36/08; [2008] VSC 304

SUPREME COURT OF VICTORIA

REID STOCKFEEDS PTY LTD v LINDHE

Kyrou J

14, 15 August 2008 — (2008) 176 IR 255

CIVIL PROCEEDINGS – ACCIDENT COMPENSATION CLAIM – EMPLOYEE INJURED AT PLACE OF EMPLOYMENT – EMPLOYEE ENGAGED IN A LIFTING COMPETITION – SUCH ACTIVITY NOT PART OF EMPLOYEE'S EMPLOYMENT – FINDING BY MAGISTRATE THAT INJURY OCCURRED "IN THE COURSE OF" THE EMPLOYEE'S EMPLOYMENT – FINDING BY MAGISTRATE THAT SUFFICIENT IF INJURY OCCURS DURING THE PRESCRIBED WORK HOURS AT THE SPECIFIED PLACE OF EMPLOYMENT – CLAIM UPHELD – ORDER MADE AGAINST EMPLOYEE'S EMPLOYER TO MAKE PAYMENTS OF COMPENSATION – WHETHER MAGISTRATE IN ERROR: *ACCIDENT COMPENSATION ACT* 1985, S82(1).

1. The words "in the course of" employment include the work or service that the employee is employed to perform and anything which is incidental to the work or service. There need not be a causal connection between the employment (or its incidents) and the injury but there must be a nexus between the relevant activity and the work or service that the employee is employed to perform.

***Henderson v Commissioner of Railways (WA)* [1937] HCA 67; (1937) 58 CLR 281; [1938] ALR 18, applied.**

2. Where a magistrate in hearing a claim under the *Accident Compensation Act* 1985 and in determining whether an injury arose in the course of employment stated that it was sufficient if the injury occurred during the prescribed work hours and at the specified place of employment, the magistrate failed to apply the *Henderson* principle and accordingly was in error.

KYROU J:

Introduction and summary

1. This is an appeal under s109 of the *Magistrates' Court Act* 1989 (Vic) ("MC Act") against an order made on 23 November 2007 by the Magistrates' Court at Melbourne requiring the appellant, Reid Stockfeeds Pty Ltd ("Reid"), to make weekly payments of compensation to the respondent, Mark Lindhe, and to pay Mr Lindhe's reasonable medical and like expenses and costs of the Magistrates' Court proceeding.

2. The Magistrate found that Mr Lindhe's injury, which occurred while he was lifting the arm of a hopper at his workplace as part of a "lifting competition", took place "in the course of" his employment within the meaning of s82(1) of the *Accident Compensation Act* 1985 (Vic) ("AC Act") notwithstanding that this activity was not part of what he had been employed by Reid to do.

3. For the reasons set out in this judgment, I have concluded that the Magistrate erred in law in concluding that it was sufficient to warrant a finding that Mr Lindhe's injury was in the course of his employment if that injury occurred during the prescribed work hours and at the specified place of employment. The appeal will be allowed and the proceeding remitted to the Magistrates' Court.

Facts, relevant statutory provisions and procedural history

4. The facts, as found by the Magistrate, were not in dispute before me. Commencing in May 2002, Mr Lindhe was employed by Reid, initially as a mill hand and, from December 2002, as a mill supervisor at Reid's Trafalgar plant in Gippsland. His duties required him to, among other things, blend stock feed or mix feed, add additives to the feed, and carry out feed bagging operations. Essentially, he processed and bagged grain for delivery to farmers to accord with their specific requirements. Aspects of the work were heavy and physical. Mr Lindhe also performed cleaning duties and mechanical work from time to time.

5. On 20 February 2003, two shifts were worked by mill hands at Reid's premises. The first shift commenced at 4am and comprised Todd Glasper (supervisor) and Andrew Kennedy (mill hand).

The second shift commenced at 8am and comprised Mr Lindhe (supervisor) and Mick Stepersma (mill hand). On that day, there was a large item of plant and machinery at Reid's premises which was described as a weigh hopper and conveyor. The hopper was made of solid steel and weighed a few hundred kilograms. Extending from the hopper was an exit chute or an arm which allowed grain to be weighed.

6. During a period when, in Mr Lindhe's words, he and other workers at the premises found themselves with "nothing much to do", they "came up with an idea of entertaining [themselves]" by taking it in turns to push up from underneath the arm of the empty hopper, which allowed the person pushing to generate a weight reading on the scales. This was done using the top of the shoulders and the base of the neck, mainly using leg muscles to push up. During cross-examination in the Magistrates' Court, Mr Lindhe accepted that the activity could be described as being like a lifting competition. I will refer to this as the "lifting activity".

