

**IN THE DISTRICT COURT
AT WELLINGTON**

**I TE KŌTI-Ā-ROHE
KI TE WHANGANUI-A-TARA**

[2021] NZACC 110 ACR 142/19

UNDER	THE ACCIDENT COMPENSATION ACT 2001
IN THE MATTER OF	AN APPEAL UNDER SECTION 149 OF THE ACT
BETWEEN	PRAVEEN NAIR Appellant
AND	ACCIDENT COMPENSATION CORPORATION Respondent

Hearing: 21 June 2021

Heard at: Wellington/Te Whanganui-A-Tara

Appearances: The appellant in person
 Ms E Watt and Ms H Iffwersen for the respondent

Judgment: 20 July 2021

**RESERVED JUDGMENT OF JUDGE C J McGUIRE
[Reimbursement of Social Security Payments s 252
Accident Compensation Act 2001]**

[1] The issue on this appeal appears to be the correctness of the Corporation's decision to reimburse Work and Income New Zealand (WINZ) a portion of the appellant's backdated weekly compensation on the basis of the Accident Compensation Act 2001 (the Act), s 252 Relationship with social security benefits: reimbursement by Corporation.

Background

[2] On 21 July 2011 Mr Nair suffered an ankle injury at work. In respect of this he was paid weekly compensation.

[3] In July 2018 Mr Nair queried his current rate of weekly compensation. This resulted in the Corporation realising that Mr Nair had been paid the incorrect rate for the period 1 August 2011 to 18 September 2018 and he was therefore owed backdated weekly compensation.

[4] On 20 September 2018 the Corporation issued a decision stating that Mr Nair was entitled to \$25,919.37 backdated weekly compensation for the period 1 August 2011 to 18 September 2018. However, for this same period, Mr Nair had received \$20,993.02 in benefits from WINZ. The Corporation explained in its decision of 20 September 2018, that it had reimbursed WINZ for the amount paid to Mr Nair as he should have been receiving weekly compensation from the Corporation.

[5] On 21 September 2018 the Corporation also issued a weekly compensation assessment payment advice to Mr Nair explaining how it had calculated his entitlement (and showing the amount of \$20,993.02, reimbursed to WINZ).

[6] As a consequence, the Corporation paid Mr Nair the sum of \$2,746.92 in backdated weekly compensation. This figure represented the backdated weekly compensation owed to him for the period 1 August 2011 and 18 September 2018, less the amount that he had received through his WINZ benefit, and deducting tax and the debts that Mr Nair owed to ACC.

[7] On 19 October 2018 the Corporation also paid Mr Nair interest in the sum of \$1,200.84. The Corporation explained that this payment covered interest for the period 14 October 2011 to 21 September 2018.

[8] In respect of the latter, the Corporation explained what it had done in a letter to the Mr Nair dated 17 October 2018:

The amount of interest we are paying covers the period 14 October 2011, the date ACC was in possession of medical records to 21 September 2018, the date

we paid your backdated weekly compensation for 1 August 2011 to 18 September 2018.

[9] Thus, Mr Nair received from the Corporation a total sum of \$3,947.76 (including interest) for backdated payments.

[10] Mr Nair applied to review the decisions to determine whether the Corporation had correctly calculated his weekly compensation entitlement and paid him the correct amount.

[11] In a decision dated 16 May 2019 the Reviewer upheld the Corporation's decision of 21 September 2018. The Reviewer found that the Corporation had correctly calculated Mr Nair's weekly compensation entitlement (as to principle and interest). The Reviewer also held that the Corporation was correct to reimburse WINZ for a substantial portion of the weekly compensation at issue.

[12] The Reviewer said:

My task as reviewer was to consider whether ACC's decision about the amount of backdated weekly compensation Mr Nair was entitled was correct. I have considered Mr Nair's points and the issues carefully in reaching my decision.

Mr Nair accepts that ACC's calculations are correct. This is further supported by correspondence between ACC and Mr Nair's former legal representative at John Miller Law and Mr Nair's file (Mr Nair is no longer represented) that resulted in John Miller Law's representative being satisfied that ACC had correctly calculated Mr Nair's entitlement to backdated weekly compensation, including the interest on the payment amount.

