



Judgment Summary

Supreme Court
Australian Capital Territory
Court of Appeal

Wednesday, 19 July 2023

I.C. Formwork Services Pty Limited v Moir [2023] ACTCA 31

McCallum CJ, Loukas-Karlsson and O'Sullivan JJ

The Court of Appeal has dismissed an appeal which sought to overturn a finding that a worker was usually based in the ACT for the purposes of a claim for common law damages arising from a work-related injury.

The appellant was a former employer of the respondent, who was injured in the course of his employment at a building site in NSW. The respondent commenced proceedings in the ACT Supreme Court. The appellant disputed the respondent's entitlement to have the claim determined according to the substantive law of the ACT. The test for determining that issue is the employment connection test in s 36B of the *Workers Compensation Act 1951* (ACT).

The primary judge held that the worker was usually based in the ACT. The appellant appealed against that finding.

The appellant submitted that the primary judge should have found that no single Territory or State could be identified from the "usually based" test. There were four grounds of appeal: that the primary judge had misapplied the "usually based" test; did not identify anything more than a convenient place to work; relied on factors not supportive of whether there was a single usual base for work; and discounted where the respondent had worked in the months immediately before the injury.

The Court of Appeal held that there was no error in the primary judge's application of the test or the conclusion that the respondent was usually based in the ACT for the purpose of his employment.

The appeal was dismissed with costs.

This summary has been prepared for general information only. It is not intended to be a substitute for the judgment of the Court or to be used in any later consideration of the Court's judgment.

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