

SHORT SHOTS

Appeal from Arbitrator's determination - insufficient evidence to find injury in the course of employment – failure to consider relevant evidence

Carroll v S L Hill and Associates Pty Limited

[LINK TO DECISION](#)

On 16 June 2010, the worker was fatally attacked by her de facto partner who was subsequently found not guilty of murder by reason of mental illness.

When the worker's 16 year old son had left for school earlier that morning at 7:30am, the worker was in bed nursing her baby. She was later found by her son at 3:45pm lying in the bedroom ensuite in her pyjamas and was unresponsive.

The worker's home was also her place of employment with an office set up downstairs. The worker's son gave evidence that in the months preceding her death, his mother had been working from her bedroom and in other areas of the house usually between 7:30am and 9pm while caring for her small baby.

At the initial hearing, an arbitrator concluded that there was insufficient evidence to find that the worker was in the course of employment at the time that she died because the time of death was too ambiguous.

On appeal, the President revoked the arbitrator's decision, observing that while the time of death was clearly an important issue, it was not determinative of the issue, namely whether there was a sufficient temporal connection between the deceased's employment and her death to establish she was in the course of her employment when she was attacked... He referred to evidence which indicated that; the deceased's injuries were sustained between 7:30am and 4pm; the deceased was essentially 'on call' at the time of her death; work documents were scattered about the house; that she performed work between 7:30am and 9pm; and that she performed work in the bedroom.

The President concluded that there was a failure by the arbitrator to properly consider all of the relevant material relating to the time and location of the worker's death which constituted an error in the process of fact finding that amounted to an error of law.

He determined that the matter should be remitted for re-determination by another Arbitrator.

Even if the new Arbitrator finds that the worker was in the course of employment when she was attacked, there will still be a significant issue as to whether her employment was a substantial contributing factor to her injuries as required under section 9A of the WCA 1987.

Decision Number: [2018] NSWCCPD 17

Decision Date: 7 May 2018

Decision Maker: President Judge Keating, Workers Compensation Commission

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