7. While taking his turn at the lifting activity, Mr Lindhe felt a pop in his back and a sharp pain. He acknowledged that his initial report of the injury was false because it stated that the injury occurred while he was lifting grain bags. He also said that he knew that the lifting activity was something that he really should not do, and was not what he had been employed to do as such by Reid. He had not seen anyone engage in the lifting activity on any previous occasion.

8. From the transcripts of the various Magistrates' Court hearings (see below) which were available to me, it appears that there was a conflict of evidence about the role of Mr Glasper at the time of the injury. Mr Lindhe said that Mr Glasper was his immediate supervisor,[1] that he was not the senior supervisor because Mr Glasper was present and he answered to Mr Glasper,[2] and that Mr Glasper did not actually do any "lifting" but was involved in the "lifting competition" and was going to take his turn after Mr Lindhe.[3] By contrast, the Gippsland manager for Reid, Geoffrey Wells, who described himself as the officer effectively in charge of the workplace, said that while Mr Glasper was onsite when the injury occurred, Mr Lindhe was the supervisor at the time.[4] In his reasons, the Magistrate noted that "[t]he plaintiff alleged that Todd Glasper was his immediate supervisor"[5] but did not make a finding about whether that was so.

9. In May 2004, Mr Lindhe made a claim in the Magistrates' Court pursuant to the AC Act for weekly payments of compensation together with medical and like expenses in relation to the injury. Reid opposed the claim. An initial decision in favour of Reid by a different Magistrate on 1 September 2005[6] was set aside by consent on appeal to the Supreme Court and the proceeding was remitted to the Magistrates' Court for re-hearing. The proceeding was re-heard by the Magistrate on 10 and 11 April 2007, and on 23 November 2007 the Magistrate delivered judgment.

10. The Magistrate considered whether Mr Lindhe satisfied s82(1) of the AC Act, which provides that "[i]f there is caused to a worker an injury arising out of or in the course of any employment, the worker shall be entitled to compensation in accordance with this Act". For the purposes of this appeal, the critical passages of the Magistrate's reasons are as follows:[7]

> The incident causing the plaintiff's injury took place in the morning of the day in question during a lull or quiet period in the work activities, that is [while] the plaintiff and his fellow employees were waiting for another job to do but were at the particular place where the work duties were ordinarily performed. It was not in my view, a break as such or interval in the hours of work. ...
> [B]oth counsel cite with approval the decision of the majority of the Court of Appeal [sic[8]] in *Hatzimanolis v ANI Corporation Limited* [1992] HCA 21; (1992) 173 CLR 473; 106 ALR 611; 66 ALJR 365 where the court considered the test to determine whether an injury occurring between periods of actual work is within the course of employment.
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> On p484 of that judgment the court said:
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> "Indeed the modern cases show that absent gross misconduct on the part of the employee, an injury occurring during such an interval or interlude will invariably result in a finding that the injury occurred in the course of employment. Accordingly, it should now be accepted that an interval or interlude within an overall period or episode of work occurs within the course of employment if, expressly or impliedly, the employer has induced or encouraged the employee to spend that interval or interlude at a particular place or in a particular way. Furthermore, an injury sustained in such an interval will be within the course of employment if it occurred at that place or while the employee was engaged in that activity unless the employee was guilty of gross misconduct taking him or

> her outside the course of employment. In determining whether the injury occurred in the course of employment, regard must always be had to the general nature, terms and circumstances of the employment 'and not merely to the circumstances of the particular occasion out of which the injury to the employee has arisen'."
>
> I have specifically emphasised the words "or" as they appear, or the word "or" as it appears in each case because in my view it is significant.
>
> It should be born[e] in mind that the decision in *Hatzimanolis* related to an incident during an interval or interlude whereas in the subject case as plaintiff's counsel submitted, the incident occurred not during a break or interval in the work duties, but while the plaintiff and his workmates were waiting to be allocated other work, and in my view significantly, occurred at the place where the plaintiff was required to work.
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> This is not an interval or interlude case as such, hence as I have already said, the emphasis that I placed on the word "or" as used by the court in *Hatzimanolis* at a particular place, "or" in a particular way. Quite simply in my view it is sufficient to fall within the definition of the course of any employment if that injury occurs during the work hours, at the place of employment, subject of course to the misconduct provision which I will come to.
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> In my view the rational[e] of the judgment of Justice Toohey in *Hatzimanolis* upon which the defendant relied, relates to the second leg of the principle adopted in the majority judgment, that is in a particular way as opposed in a particular place, but the worker must, as Justice Toohey opined, be doing something which he was reasonably required, expected or authorised to do in order to carry out his duties to provide a connection with the employment if whatever is being done by the worker is being done away from the work place ... as was the situation in *Hatzimanolis*. That in my view is the distinction.
>
> So long as the injury occurs during the prescribed work hours at the specified place of employment in my view it matters not that the plaintiff was at the time he was injured, not then doing something which he was reasonably required or expected or authorised to do, as submitted by the defendant. In my view such a test is applied when considering whether an injury arose out of any employment as opposed to in the course of any employment.

