: Ms C Phillips

Employer: Mr G Nutt

*Solicitors:*

Appellant: Maurice Blackburn

Employer: Sparke Helmore

Decision category classification

B

Decision ID number

[2022] NTWHC008

Number of paragraphs

15

IN THE WORK HEALTH COURT  
AT DARWIN IN THE NORTHERN  
TERRITORY OF AUSTRALIA

No. 2021-01087-LC

BETWEEN:

Bertha Cochran

Worker

AND:

Councilbiz

Employer

REASONS FOR DECISION

(Delivered 19 October 2022)

ACTING JUDGE O'LOUGHLIN

**Introduction**

1. This is the second decision on costs and interest in a matter which substantially resolved on 9 June 2022. At that time the Employer consented to orders for the payment of past compensation and interest under section 89 of the *Return to Work Act 1986* ("the Act"). On 15 August 2022, the Court further ordered the Employer to pay interest under subsection 109 (1) of the Act.
2. Despite the consent order, the Employer has raised new grounds to resist paying the Worker the past compensation.
3. The Worker has now applied for a further order specifying the amount of arrears to be paid, and applied for an award of interest under subsection 109 (2) of the Act.

**Background**

4. In August 2020, the Employer accepted the Worker's claim and paid benefits until February 2021 when the Employer disputed liability.
5. The Worker issued proceedings to challenge the cancellation. On 9 June 2022, after some interlocutory success to the Worker, the Employer abandoned its case and consented to the following order:

*"The Employer is to pay the Worker all outstanding compensation from 15 February to the date of this order."*

6. By September 2022, the Employer had failed to comply with the above order as it stated it required a taxation declaration and further medical certificates confirming ongoing incapacity.
7. At no stage did the Employer suggest that its consent to the above order was subject to the Worker producing medical certificates and a taxation declaration. The Court Order certainly does not state that the order is subject to these (or any) conditions.
8. Despite the lack of merit in the Employer's demands the Worker has provided two medical certificates covering the disputed period and I fail to see why a tax declaration would be required if the Employer had paid the Worker via her solicitors trust account (as was requested).
9. I find the arrears in compensation should have been paid no more than two weeks after 9 June 2022, and the Employer is acting unreasonably in raising new grounds to defer the payment.
10. By 16 September 2022, the Employer had continued to decline to pay for the week following 15 February 2022 and the four months between 9 March and 4 July 2022.
11. Subsection 109(2) of the Act allows for additional interest if the Employer has not made weekly payments in a regular manner or in accordance with the normal manner of payment. After abandoning its challenge to the Worker's entitlement to compensation, and consenting to orders to pay arrears, the Employer was liable to resume making regular weekly payments to the Worker. The Employer has thereby failed to make the weekly payments at all (let alone in a regular manner).
12. The Employer's explanation for its failure to pay weekly benefits as ordered is described above and that explanation is weak and section 109 (2) interest is warranted. The fact that the Employer failed to comply with an order for specious reasons calls for a higher rate of interest and I will award 12 per cent. Those benefits should have been paid by 23 June 2022 and the 109(2) interest should be calculated from that date.
13. Indemnity costs were considered by Riley CJ in *BAE Systems Australia v Rothwell* (2013) 275 FLR 244 at [26] and said:

*"Indemnity costs may be awarded in a variety of circumstances, and the categories in which such orders may be made are not closed or rigid. Examples of circumstances where costs may be ordered on an indemnity basis include where a party has pursued a matter which, on proper consideration, should have been seen to be a hopeless case and where there was undue prolongation of a case by groundless contentions."*
14. The Employer should have paid the benefits months ago and its groundless objections have unnecessarily prolonged the case. The Worker is therefore entitled to her costs of this application on an indemnity basis.
15. The Worker has provided calculations of section 65 arrears and section 89 interest under the Act, which appear correct and have not be challenged by the Employer. These amounts will be ordered.

## Orders

1. In addition to earlier awards of interest, the Employer is also to pay interest under subsection 109 (2) at the rate of 12 per cent for the weeks of unpaid section 65 compensation for the period of 23 June 2021 until the date of payment.
2. The Employer to make payment of the Worker's section 65 benefits in the amount of \$91,294.34 (less PAYG taxation) to Maurice Blackburn's Trust Account.
3. The Employer to make payment of the Worker's section 89 interest in the amount of \$4,078.99 to Maurice Blackburn's Trust Account.
4. The Employer pay the Worker's costs of and incidental to this interlocutory application at 100 per cent of the Supreme Court Scale, taxed in default of agreement on an indemnity basis.