Mr Nair considers it unfair that despite ACC making a mistake in calculating his entitlements it didn't suffer a consequence of this because of the repayment to WINZ.

However, as Mr Light explained at the hearing, ACC is required by section 252 of the Act to make this payment calculation and reimburse WINZ.

I sympathise with Mr Nair, who is in difficult circumstances trying to support his family while dealing with ongoing illness that has affected his ability to work. However, ACC had no choice but to pay his money to WINZ because it is required to do so by law.

[13] On 12 June 2019 Mr Nair filed an appeal against the Reviewer's decision.

The Appellant's Submissions

[14] Mr Nair told the Court that when the Corporation started paying weekly compensation the rate was "very low". He said he had to ask WINZ for extra help.

[15] He said that he provided the Corporation with a letter from WINZ each year so that they were aware of payments he was receiving from WINZ.

[16] He said that he was "begging" the Corporation from the beginning to pay more and although the Corporation has acknowledged that Mr Nair was underpaid he was made to feel that he had caused the problem.

[17] He told the Court that the Corporation had trespassed him and that had stopped him dealing with his claim. He said he had been arrested three times and discharged from the police station.

[18] He said that as recently as the previous week he had received a letter from the Corporation increasing his payment for July and that he gave a copy to WINZ as he always did with letters of that kind.

[19] He said that the Corporation never asked if he was getting money from WINZ. He repeated that each year he had been open with both WINZ and the Corporation. He said that the Corporation "blamed" him and he did nothing wrong.

The Respondent's Submissions

[20] Written submissions on behalf of the Corporation refer to the following decisions of the respondent:

[a] ACC's decision of 20 September 2018 stating that Mr Nair did not receive the full amount of weekly compensation he was entitled to and setting out how his weekly compensation has been calculated (including the amount of \$20,993.02 to be reimbursed to WINZ).

[b] ACC's decision of 21 September 2018 being a weekly compensation assessment which explains how it had calculated Mr Nair's gross weekly

compensation rate based on updated earnings information, such that Mr Nair's weekly compensation from 29 August 2011 would be based on an increased weekly rate of \$416.00 which had been increased to allow for the minimum wage.

[c] ACC's decision of 17 October 2018 making an interest payment to Mr Nair of \$1,200.84 on the backdated weekly compensation payment made to him.

[21] Ms Watt notes that s 114 of the Act provides that the Corporation is liable to pay interest on any payment of weekly compensation to which the claimant is entitled if the Corporation has not made the payment within one month after the Corporation has received all the information necessary to enable it to calculate and make the payment.

[22] She refers to s 252 of the Act which provides that if a person receives payment of a benefit under the Social Security Act and establishes a claim for entitlement from ACC in respect of all or part of the same period, any excess benefit payment is regarded as having been paid in respect of that entitlement.

[23] Ms Watt refers to a letter from Meredith Connell, solicitors, on behalf of the Corporation to the appellant dated 10 September 2019 which points out to Mr Nair the effect of s 252 of the Act. The letter says:

Therefore ACC is required by law to pay WINZ (MSD) back for any benefit paid to someone who should have been receiving monetary assistance from ACC when they were receiving a WINZ benefit.

[24] The letter also says:

Apology

16. ACC would like to resolve this matter with you outside of Court.
17. ACC acknowledges that you are frustrated that ACC has not been held accountable for its oversight in failing to pay you the correct amount of weekly compensation sooner than it did.
18. It would like to take this opportunity to apologise to you for its oversight in not processing your claim for weekly compensation at the correct rate

sooner. ACC would also like to apologise for the distress the oversight has caused you.

[25] Ms Watt submits that Mr Nair's concern seems to be over who the excess was paid to (i.e. WINZ) rather than the quantum of the amount.

[26] Ms Watt notes that at the review hearing Mr Nair acknowledged that the calculations that ACC has made are correct.

[27] She notes that interest was paid on the late compensation to represent the value of the money that was paid late to Mr Nair.

[28] She refers to *Cullen v Accident Compensation Corporation*¹. That case concerned a similar situation where the appellant had received part of the amount due to him from ACC, from WINZ.