11. On the facts, and applying the law as he had expressed it, the Magistrate found that Mr Lindhe's injury occurred in the course of his employment within the meaning of s82(1) of the AC Act. The Magistrate said that it was accordingly unnecessary for him to consider whether the injury arose out of the employment, and he did not do so.

12. Before the Magistrate, Reid argued that s82(4) of the AC Act applied. Section 82(4) provides: "If it is proved that an injury to a worker is attributable to the worker's serious and wilful misconduct ... compensation shall not be payable in respect of that injury." The Magistrate found that Mr Lindhe's behaviour was not "serious and wilful misconduct" within the meaning of s 82(4).

13. As a result of the above findings, the Magistrate found in favour of Mr Lindhe and made the following order on 23 November 2007:

> 1. The defendant is to pay the plaintiff weekly payments of compensation from 20th February 2003 to 23 February 2003 at the non current work capacity rate and there after until 19 February 2005 at the rate appropriate to current work capacity.
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> 2. Defendant to pay plaintiff's reasonable medical and like [expenses], amount reserved.
>
> 3. Defendant to pay plaintiff's costs on Magistrates' Court Scale "E" including reserved costs certificate 1 refreshers such costs to be assessed in default of agreement.
>
> Liberty to apply.

14. That order is now the subject of appeal to this Court. The notice of appeal essentially raises the question of whether the Magistrate applied an erroneous legal principle in determining whether Mr Lindhe's injury was in the course of his employment for the purposes of 82(1) of the AC Act. The Magistrate's finding in relation to s82(4) is not challenged in this appeal. Nor is the Magistrate's finding that this was not an "interval or interlude case".

Injury "in the course of" employment

15. The words "in the course of" employment include the work or service that the employee is employed to perform and anything which is incidental to the work or service.[9] There need not be a causal connection between the employment (or its incidents) and the injury.[10] In *Henderson v Commissioner of Railways (WA),* Dixon J stated:[11]

> To be in the course of the employment, the acts of the workman must be part of his service to the employer. But the difficulty lies in the application of this conception. For the service consists in more than the actual performance of the work which the workman is employed to do. It includes the doing of whatever is incidental to the performance of the work. ... Where the accident arises shortly before the beginning of actual work or shortly after its cessation, or in an interval when labour is suspended, and it occurs at or near the scene of operations, the question whether it arises in the course of the employment will depend on the nature and terms of the employment, on the circumstances in which work is done and on what, as a result, the workman is reasonably required, expected or authorized to do in order to carry out his actual duties.

16. I will refer to the above quoted principle as "the Henderson principle". In *Humphrey Earl Ltd v Speechley*,[12] Dixon J repeated the key elements of the Henderson principle without the word "actual" in the final line.

17. Many cases have applied the *Henderson* principle, with some retaining the word "actual", and others omitting it.[13] Although not all of the cases have used the same language as Dixon J in *Henderson* and *Speechley*, they have all required that there be a nexus (which has sometimes been very slight indeed) between the relevant activity and the work or service that the employee is employed to perform, with most specifically referring to that activity as being incidental to the work or service. The outcomes of the cases have varied and have largely turned on their facts. A trend, however, can be discerned towards the adoption of a more liberal approach to whether something is "in the course of" employment.[14] It is only possible to reconcile the application of the *Henderson* principle with decisions in many modern cases by a strained interpretation of the words "in order to carry out his actual duties".[15]

18. One area where the application of the *Henderson* principle – particularly the words "in order to carry out his actual duties" – has led to difficulties is where the injury occurred in the course of an activity that took place during an interval or interlude, such as where the activity took place outside the normal workplace or outside the normal working hours (such as a lunch break). In *Hatzimanolis v ANI Corporation Ltd*, the High Court authoritatively stated the principle to be applied in interval or interlude cases. The statement of the principle is set out in the quotation from the Magistrate's decision in paragraph 10 of the judgment.[16]

