

**IN THE DISTRICT COURT
AT WELLINGTON**

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

[2023] NZACC 211

ACR 030/22

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

Hearing: 20 June 2023
Heard at: Christchurch
Appearances: Mr Ord for appellant (by AVL)
Mr Russ for respondent (in person)
Judgment: 18 December 2023

**RESERVED JUDGMENT OF JUDGE I C CARTER
[Rehabilitation – Social, Accident Compensation Act 2001,
Schedule 1, Part 1 Clauses 21, 22(2)(e), 22(2)(f)(ii)]**

Table of Contents

	Paragraph
The Appealed Review Decision	[1]
Grounds of Appeal	[4]
Facts.....	[5]
Submissions for Mr Wiringi.....	[11]
The Corporation’s Submissions	[15]
Law	[16]
Analysis	[25]
Conclusion.....	[40]
Result.....	[42]
Costs	[43]

The Appealed Review Decision

[1] Mr Wiringi appeals against a Review Decision dated 31 December 2021 (the Review Decision) upholding the Accident Compensation Corporation’s (the Corporation’s) decision dated 18 June 2021 (the Decision) declining to fund, as part of social rehabilitation entitlements, a new garage door and replacement vehicle under Schedule 1, Part 1, Clauses 21, 22(2)(e), 22(2)(f)(ii) of the Accident Compensation Act 2001 (the Act).¹

[2] Mr Wiringi does not appeal against the part of the Review Decision relating to the garage door.

[3] He appeals only on a specific issue relating to a replacement vehicle - specifically, whether the time has come for the Corporation to replace the vehicle that he now accepts was disposed of without reasonable excuse.

Grounds of Appeal

[4] The Notice of Appeal dated 25 January 2022 and filed on Mr Wiringi’s behalf identifies two grounds of appeal:

¹ All statutory references are to provisions of the Accident Compensation Act 2001 unless otherwise stated.

- (a) Was the Reviewer's interpretation of the word "disposes" correct in the context of the circumstances surrounding Mr Wiringi's loss of his vehicle.

Mr Ord confirmed at the hearing that this ground of appeal is abandoned because it is now conceded that Mr Wiringi's loss of his vehicle was (a) a disposal; and (b) without reasonable excuse.

- (b) Given that Mr Wiringi had disposed of his vehicle without reasonable excuse five years before the Review Decision, the Corporation's power should have been exercised in favour of replacing it as otherwise the effect was:

- [i] to impose another penalty on Mr Wiringi, and/or

- [ii] outside an implied limitation period.

Facts

[5] The relevant facts are not in dispute.

[6] On 25 September 1989, Mr Wiringi was involved in a motor vehicle accident. He suffered extensive injuries, including the amputation of his left leg. Cover was accepted by the Corporation.

[7] In 2007 the Corporation funded a modified vehicle for Mr Wiringi. The vehicle was later impounded. Mr Wiringi subsequently negotiated with a car dealer for a cash payment and a different vehicle. The replacement vehicle was later impounded and eventually lost to Mr Wiringi.

[8] In 2017 ACC provided Mr Wiringi with a new modified vehicle. Mr Wiringi was later convicted of an excess breath/blood alcohol charge. The vehicle provided in 2017 was impounded and not recovered by Mr Wiringi. The vehicle was de-registered in 2019.

[9] Mr Wiringi asked the Corporation to provide him with another vehicle. On 1 June 2021, an ACC technical specialist reviewed Mr Wiringi's request. She concluded that the vehicle provided in 2017 would have continued to meet Mr Wiringi's social rehabilitation

needs, and therefore the Corporation had met its obligations under the Act. Another technical specialist considered whether the fact that cover was under the 1992 Act altered Mr Wiringi's position. He concluded it did not.

[10] On 18 June 2021, the Corporation made a decision declining to fund another vehicle on the basis it had met Mr Wiringi's injury-related transport needs and that the most recent vehicle provided by the Corporation, which would still have met his needs, had been disposed of without reasonable excuse.

Submissions for Mr Wiringi

[11] The essence of submissions for Mr Wiringi was that Mr Wiringi had been waiting for an indefinite period to get funding for a replacement vehicle.

