

BETWEEN:

JOSEPH AQUILINA

Plaintiff

AND

ERARING ENERGY

Defendant

BABCOCK INTERNATIONAL LIMITED

Cross Defendant

REQUEST FOR REDETERMINATION UNDER SLIP RULE

1. On 27 January 2009 I made a contributions assessment determination (**the Determination**) in this matter.
2. On 4 February 2009 I received a facsimile at about 7.20pm from the solicitors acting for Babcock International Limited (**BIL**) requesting corrections to my Determination pursuant to CI 49(10)(b) of the *Dust Diseases Tribunal Regulations* (**the Facsimile**).
3. Clause 49(10) provides a mechanism for correcting an error arising from an accidental slip or omission. The application must be made within 7 business days after the determination is made. I note that the Determination is dated 27 January 2009 but a review of my records shows that the Determination was sent to the Registrar by email and DX on the morning of 28 January 2009. I proceed on the basis that for the purposes of CI 49(10) the Determination was made on 28 January 2009 and so the request to review the Determination has been made within time and it is appropriate for me to address the matters raised in the Facsimile.
4. I set out in full the errors that BIL's solicitors say need to be redressed from the Facsimile:
 - 1 *At paragraphs 13 and 17 of the Determination, several references are made to the plaintiff's "post 1990" exposure to asbestos.*

We refer to Annexure "A" to our letter addressed to Turner Freeman dated 19 December 2008. Annexure "A" states that the plaintiff was employed by the Defendant's predecessor from 1980 to 1996, and that during the period 1982 to 1990, the plaintiff worked as a Trades Assistant in sub station at Homebush from 1982 to 1990. From 1990 until 1996, the plaintiff worked at the head office of Pacific Power. According to Annexure "A", the plaintiff considered that he had been exposed to asbestos materials at least once a week during the eight years that he worked as a Trades Assistant, i.e. from 1982 to 1990. Annexure "A" concludes:

"Mr Aquilina stated that as far as he is aware, he did not have any contact or exposure to asbestos materials in the periods from 1990 to 1996."

Consequently, it is unclear why the determination refers to the plaintiff's "post 1990" exposure, when the content of Annexure "A" states that the plaintiff was exposed to asbestos during the course of his employment with the Defendant's predecessor between 1982 and 1990 whilst working at sub stations at Homebush.

- 2 *We also note that at paragraph 18(e) of the Determination, the plaintiff is incorrectly referred to as "Mr Bolton".*
5. The Facsimile also noted that a mediation was imminent and requested that any review be done promptly. I arranged for the file to be uplifted from the Dust Diseases Tribunal Registry today.
6. I have considered the Facsimile as well as the contents of the letter from Malleson Stephen Jacques to Turner Freeman dated 19 December 2008 (which includes Annexure A). In my view it is appropriate to amend the Determination.
7. In paragraph 18(b) of the Determination I found that Mr Aquilina's last exposure to asbestos was in 1960. It is clear on review that each reference to "post 1990" is a clerical mistake.
8. In lieu of each of the references to "post 1990" in paragraphs 17 and 26 of the Determination I substitute the words "post 1960".
9. The reference to "Mr Bolton" is a clerical mistake on my part. I substitute those words with the words "Mr Aquilina".

10. Contrary to the assertion in the facsimile, there is no reference to “post 1990” in paragraph 13 of my Determination. I assume this is an error on BIL’s solicitor’s part and make no amendment to that paragraph.

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David Jay

Contributions Assessor

5 February 2009