

WORKERS COMPENSATION COMMISSION

CERTIFICATE OF DETERMINATION

Issued in accordance with section 294 of the *Workplace Injury Management and Workers Compensation Act 1998*

Matter Number: 6748/19
Applicant: Zaharias Jason Spanos
First Respondent: Transport Fleet Services (NSW) Pty Limited
Second Respondent: Kings Consolidated Group Pty Limited trading as Kings Transport & Logistics
Date of Determination: 11 March 2020
Citation: [2020] NSWCC 73

The Commission determines:

1. The applicant has failed to prosecute this application.
2. These proceedings are a nullity.

The Commission orders:

3. Proceedings are struck out.

A brief statement is attached setting out the Commission's reasons for the determination.

Michael Wright
Arbitrator

I CERTIFY THAT THIS PAGE AND THE FOLLOWING PAGES IS A TRUE AND ACCURATE RECORD OF THE CERTIFICATE OF DETERMINATION AND REASONS FOR DECISION OF MICHAEL WRIGHT, ARBITRATOR, WORKERS COMPENSATION COMMISSION.

A Sufian

Abu Sufian
Senior Dispute Services Officer
As delegate of the Registrar



STATEMENT OF REASONS

BACKGROUND

1. Zaharias Jason Spanos (the applicant) claims compensation pursuant to section 66 of the *Workers Compensation Act 1987* (the 1987 Act) in respect of injury on 19 August 2015 to the cervical spine, right upper extremity (right shoulder), digestive system (hernia), right lower extremity (right knee) and left lower extremity (left knee) by way of an Application to Resolve a Dispute (the Application) registered in the Workers Compensation Commission (the Commission) on 20 December 2019. The Application nominated the respondent as Transport Fleet Services (NSW) Pty Ltd.
2. Attached to the Application was a letter of claim by the Applicant's solicitors dated 11 July 2019 addressed to the respondent and attaching details of the claim by way of a draft Application for the current proceedings.
3. Also attached to the Application was the applicant's statement dated 9 July 2019. The applicant said that he was employed by "Kings" as a courier in March 2015 and as at the date of the injury. The entity known as "Kings" was not otherwise identified in the Application, nor was the relationship between "Kings" and the respondent identified or explained in the Application. The applicant said that he bought a vehicle in his own name to do the work for Kings. He also stated that he used a company "J & Sons Couriers" to obtain the work with Kings. At the end of 2016 he "started working again in a self-employed capacity" under J & Sons Couriers selling scrap metal. There was no other evidence attached to the Application relating to employment.

PROCEDURE BEFORE THE COMMISSION

4. The matter was listed for a telephone conference on 31 January 2020 before an Arbitrator of the Commission. The applicant was represented by his solicitor. A Reply had not been lodged by 31 January 2020 and there was no appearance for the respondent. The Commission issued the following directions:

"The Commission notes as follows:

1. By a statement dated 9 July 2019, the applicant alleges as follows.
 - a. In March 2015, he obtained employment with an entity described as 'Kings'.
 - b. On 19 August 2015, he was injured in the course of that employment.
2. The proper name of the entity described by the applicant as 'Kings' is Kings Consolidated Group Pty Limited trading as Kings Transport & Logistics, referred to variously in this Direction as 'Kings' or the second respondent.
3. At teleconference on 31 January 2020, the applicant's solicitor advised the Commission that, on enquiry to iCare, he was advised that, as at the date of injury:
 - a. Kings' holding company was Transport Fleet Services (NSW) Pty Limited (now, the second respondent).
 - b. The second respondent held a worker's compensation policy with EML.

4. Under cover of a solicitor's letter dated 11 July 2019 addressed to the first respondent's office in Melbourne, the applicant served a copy of the Application to Resolve a Dispute with annexures, and claimed workers compensation pursuant to section 66 of the Workers Compensation Act 1987 from the first respondent.
5. At teleconference on 31 January 2020, there was no appearance for the second respondent (which was then the only respondent) or its workers compensation insurer, EML.
6. To enable the first and second respondents or their workers compensation insurers to appear, the matter was listed for further teleconference on 21 February 2020 at 2pm.