[12] The Corporation had effectively imposed another penalty or punishment additional to that imposed on Mr Wiringi following conviction under the Land Transport Act 1998.

[13] There is an implied limitation period after which the Corporation is barred from refusing to fund a replacement vehicle. Arguing “by analogy” from:

- (a) Limitation Act 2010, s 50 conferring a discretion to allow relief for an ancillary claim in a civil proceeding when allowed for the original claim.
- (b) Criminal Records (Clean Slate) Act 2004, s 3(2) providing that where an individual satisfied the relevant eligibility criteria the person has the right to have his or her criminal record concealed by government departments and law enforcement agencies. Mr Ord conceded that the Clean Slate Act cannot apply to the offending by Mr Wiringi that led to him losing his vehicle.
- (c) Harassment Act 1997, s 21 which provides for the default duration of a restraining order to be the expiry of one year from the date on which the order is made, in the absence of a contrary court order. Mr Ord suggested that this was an indication by Parliament that one year is a reasonable amount of time for a restraining order and by analogy, a similar period should apply to replacement of Mr Wiringi's vehicle.

- (d) The Corporation's decision declining to replace Mr Wiringi's vehicle is unreasonable in the *Wednesbury* judicial review sense and unlawful because it was tantamount to an indefinite refusal with no specific administrative policy to guide the Corporation's exercise of its power.²

[14] The length of time that has passed since disposal of Mr Wiringi's vehicle is such that the Corporation should have replaced it.

The Corporation's Submissions

[15] It was submitted for the Corporation that:

- (a) It is undisputed that Mr Wiringi's vehicle was disposed of without reasonable excuse.
- (b) The Corporation's decision declining to replace Mr Wiringi's lost vehicle was made correctly in law under the relevant clauses of Schedule 1, Part 1, of the Act.
- (c) The decline to replace Mr Wiringi's lost vehicle would not be maintained indefinitely but rather for so long as the useable life of the lost vehicle.
- (d) The effect was not to impose a penalty, but rather to correctly apply the requirements of Schedule 1, Part 1, of the Act.
- (e) There is no limitation period implied by analogy.

² Citing the dissenting judgment of Winkelmann CJ in an immigration case challenging the lawfulness of a specific immigration policy, *H v Minister of Immigration* [2021] NZSC 192 at [57]–[62]. As a matter of public law, a decision may be declared unlawful and set aside for *Wednesbury* “unreasonableness”. Broadly speaking “unreasonableness” may be found if a decision is irrational or one that no properly directed decision maker could make in the circumstances of the case. The reference to *Wednesbury* unreasonableness comes from the landmark English case of *Associated Provincial Picture Houses Ltd v Wednesbury Corporation* [1948] 1 KB 223.

- (f) *Wednesbury* unreasonableness does not apply and if it did the Corporation's decision was reasonable.

Law

[16] Section 67 of the Act provides that an applicant who has cover for an injury and who meets the applicable eligibility criteria is entitled to entitlements under the Act.

[17] Section 69 lists the entitlements the Corporation can provide. Section 69(1) provides that entitlements include rehabilitation and, specifically, social rehabilitation.

[18] Section 79 of the Act provides that the purpose of social rehabilitation is to assist in restoring a claimant's independence to the maximum extent practicable.

[19] Section 81 requires the Corporation to provide key aspects of social rehabilitation to a claimant provided the conditions in s 81(4) are met (cumulatively).³ Transport is a key aspect of social rehabilitation.⁴

[20] Once the Corporation is satisfied that the conditions in s 81(4) are met, there is no discretion and the Corporation is required to provide the key aspects of social rehabilitation. The conditions required to be met are:

- (a) A claimant is assessed or reassessed under section 84 as needing the key aspect; and
- (b) The provision of the key aspect is in accordance with the Corporation's assessment of it under whichever of clauses 13 to 22 of Schedule 1 are relevant; and
- (c) The Corporation considers that the key aspect:
 - [i] Is required as a direct consequence of the personal injury for which the claimant has cover; and

³ *Knowles v ACC* [2015] NZACC 285.

