HIGH COURT OF AUSTRALIA

30 October 2013

COMCARE v PVYW

[2013] HCA 41

Today the High Court, by majority, held that Comcare, the appellant, was not liable to pay compensation to a Commonwealth government employee who, whilst staying overnight on a work-related trip to a regional town, suffered injuries whilst engaging in sexual intercourse in the motel room her employer had booked for her.

The respondent had been required by her employer to work for two consecutive days in a regional town away from her ordinary place of residence. She stayed overnight at a local motel which had been booked by her employer. Whilst at the motel, the respondent engaged in sexual intercourse with an acquaintance. In that process, a glass light fitting above the bed was pulled from its mount and struck the respondent on her nose and mouth, causing her physical injuries and a subsequent psychological injury. The respondent sought compensation from Comcare under the *Safety, Rehabilitation and Compensation Act* 1988 (Cth) ("the Act"). She argued that her injuries were suffered "in the course of" her employment and that she was, therefore, entitled to compensation.

The Administrative Appeals Tribunal ("the Tribunal") held that the respondent's injuries were unrelated to her employment. On appeal, the Federal Court of Australia set aside the Tribunal's decision. The Federal Court's decision was then upheld by the Full Court of the Federal Court. The Full Court held that the respondent's injuries occurred in an "interval or interlude" during an overall period of work and, therefore, arose in the course of her employment. An interval or interlude existed because the respondent's employer had induced or encouraged her to spend the night at a particular place – the motel. It was not necessary to show that the respondent's employer had induced or encouraged her to engage in the particular activity in which she was engaged when her injuries were suffered. By special leave, Comcare appealed to the High Court.

The High Court allowed Comcare's appeal. A majority of the High Court held that in order for an injury sustained in an interval or interlude during an overall period of work to be in the course of an employee's employment, the circumstances in which the employee was injured must be connected to an inducement or encouragement by the employer. If the employee is injured whilst engaged in an activity at a certain place, that connection does not exist merely because of an inducement or encouragement to be at that place. When the circumstances of an injury involve the employee engaging in an activity at the time of the injury, the relevant question is: did the employer induce or encourage the employee to engage in that activity? On the facts of the respondent's case, the majority held that the answer to that question was 'no'.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*

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