19. The High Court in *Hatzimanolis* did not reformulate the legal principles that apply where there is no interval or interlude. In particular, the High Court did not decide that in cases that do not involve an interval or interlude, the mere fact that an injury occurs during the prescribed work hours and at the specified place of employment is sufficient (irrespective of whether the activity that resulted in the injury was part of the work the employee was employed to perform or incidental to it) to warrant a finding that the injury occurred in the course of employment. The *Henderson* principle continues to apply in cases that do not involve an interval or interlude.[17]

Error of law on the part of the Magistrate

20. In the current case, the Magistrate set out various findings of fact, including that this was not an interval or interlude case. Notwithstanding this finding, as set out above, he quoted the principle in *Hatzimanolis* and held that:

> it is sufficient to fall within the definition of the course of any employment if that injury occurs during the work hours, at the place of employment, subject of course to the misconduct provision which I will come to. ...
>
> So long as the injury occurs during the prescribed work hours at the specified place of employment in my view it matters not that the plaintiff was at the time he was injured, not then doing something which he was reasonably required or expected or authorised to do, as submitted by the defendant.

21. Mr O'Loghlen, who appeared with Mr Hutchinson for Mr Lindhe before me, submitted that the Magistrate's reference to the submissions of the defendant was a reference to a submission

by Reid before the Magistrate that, in this case, Reid did not require, expect or authorise Mr Lindhe to engage in the lifting activity. The words "require, expect or authorise" obviously reflect the *Henderson* principle.

22. Mr Gorton, who appeared with Mr Fleming for Reid before me, submitted that the Magistrate applied the wrong test in determining that the injury occurred within the course of employment. He submitted that where the injury results from an activity which is not part of the work the employee is employed to perform and no interval or interlude is involved, the Henderson principle applies. He submitted that it is not sufficient that the injury occurred during the prescribed work hours and at the specified place of employment. He submitted that while it was possible that the Magistrate may have concluded that Mr Lindhe's injury occurred during the course of employment if he had made particular findings of fact and applied the correct legal test to those facts, the Magistrate did not apply the correct legal test and thereby made an error of law requiring that the appeal be allowed and the proceeding be remitted to the Magistrates' Court.

23. Mr O'Loghlen submitted that the Magistrate's decision must be considered as a whole and that, when this is done, it is clear that the Magistrate found as a fact that Mr Lindhe's injury occurred in the course of his employment. Mr O'Loghlen pointed to the Magistrate's findings that Mr Lindhe and his co-workers had remained together within the workplace and that there had not been any interruption to their work when the injury occurred. He submitted that although the Magistrate did not, in terms, find that the lifting activity in question was incidental to Mr Lindhe's work, this was the effect of the Magistrate's decision. Mr O'Loghlen submitted that, when the Magistrate's statements that are quoted in paragraph 10 of this judgment are considered in the context of the whole of the Magistrate's reasons, the Magistrate did not base his decision on the premise that the mere fact that the injury occurred during the prescribed work hours and at the specified place of employment, was sufficient; rather, the conclusion that the injury occurred in the course of employment was based on the Magistrate's factual findings as a whole and on the circumstances that he took into account, which are apparent from a reading of his reasons. Mr O'Loghlen submitted that cases such as *Park v Peach*[18] make it clear that what constitutes "in the course of" employment involves questions of fact and degree.

24. I do not accept Mr O'Loghlen's submission that the Magistrate in effect applied the correct legal principles although he did not expressly refer to them. When the Magistrate's reasons are read as a whole, it is clear that he based his decision on the following propositions:

> (a) the principle of whether or not the injury occurs while a worker was doing something which was reasonably required, expected or authorised by the employer (that is, the *Henderson* principle) is applicable to the question of whether an injury arises "out of" employment but not to the question of whether an injury arises "in the course of" employment; and
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> (b) in relation to the question of whether an injury arises in the course of employment, it is sufficient if the injury occurs during the prescribed work hours and at the specified place of employment, unless the worker engaged in serious and wilful misconduct within the meaning of s82(4) of the AC Act.

25. The above propositions, which the Magistrate erroneously derived from *Hatzimanolis,* are contrary to longstanding authority. The Magistrate thus erred in law in applying those propositions.