⁴ Section 81(1)(h) Accident Compensation Act 2001.

- [ii] Is for the purpose set out in section 79; and
 - [iii] Is necessary and appropriate, and of the quality required, for that purpose; and
 - [iv] Is of a type normally provided by a rehabilitation provider; and
- (d) The provision of the key aspect has been agreed in the claimant's individual rehabilitation plan, if a plan has been agreed.

[21] Section 84 of the Act requires the Corporation to assess a claimant's need for social rehabilitation and identify the specific social rehabilitation that the claimant needs, having regard to the matters set out in section 84(4).

[22] Clause 21 Schedule 1 of the Act details the factors the Corporation must have regard to when deciding to contribute to the cost of transport for independence.

[23] Clause 22(2)(e) of Schedule 1 provides that the Corporation is not required to contribute to the cost of replacing a vehicle for whose purchase or modification the Corporation has already contributed, unless the replacement is necessary for the claimant to maintain independence.

[24] Clause 22(2)(f)(ii) of Schedule 1 provides that the Corporation is not required to contribute to a replacement vehicle if the claimant's need for a replacement vehicle arises because the claimant has, without a reasonable excuse, disposed of the existing vehicle.

Analysis

[25] It is not disputed that Mr Wiringi meets the criteria for the Corporation to fund a vehicle for transport independence. The Corporation did so in 2007 and again in 2017. The Corporation's position is that the vehicle provided in 2017 would continue to meet Mr Wiringi's social rehabilitation needs today.

[26] As noted in the Review Decision, there is no dispute that Mr Wiringi's independence would be improved if he was provided with a replacement vehicle. That is not the issue. The

issue is whether the Corporation's decline to provide a replacement vehicle is justified on the grounds relied on by the Corporation, namely, that Mr Wiringi disposed of the vehicle provided by the Corporation without reasonable excuse.

[27] Mr Wiringi's vehicle was impounded following criminal offending by drink-driving. It appears from the Review Decision that Mr Wiringi's vehicle was not forfeited on conviction, but rather Mr Wiringi simply failed to pay the costs, or make a suitable arrangement for payment, associated with storage and impounding of the vehicle. This resulted in the disposal of the vehicle by the authorities. This was not the first time that a vehicle belonging to Mr Wiringi had been impounded for driving offending.

[28] The impounding of Mr Wiringi's vehicle was a direct consequence of his decision to drive contrary to the excess breath/blood alcohol provisions of the Land Transport Act 1998. Mr Wiringi did not pay or make arrangements to pay the costs required to release the vehicle or to notify the Corporation of the impounding. As noted in the Review Decision, Mr Wiringi's vehicle was lost because of the vehicle being impounded and failure to recover it - not due to any other reason.

[29] The Corporation's position is that a vehicle funded by the Corporation has a useable life and that there is a point at which the vehicle is no longer be considered suitable for meeting Mr Wiringi's social rehabilitation needs. That point had not been reached at the time of the Corporation's Decision or by the time of the subsequent Review Decision.

[30] Mr Wiringi's review and this appeal relate to the Corporation's decision made on 18 June 2021. It is the Corporation's assessment at this time which is relevant. Based on the technical advisor's assessment in June 2021, the vehicle remained suitable for Mr Wiringi's transport needs at the time of the Corporation's decision. No evidence was advanced at the review hearing, or sought to be advanced in this appeal, to suggest that Mr Wiringi's vehicle had reached the end of its useable life and was no longer considered suitable for meeting Mr Wiringi's social rehabilitation needs. Mr Wiringi has not challenged the Corporation's position that the vehicle would, if retained by Mr Wiringi, have met his transport needs.

[31] The concession that Mr Wiringi disposed of his vehicle without reasonable excuse was properly made and is consistent with previous authority:

- (a) *In Doyle v Accident Compensation Corporation*,⁵ the decision to sell a vehicle on the assumption that it was no longer fit to drive was disposal without reasonable excuse, particularly as the Court found that there was insufficient evidence to show that the car was no longer fit to drive.
- (b) In *Wilcox v Accident Compensation Corporation*,⁶ the appellant got into financial difficulties and disposed of a modified vehicle to meet his outstanding obligations. The Court held that there was an existing obligation on the appellant not to dispose of the vehicle without reasonable excuse. Incurring debts on the vehicle and selling it to meet the debts was found not to be acceptable.

