CITATION:	*RTA GOVE PTY LTD V CONTITECH AUSTRALIA PTY LTD* [2023] NTWHC 7
PARTIES:	*RTA GOVE PTY LTD* v *CONTITECH AUSTRALIA PTY LTD*
TITLE OF COURT:	WORK HEALTH COURT
JURISDICTION:	WORK HEALTH
FILE NO(s):	2022-02801-LC
DELIVERED ON:	19 September 2023
DELIVERED AT:	Darwin
HEARING DATE(s):	1 August 2023
DECISION OF:	Deputy Chief Judge Fong Lim

CATCHWORDS:

Statutory interpretation – ordinary meaning - context and purpose – "indemnity" – "compensation"-

Return to Work Act [NT] sections 3, 110 and 127(1) (3), 136(1)(b)

BAE Systems Australia v Rothwell 2013[NTCA] 244

Project Blue Sky v Australian Broadcasting Authority (1998)194 CLR 384

Tickle industries Pty Ltd v Hann (1974) 130 CLR 321

Watson v Newcastle Corporation (1962) 106 CLR 426

Thompson v Groote Eylandt Mining [2003] 173 FLR 72

REPRESENTATION:

Counsel:

Applicant:	Mr Roper SC
Respondent:	Mr Moses

Solicitors:

Worker:	Minter Ellison
Employer:	Suzi Kapetas Lawyer

Decision category classification:	A
Decision ID number:	[2023] NTWHC 7
Number of paragraphs:	29

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

No. 2022-02801-LC

BETWEEN:

RTA Gove Pty Ltd

Applicant

AND:

Contitech Australia Pty Ltd

Respondent

REASONS FOR DECISION

(Delivered 19 September 2023)

DEPUTY CHIEF JUDGE FONG LIM

Factual Background

1. The Worker, Mr Khail, made a claim for compensation under the Return to Work Act against the applicant and the respondent for an injury incurred on the 5 September 2019. His injuries were physical and psychological. He claimed psychological consequences from the physical injury as well as a fresh psychological injury arising from his return to work duties. He was paid weekly benefits and medical expenses for the physical injury and the some treatment for his psychological injury. Both RTA and Contitech then ceased any payments of benefits to the Worker and he was ultimately unsuccessful in challenging that cessation before me. My reasons were published on the 31 March 2023 and are subject to appeal.

2. At the time of his physical injury the worker was employed by Contitech who had contracted with RTA to provide services on their behalf .At the time of his physical injury Contitech did not hold an insurance policy as it was required to do so under section 126AA of the Return to Work Act (the "Act") and so the Worker elected to pursue RTA as he was entitled to do under section 127 of the Act.

3. It is agreed the applicant was the principal contractor and the respondent the subcontractor for the purposes of section 127.[1]

4. The Applicant has paid the Worker weekly compensation, medical expenses and has incurred expenses (including legal costs) in managing the Worker's claim for compensation.

[1] See para 5 of the statement of agreed facts.

5. **Issues:** the issues before the court are limited taking into account the appeal of my decision in the worker's case. This court is asked to determine whether "indemnity" under section 127(3) includes:

    i. Reasonable management, administrative and claims processing expenses incurred by the Applicant in the course of dealing with the Worker's accepted claim

    ii. Solicitor – client expenses incurred by the Applicant as a respondent to the Worker's appeal from the decision of the work health court in *Khail v RTA [2023] NTWH 4* in work health matter 2020-02625-LC

    iii. Solicitor - client legal expenses incurred by the Applicant as a defendant in the work health matter 2020-02625-LC

6. The Court is not required to decide the quantum of those costs and expenses.

7. Section 127(3) provides:

    "*A principal contractor who is liable to pay compensation under this section is entitled to be indemnified by any person who is liable to pay compensation to the worker other than by virtue of this section"*

8. General principles of statutory interpretation require the court to give words their ordinary meaning and to ensure that meaning within its context[2] does not produce a result which is contrary to the purpose or object of the act[3]. Of course if a word is defined in the act then that definition must be applied. The court must also consider any interpretation of the Return to Work Act in light of the fact that it is beneficial legislation.

9. The objects of the Act are set out in section 2 of the Act and are as follows:

    "(a) to provide for the effective rehabilitation and compensation of injured workers; ….
    (c) to ensure that the scheme for the rehabilitation and compensation of injured workers in the Territory
    (iii) is balanced to ensure that the costs of the workers compensation are contained to reasonable levels for employers"

10. *"compensation" is defined as "a benefit or an amount paid or payable under this act as the result of an injury to a worker and in section 132 to 137 and section 167 includes:*
    (a) an amount in settlement of a claim for compensation and
    (b) costs payable to a worker by an employer in relation to a claim for compensation"

11. The Applicant impressed upon the Court to find that the word "indemnified" in section 127(3) must be read to ensure the Applicant is not out of pocket for taking up the responsibility that should have been Contitech's. The worker elected to pursue the Applicant for his compensation because although .Contitech was his employer they did not had appropriate insurance at the time of his original physical injury.

[2] BAE Systems Australia v Rothwell 2013[NTCA]244 per Kelly J at pages 268-271- and Riley J at page 251.
[3] Project Blue Sky v Australian Broadcasting Authority (1998)194 CLR 384.

12. The Applicant submitted that as there is no limit placed on the indemnity the Court should read the word "indemnity" in such a way that would mean the respondent does not profit for its own wrong, not holding the appropriate insurance.

13. The Respondent submitted that the word "indemnity" must be read within the context of the section and the objects of the Act and in doing so the Court must find does not include the items claimed by the Applicant.