26. While it is true that, as Mr O'Loghlen submitted, cases that have decided that an injury occurred "in the course of" employment involve questions of fact and degree, the correct legal principles must be applied. The case of *Park v Peach*,[19] upon which Mr O'Loghlen relied, illustrates this. That case involved a taxi driver who, on his way to deliver the taxi to his employer, stopped his taxi in order to cross the road and purchase a newspaper. The taxi driver was knocked down and killed while returning to the taxi after purchasing the newspaper. Mr O'Loghlen submitted that notwithstanding the fact that the newspaper was purchased for purposes not connected with the taxi driver's employment, the Full Court of the Supreme Court nevertheless held that the death occurred in the course of the taxi driver's employment. However, an important consideration in that case was the finding of fact that the employer had no objection to the taxi driver leaving the taxi to have a meal or to purchase a newspaper or to answer a call of nature. The Court said:[20]

> [T]he consent or permission by the employer to the particular activity upon which the employee is engaged at the time of the injury is a relevant and important, although not by itself a decisive,

> consideration. ... The presence of such consent or permission may, we think, constitute a circumstance tending to prove that at the critical time the worker was doing something contemplated by his contract or employment and therefore incidental to the end his work is designed to serve.
>
> ... the [Workers Compensation] Board found as a fact that the place where the deceased stopped the taxi was directly upon the route upon which normally he would have to travel in returning the car to his employer. It also found that the employer had no objection, which we take to mean in the context, gave his permission to the deceased leaving the car to purchase the paper ...
>
> Having regard to the above-mentioned findings and considerations, we think it was open to the Board to take the view that the act of the deceased in leaving the taxi to purchase the paper was but an incident that occurred whilst he was driving the taxi of his employer as directed by him.

27. In the present case, there was evidence that could have been relevant to the issue of whether the lifting activity was incidental to the performance of Mr Lindhe's duties, within the meaning of the *Henderson* principle. For example, as described in paragraph 8 of this judgment, there was evidence that Mr Glasper, who Mr Lindhe described as his supervisor, was present during the lifting activity. If the Magistrate was in fact applying the *Henderson* principle, one would have expected him to make a finding as to whether Mr Glasper was Mr Lindhe's supervisor and whether his presence during the lifting activity constituted authorisation on behalf of Reid of the carrying out of the lifting activity or otherwise rendered the lifting activity incidental to the work Mr Lindhe was employed to perform. The fact that the Magistrate did not make such findings, either positive or negative, supports the view that the Magistrate did not apply the *Henderson* principle and that he decided that it was sufficient that the injury occurred during the prescribed work hours and at the specified place of employment.

28. As I have found that the Magistrate applied the wrong legal principle in reaching his decision, the appeal must be allowed and the proceeding remitted to the Magistrates' Court so that it can be reheard and redetermined according to law.

Proposed orders

29. Subject to any submissions from the parties, I propose to make the following orders:

> (a) The appeal against the orders of the Magistrates' Court dated 23 November 2007 in case number S01168506 ("the case") is allowed.
>
> (b) The orders of the Magistrates' Court made on 23 November 2007 in the case are set aside.
>
> (c) The case is remitted to the Magistrates' Court to be reheard and redetermined according to law.