The Commission directs as follows:

1. Grant leave to join Kings Consolidated Group Pty Limited trading as Kings Transport & Logistics as the second respondent.
2. On or before 11 February 2020, the applicant by his solicitor is to do the following.
 - a. Serve (or re-serve as appropriate) the Application to Resolve a Dispute and a copy of this Direction on:
 - i. the first respondent,
 - ii. EML,
 - iii. the second respondent, and
 - iv. the workers compensation insurer of the second respondent (if different from EML, and if one can be identified).
 - b. Furnish iCare with a copy of the Application to Resolve a Dispute and this Direction, and invite it to be represented at teleconference on 21 February 2020 at 2pm, with a view to advising the Commission as to the following:
 - i. Whether, as at 19 August 2015, the second respondent was covered by the first respondent's workers compensation policy.
 - ii. If not, whether any workers compensation policy was held by the second respondent in respect of injury occurring on 19 August 2015.
 - iii. The identity of the second respondent's workers compensation insurer (if any) in respect of injury occurring on 19 August 2015.
3. On or before 19 February 2020, the applicant's solicitor is to file a statement detailing:
 - a. the steps taken to comply with the preceding direction and
 - b. what responses were received from the respondents or their workers compensation insurers.
4. EML is to appear at teleconference on 21 February 2020 at 2pm.
5. The first respondent is to appear at teleconference on 21 February 2020 at 2pm, unless it notifies the Registrar in writing, on or before 18 February 2020, that EML will appear in its interests at the teleconference.

6. The workers compensation insurer (if any) of the second respondent as at the date of injury is to appear at teleconference on 21 February 2020 at 2pm.
7. The second respondent is to appear at teleconference on 21 February 2020 at 2pm, unless it notifies the Registrar in writing, on or before 18 February 2020:
 - a. of the identify of its workers compensation insurer as at the date of injury, and
 - b. that the relevant insurer will appear in its interests at the teleconference.”
5. A further teleconference was held on 21 February 2020 (the second telephone conference). Mr Gabriel, solicitor, appeared for the applicant, who was in attendance (after a short delay) in Mr Gabriel’s office. Mr Murray, solicitor, appeared on behalf of the first respondent, instructed by Ms Bentley, of iCare. There was no appearance for Kings Consolidated Group Pty Limited trading as Kings Transport & Logistics (second respondent). Mr Murray informed me that he did not act for the second respondent, and that, based upon information and enquiry by iCare, the second respondent did not hold a NSW workers compensation insurance policy in respect of the date of accident in question.
6. The applicant and first respondent were not able to reach an agreed resolution of the matter. The first respondent sought to have the matter set down for a conciliation and arbitration hearing. The applicant, following my questioning of the readiness of the matter to proceed, sought a further teleconference in four weeks to allow time for a claim to be brought against the Nominal Insurer in respect of the uninsured second respondent. This further adjournment of the matter was declined by me as it was not in accordance with Practice Direction 2. The matter was not ready to proceed and adjournment for a second time, with no end in sight to properly bringing a claim against the Nominal Insurer, was contrary to the Commission’s objective of timely dispute resolution.
7. At the second telephone conference I found that the proceedings were a nullity and I ordered that the matter would be struck out.

EVIDENCE

Documentary evidence

8. The following documents were in evidence before the Commission and taken into account in making this determination:
 - (a) Application and attached documents, and
 - (b) Reply of the first respondent and attached documents;
9. There was no reply or appearance on behalf of the second respondent.
10. The Commission did not receive a statement from the applicant’s solicitor, as required at direction number 3 above.

REASONS

11. In my view, the evidence contained within the Application and Reply, including the applicant’s statement, indicated that the second respondent was potentially liable for the applicant’s claim. That being the case, it was my view that the matter was not ready to proceed, and was unlikely to be ready to proceed by the time of a further telephone conference. I was not assisted by the absence of evidence from the applicant as to the claim being made against the second respondent.

12. Also, in my view, the applicant faced a significant issue as to whether he was a worker, based on the matters raised in his statement. The first respondent had indicated that it would seek leave to dispute employment, but it was not necessary for me to decide leave, given the unreadiness of the matter to proceed. The applicant in my view may well need to provide further evidence on this issue.
13. I find that these proceedings are a nullity.¹ In my view, there is no prospect of this matter being ready to proceed to a hearing within the Commission's timeframes of three weeks from the telephone conference, or within a reasonable period, as it was already outside of those timeframes at the second telephone conference, with no prospect that the Nominal Insurer would be in a position to attend or take a hearing date at a further telephone conference. Further delay would incur additional costs for the first respondent, a matter prejudicial to that party. The matter is not finally decided against the applicant if it is struck out. Legal funding to the applicant is available through the Independent Legal Assistance and Review Service. The applicant may recommence proceedings by lodging a further application when the matter is ready to proceed.
14. These proceedings are struck out pursuant to rule 15.1 of the Workers Compensation Commission Rules 2011 for want of prosecution.



¹ *Morgan v Hacken Pty Limited* [2004] NSWCCPD 83.