

IN THE HIGH COURT OF AUSTRALIA

ATHANASIOS MARINAKIS

V.

GENERAL MOTORS-HOLDEN'S PTY. LTD

REASONS FOR JUDGMENT

Oral

Judgment delivered at Adelaide

on 23rd September 1969

ATHANASIOS MARINAKIS

v.

GENERAL MOTORS-HOLDEN'S PTY. LTD.

ORDER

Application for special leave to
appeal refused.

ATHANASIOS MARINAKIS

v.

GENERAL MOTORS-HOLDEN'S PTY. LTD.

JUDGMENT

BARWICK, C.J.

(ORAL)

ATHANASIOS MARINAKIS

v.

GENERAL MOTORS-HOLDEN'S PTY. LTD.

In my opinion this is not a case for special leave. The employer applied for an order of redemption under s. 28 of the Workmens' Compensation Act, 1932-1966. That order, the order of redemption, was clearly not as of right. Whether or not it should be made was a matter for the discretion of the arbitrator in this sense, that he could decide that he would not make the order because he was not satisfied as to the point of time at which the workman would cease to be entitled to a continuance of the weekly payments which were then current.

In this case the liability of the employer was stabilized in the sense that the amount of the weekly payments was fixed and was likely to continue, if nothing further was done, for some time. The question for the arbitrator was a question of fact, namely whether he could determine the point of time at which the workman would cease to be entitled to a continuance of those weekly payments.

On the material before him the arbitrator felt that he was able to determine this question, no doubt principally upon the medical evidence which he accepted. Having determined the point of time at which the workman would, in his opinion, cease to be entitled to a continuance of the weekly payments, the arbitrator was certainly entitled to make the order of redemption. Indeed, once he had made that decision and fixed the time at which the workman would cease to be entitled to a continuance of the weekly payments, in my opinion, he would be bound to make the order at the instance of the employer.

What the arbitrator did in the instant case was to determine that point of time which was shorter than six months from the date of the making of the order, but in fairness to the employee he fixed a slightly larger time, erring if anything on the cautious side.

The argument which has been presented to us in the last analysis, in my opinion amounts to no more than this, that the arbitrator ought not to have acted upon the medical evidence, ought not to have taken the view of the time at which the workman would cease to be entitled under the Act to a continuance of the weekly payments whilst he did in point of fact. In my opinion, there is no ground for the grant of special leave.

The order of the Court is that the application for special leave is refused.

MARINAKIS

v.

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JUDGMENT
(ORAL)

McTIERNAN J.

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I agree entirely with what the Chief Justice has said. For my part I would add only this, that I think the arbitrator treated the workman reasonably, having regard to the whole of the evidence.

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JUDGMENT
(ORAL)

MENZIES J.

MARINAKIS

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I agree.

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JUDGMENT
(ORAL)

WINDEYER J.

MARINAKIS

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I agree. The arbitrator appears to have been satisfied that to end the award of weekly compensation by the award of a lump sum would, within a limited time thereafter, end the worker's incapacity resulting from neurasthenia. There was evidence on which he could take that view. I am unable to say that he failed to address his mind to any matter which he must take into consideration when determining whether, in his discretion, he would direct a redemption, or in determining a lump sum at which the weekly payment should be redeemed.