30. I will hear the parties on the precise form of the order and on costs.

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[1] Transcript of Proceedings, *Lindhe v Reid Stockfeeds Pty Ltd* (Magistrates' Court of Victoria, 9 June 2005) 14.
[2] Transcript of Proceedings, *Lindhe v Reid Stockfeeds Pty Ltd* (Magistrates' Court of Victoria, 9 June 2005) 34, 38.
[3] Transcript of Proceedings, *Lindhe v Reid Stockfeeds Pty Ltd* (Magistrates' Court of Victoria, 9 June 2005) 28.
[4] Transcript of Proceedings, *Lindhe v Reid Stockfeeds Pty Ltd* (Magistrates' Court of Victoria, 31 August 2005) 53.
[5] Transcript of Proceedings, *Lindhe v Reid Stockfeeds Pty Ltd* (Magistrates' Court of Victoria, 23 November 2007) 4.
[6] The decision followed hearings on 9-10 June 2005 and 31 August 2005.
[7] Transcript of Proceedings, *Lindhe v Reid Stockfeeds Pty Ltd* (Magistrates' Court of Victoria, 23 November 2007) 6-10.
[8] The Magistrate's reference to the Court of Appeal was erroneous – *Hatzimanolis v ANI Corporation Ltd* [1992] HCA 21; (1992) 173 CLR 473; 106 ALR 611; 66 ALJR 365 ("*Hatzimanolis*"), from which the Magistrate quotes, was a decision of the High Court, on appeal from the New South Wales Court of Appeal.
[9] *Pearson v Fremantle Harbour Trust* [1929] HCA 19; (1929) 42 CLR 320, 329-30; 35 ALR 258; *Whittingham v Commissioner of Railways (WA)* [1931] HCA 49; (1931) 46 CLR 22, 26, 27, 29, 36, 40; 38 ALR 8; *Henderson v Commissioner of Railways (WA)* [1937] HCA 67; (1937) 58 CLR 281, 294; [1938] ALR 18 ("*Henderson*"); *Humphrey Earl Ltd v Speechley* [1951] HCA 75; (1951) 84 CLR 126, 133, 137; [1952] ALR 46; (1951) 25 ALJR 616 ("*Speechley*"); *Kavanagh v Commonwealth* [1960] HCA 25; (1960) 103 CLR 547, 559, 568-9, 571-2, 581; [1960] ALR 470; 34 ALJR 36 ("*Kavanagh*"); *Commonwealth v Oliver* [1962] HCA 38; (1962) 107 CLR 353, 356, 363; [1962] ALR 609; 36 ALJR 133 ("*Oliver*"); *Danvers v Commissioner for Railways (NSW)* [1969] HCA 64; (1969) 122 CLR 529, 536, 540, 542; [1970] ALR 403 ("*Danvers*"); *Bill Williams Pty Ltd v Williams* [1972] HCA 23; 126 CLR 146, 148, 151-2, 154-5, 158-9; [1972-73] ALR 303; 46 ALJR 285 ("*Bill Williams*");

Hatzimanolis [1992] HCA 21; (1992) 173 CLR 473, 478; 106 ALR 611; 66 ALJR 365.
[10] *Kavanagh* [1960] HCA 25; (1960) 103 CLR 547, 556-7, 558-9, 572; [1960] ALR 470; 34 ALJR 36; *Oliver* [1962] HCA 38; (1962) 107 CLR 353, 358; [1962] ALR 609; 36 ALJR 133; *Bill Williams* [1972] HCA 23; 126 CLR 146, 154-5, 158-9; [1972-73] ALR 303; 46 ALJR 285.
[11] [1937] HCA 67; (1937) 58 CLR 281, 294; [1938] ALR 18.
[12] [1951] HCA 75; (1951) 84 CLR 126, 133; [1952] ALR 46; (1951) 25 ALJR 616.
[13] See, eg, *Kavanagh* [1960] HCA 25; (1960) 103 CLR 547, 567; [1960] ALR 470; 34 ALJR 36; *Oliver* [1962] HCA 38; (1962) 107 CLR 353, 363; [1962] ALR 609; 36 ALJR 133; *Danvers* [1969] HCA 64; (1969) 122 CLR 529, 536; [1970] ALR 403; *Bill Williams* [1972] HCA 23; 126 CLR 146, 159; [1972-73] ALR 303; 46 ALJR 285. Cf *Hatzimanolis* (1992) 173 CLR 473, 479-82.
[14] See *Oliver* (1962) 107 CLR 353, 356; *Park v Peach* [1967] VR 558, 560; *Danvers* (1969) 122 CLR 529, 536; *Hatzimanolis* [1992] HCA 21; (1992) 173 CLR 473, 479; 106 ALR 611; 66 ALJR 365.
[15] *Hatzimanolis* [1992] HCA 21; (1992) 173 CLR 473, 479-80; 106 ALR 611; 66 ALJR 365.
[16] *Hatzimanolis* [1992] HCA 21; (1992) 173 CLR 473, 482, 484; 106 ALR 611; 66 ALJR 365.
[17] *Roncevich v Repatriation Commission* [2005] HCA 40; (2005) 222 CLR 115, 123 [17]; (2005) 218 ALR 733; (2005) 85 ALD 257; (2005) 79 ALJR 1366; 41 AAR 355.
[18] [1967] VicRp 60; [1967] VR 558, 565.
[19] [1967] VicRp 60; [1967] VR 558.
[20] [1967] VicRp 60; [1967] VR 558, 561-2.

APPEARANCES: For the appellant Reid Stockfeeds Pty Ltd: Mr R Gorton QC and Mr M Fleming, counsel. Wisewoulds Lawyers. For the respondent Lindhe: Mr M O'Loghlen QC and Mr B Hutchinson, counsel. Maurice Blackburn Lawyers.