[29] The Court of Appeal said this:

[15] This means that in this case Mr Cullen was entitled under s 114 of the Act to the interest he received on the late payment of arrears of compensation of \$12,789.45 which he in fact received, but he was not entitled to interest on the refund of \$185,498.63 paid by the Corporation to WINZ under s 252 of the Act. Mr Cullen was out of pocket in respect of the late payment he received. He was not out of pocket in respect of the refund to WINZ.

[16] We do not accept Mr Schmidt's submission that this conclusion is inconsistent with Mr Cullen's "entitlement" to the "gross" amount of compensation calculated under the relevant statutory formula and recognised by ss 114 and 252. The short answer is that, apart from the sum of \$12,789.45 Mr Cullen had already received from WINZ the full amount to which he was entitled. In terms of s 114 the Corporation was not liable to pay him interest on the amount he in fact received from WINZ. No late payment was involved in respect of that amount.

[30] Ms Watt notes that Mr Nair received \$20,993.02 in benefits from WINZ for the period 1 August 2011 to 18 September 2018 and he would not have been entitled to those benefit payments if he had been receiving the correct rate of weekly compensation from ACC which amounted to a total of \$25,919.37 for that period.

¹ *Cullen v Accident Compensation Corporation* [2014] NZCA 94.

[31] She submits that s 252 mandates that the Corporation was obliged to reimburse WINZ directly for this payment (\$20,993.02) and that the Corporation has now paid Mr Nair directly the correct total sum of \$3,947.76.

[32] She submits ultimately that Mr Nair received the majority of the amount of his entitlement to weekly compensation at the relevant time, but received it from the wrong government department (WINZ, instead of the Corporation).

[33] She submits that ACC correctly applied s 252 by reimbursing WINZ for the benefit payments that it had made to Mr Nair and then the Corporation correctly paid Mr Nair the difference between that sum and the backdated weekly compensation that he was entitled to and that it also compensated Mr Nair for the error by paying interest on the amount that it did owe him.

Judgment

[34] On 25 July 2011 Mr Nair fractured his left ankle while working. Unfortunately, his recovery was complicated by further injuries. As the Reviewer said, this was particularly difficult for him because he had to financially support his wife and a large family.

[35] In 2018 the Corporation accepted that Mr Nair had been incapacitated continuously from the beginning of August 2011. This meant that they had to recalculate his entitlement to weekly compensation and to make a further payment to him. With his family reliant on him one can readily understand Mr Nair's anxiety and frustration during this period.

[36] Mr Nair has other health issues including hearing problems which results in him speaking loudly as a matter of course.

[37] It is not difficult to imagine that this has been at times mistaken for anger, and as he recounts, he has been trespassed by ACC and he told the Court he was arrested three times by the police to be discharged from the police station.

[38] It is highly regrettable that his issues were not resolved earlier and the fact that Meredith Connell on behalf of the Corporation in a letter dated 10 September 2019 has apologised to him is acknowledgement that ACC's service to him fell short of what it should have been.

[39] As counsel has mentioned, Mr Nair accepted at the review that the ultimate calculations made were correct.

[40] In this case s 252 of the Act governs what occurs when a claimant receives payment of an income tested benefit under the Social Security Act 1961 and establishes a claim for entitlement from the Corporation in respect of all or part of the same period of time.

[41] Subsection (2) of s 52 states:

An excess benefit payment is regarded as having been paid in respect of that entitlement.

[42] Subsection (4) goes on to require the Corporation to refund the excess benefit payment to the department responsible.

[43] The decision in *Cullen's* case referred to by counsel makes it clear that in terms of s 114 the Corporation is not liable to pay a claimant interest on the amount he received from WINZ but which he should have received from ACC.

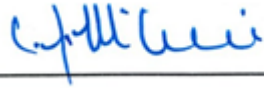
[44] As the Court of Appeal said no late payment is involved in respect of such amount.

[45] Accordingly, although the experience Mr Nair has been through is very regrettable and has plainly caused him considerable distress, I must conclude that when the Corporation recalculated his entitlements in 2018 and calculated what interest was to be paid for late payments, the decisions made were correct.

[46] Accordingly, the Corporation's decisions of 20 September 2018, 21 September 2018 and 17 October 2018 stand.

[47] The appellant's appeal must therefore be dismissed.

[48] There is no issue as to costs.



Judge C J McGuire
District Court Judge

Solicitors: Meredith Connell, Solicitors, Auckland for the respondent