14. The indemnity in section 127 is not unlimited. The indemnity is linked to the principal contractor's liability to pay compensation hence the words "is liable to pay compensation" and that is to be payable by another person, in this case the subcontractor, because they are also liable to pay the worker compensation.

15. "Compensation" as defined in section 3 includes costs in relation to sections 132-137 and 167 of the Act. There is no mention of costs in relation to any claim for compensation under section 104 or 127 of the Act.

16. Logically if the Parliament intended that the indemnity under section 127(3) was to include costs and management fees incurred by the principal contractor it would have done as explicitly as it did in relation to sections 132-137 and 167 in the definition of "compensation".

17. "Indemnity" has been the subject of some judicial consideration. In *Tickle Industries Pty Ltd v Hann (1974) 130 CLR 321* Barwick CJ where there is no express scope for the indemnity then the court must determine the extent of the indemnity. The question in the court's mind should be an indemnity against what? To that purpose I adopt the reasons of Kitto J in *Watson v Newcastle Corporation (1962)106 CLR 426* where his honour set out "*the nature and extent of the intended indemnity must surely be sought by inquiring what it is against which he needs to be relieved"*.

18. In *Tickle Industries*[4] the High Court was considering the Employer's right of indemnity against a tortfeasor under section 22 of the Worker's Compensation Act. The Court found that the indemnity against a tortfeasor was a cause of action created by the Act which did not require the Worker to pursue the tortfeasor for the cause of action to crystallise. The section did require the Employer to prove the defendant had actually committed a tort. Central to the Court's deliberations was the purpose of the section and for what the legislature intended the Employer should be indemnified. The interpretation the Court placed on the section sat well with the objects of the act and ensured the Worker was not required to prove anything in the claim for indemnity having already been paid compensation under the Act. The Court found it did not matter what amount of damages were awarded the indemnity was limited to the compensation paid, if damages were more than that amount then the tortfeasor would only have to pay the amount of compensation. If damages were awarded as less than the compensation paid then the tortfeasor would have to pay to the Employer the lesser amount.

19. In section 127(3) of the Return to Work Act (the Act) the indemnity is linked squarely to the principal contractor's liability to pay compensation and any other person who is liable

[4] See supra 1.

to pay the Worker compensation. The referral to compensation in this section refers to benefits or amounts paid under the Act[5] The only other person who may be responsible to pay compensation to the Worker under the Act is the sub-contractor and, in the no fault system created by the Act, their liability (for which the indemnity lies) will be exactly the same as that of the principal contractor.

20. At this point I remind myself that any interpretation placed by this Court on section 127(3) should not result in a different result depending on the facts of the case and should take into account the section sits in the division dealing with insurance. That is the indemnity should not produce a different result reliant on whether the claim was accepted by the principal contractor or contested and if they have been successful in any litigation against the Worker. It should not be a construction that is unjust or anomalous.

21. A principal contractor's liability to pay "compensation" (as defined by the Act) does not include costs of litigation and management fees these are not part of the contractor's liability to pay compensation. Costs of litigation may be order by a court but are not included in the definition of compensation.

22. The focus of the *Return to Work Act* is to create an efficient and fair system of no fault compensation for work based injuries. The compulsory insurance for Employers to cover such compensation is a tool to ensure that a worker is not disadvantaged if their Employer does not have the means to pay such compensation.

23. Section 127 is a reflection of the focus of the Act by giving the Worker the option to pursue their employer or the employer's subcontractor for compensation when their principal employer does not have insurance to cover the worker's injury.[6]

24. If the principal contractor is ultimately found not to be liable to pay compensation then there would be no liability of that party for which the subcontractor is liable to indemnify and therefore the principal contractor would not be able to claim those costs and management fees because there would be no liability for compensation against which the indemnity is to attach.

25. While there is some attraction in the argument that the respondent should not profit from their own wrong doing in my view the more persuasive argument is that the interpretation should not create an anomalous situation where one set of facts results in a different outcome.

26. It is tolerably plain in the language of the section that the indemnity is linked to the compensation paid and "compensation" as defined by the Act does not include costs (except in certain circumstances). If it was intended that the indemnity did cover costs and management fees the legislature would have specifically defined it to do so as it did in relation to costs under sections 132-137 and 167.

[5] Section 3 of the RTA.
[6] Thompson v Groote Eylandt Mining [2003] 173 FLR 72 per Mildren J at page 79.

27. To allow the inclusion of those costs and management fees in the indemnity under section 127 would be to ignore the context of that indemnity and that is clearly linked to the principal contractor's liability to pay compensation.

28. The Applicant submitted section 110 of the Act supports the argument that "compensation" must include costs. I reject that submission - that is a mischaracterisation of that section. Section 110 sets out some of the matters the Court should take into account when exercising its discretion in awarding costs in a proceeding not what should be included in compensation.

29. Section 136 is instructive in that it demonstrates if it was the legislature intention to include expenses incurred as a consequence of an indemnity then it would have done so explicitly.

30. I find myself persuaded by the submissions of the Respondent.

Orders:

a. The indemnity under section 127(3) <u>does not</u> extend to:

   i. Reasonable management, administrative, and claims processing expenses incurred by the Applicant in the course of dealing with the Worker's accepted claim;

   ii. Solicitor - client legal expenses incurred by the Applicant as a defendant in work health matter 2020-026-LC;

   iii. Solicitor – client legal expenses incurred by the Applicant as a respondent to the Workers appeal from the decision of the work health court in Khail v RTA [2023] NTWHC 4 in work health matter 2020-02625-LC.

31. I will hear the parties on the costs of these proceedings.
