

Case
Judgment delivered at St. Louis
Thursday, 14th August 1969
on

ARTHUR H. STEPHENS (N.S.W.) PTY. LTD.

v.

NAPOLI

ORDER

Appeal dismissed with costs.

ARTHUR H. STEPHENS (N.S.W.) PTY. LTD.

v.

NAPOLI

JUDGMENT

(ORAL)

BARWICK C.J.

ARTHUR H. STEPHENS (N.S.W.) PTY. LTD.

v.

NAPOLI

In my opinion the conclusion of the learned Chairman of the Commission was right but, in my opinion, rather for the reason I would give than for the one he gave. In my opinion, there was no substantial interruption of this journey. His Honour evidently believed that the worker arrived at the garage from his place of work and stayed there a considerable time while his cycle was repaired to enable him to continue on towards his home. In my opinion, he ought to have held that this constituted no substantial interruption of his journey. What occurred at the garage was, in my opinion, no more than a halt in the progress of the worker's journey homewards. He did not turn aside to engage, however briefly, in any other activity than journeying home. The halt so far as he was concerned was involuntary; none the less so because, at least in theory, he might have sought other means of transport than his cycle to finish the journey. No doubt there may be occasions where an involuntary cessation of journeying will amount to a relevant interruption of the journey: but, in general, in my opinion, such an interruption will be the result of a voluntary act on the part of the worker. The provision of the Act as to injury received in the periodic journey is for the benefit of the worker: the qualification as to a substantial interruption or deviation ought to be construed as in general involving conduct of the worker. The provision of the Act

as to injury received on the periodic journey is for the benefit of the worker: the qualification as to a substantial interruption or deviation ought to be construed as in general involving conduct of the worker. What subsequently occurred, i.e. after he had left the garage and before he reached his home, did, as his Honour found, occur in the course of his periodic journey between the place of work and the place of residence.

So far as concerns the argument that his Honour was in error as to the onus of establishing that the injury complained of occurred in the course of the journey, in my opinion, his Honour's judgment properly understood, does not say that an onus of proof rested on the respondent. What his Honour was saying, in my opinion, was that the case which he was accepting, namely, that the plaintiff did set off home from the garage, was not displaced by the evidence of the witness Magro who was called by the respondent.

I would dismiss the appeal.

ARTHUR H. STEPHENS (N.S.W.) PTY. LTD.

v.

NAPOLI

JUDGMENT

McTIERNAN J.

ARTHUR H. STEPHENS (N.S.W.) PTY. LTD.

v.

NAPOLI

I agree with what the Chief Justice has
said.

ARTHUR H. STEPHENS (N.S.W.) PTY. LTD.

v.

NAPOLI

JUDGMENT
(ORAL)

KITTO J.

ARTHUR H. STEPHENS (N.S.W.) PTY. LTD.

v.

NAPOLI

I agree.

ARTHUR H. STEPHENS (N.S.W.) PTY. LIMITED

v.

ROCCO NAPOLI

JUDGMENT
(ORAL)

MENZIES J.

ARTHUR H. STEPHENS (N.S.W.) PTY. LIMITED

v.

ROCCO NAPOLI

I agree that this appeal should be dismissed.
In my opinion there is no basis for disturbing the decision
of the Commissioner that the applicant was entitled to
compensation whether or not there was a substantial
interruption to the journey.

ARTHUR H. STEPHENS (N.S.W.) PTY. LTD.

v.

NAPOLI

JUDGMENT
(ORAL)

WINDEYER J.

ARTHUR H. STEPHENS (N.S.W.) PTY. LTD.

v.

NAPOLI

I agree. I do not consider, on the evidence, that there was a substantial interruption to the journey but I also entirely agree that the applicant is entitled to compensation.