[32] The plain and ordinary meaning of “Disposal” is the act or process of getting rid of something and is clearly a very wide concept. There was no reasonable excuse for the disposal in the context of Mr Wiringi's offending, the impounding of the vehicle because of his offending and Mr Wiringi's failure to secure release of the vehicle from impounding.

[33] The core of Mr Wiringi's complaint is to allege that the Corporation's stance is to refuse to fund a replacement vehicle *indefinitely* and that this is unlawful as it amounts to a penalty, in breach of an implied limitation period or “unreasonable”. This is incorrect.

[34] The Act is a code. A claimant's right to cover and entitlements, the Corporation's obligations and application of the statutory criteria are all determined by the Act. The Corporation's position in Mr Wiringi's case reflects a straightforward application of the Corporation's power relating to social rehabilitation, in particular clause 22(2)(f)(ii) of Schedule 1. Mr Ord properly conceded that the power was exercised lawfully. The effect is in no way to impose an additional penalty or punishment.

[35] The decline to fund a further replacement vehicle was not indefinite. The Corporation's position is clear that it would fund a replacement vehicle at the point when Mr Wiringi's last

⁵ *Doyle v Accident Compensation Corporation* (2004] NZACC 270.

⁶ *Wilcox v Accident Compensation Corporation* (2004] NZACC 321.

vehicle would have reached the end of its useable life and is no longer considered suitable for meeting Mr Wiringi's social rehabilitation needs. That is reasonable. There is no evidence that the useable life of Mr Wiringi's lost vehicle had reached an end at the time of the Corporation's Decision, the time of the Review hearing or the time of hearing this appeal.

[36] It is arguable that in an extreme case involving a claimant's serial vehicle disposals without reasonable excuse that the Corporation may be justified in declining to fund a replacement vehicle at all. However that argument has not been run in this appeal and it is unnecessary to decide the point.

[37] There is no implied limitation period of the kind contended for by Mr Orr. The Criminal Records (Clean Slate) Act 2004 clearly has no application. A randomly selected one-year default limitation period (which may be extended by court order) in the unrelated subject area of the Harassment Act 1997 is irrelevant.

[38] The Limitation Act 2010 only applies to original and ancillary claims pursued in a specified court or by way of arbitration.⁷ Mr Wiringi's claim for cover, review and appeal are not a claim to a specified court or arbitral tribunal. This appeal is from a statutorily constituted review body and is not subject to the Limitation Act 2010.

[39] So far as *Wednesbury* unreasonableness is concerned, the District Court is not a Senior Court and has no judicial review jurisdiction to set aside a statutory decision on the basis of unreasonableness. In any event, the circumstances of Mr Wiringi's case do not remotely come close to the extremely high level required to establish *Wednesbury* unreasonableness. Further, the issue on appeal is not one of unreasonableness. The question is whether the Corporation was correct in determining that Mr Wiringi had disposed of the vehicle without reasonable excuse. It is undisputed that this is what he did. Clause 22 is clear that the Corporation was not required to replace the lost vehicle and adopts the reasonable position that the vehicle may be replaced when the end of its useful life is assessed to have been reached.

⁷ Section 10 Limitation Act 2010.

Conclusion

[40] The Corporation's decline to replace Mr Wiringi's vehicle that was:

- (a) disposed of as a direct consequence of his offending and subsequent failure to secure release of the vehicle; and
- (b) fit for Mr Wiringi's social rehabilitation

is correct.

[41] The Corporation's Decision dated 18 June 2021 and the Review Decision dated 31 December 2021 are both correct and are maintained.

Result

[42] The appeal is dismissed.

Costs

[43] Although Mr Wiringi is unsuccessful on appeal, I make no order for costs.



I C Carter
District Court Judge

Representation: Rob Ord, Barrister and Solicitor, Nelson, for appellant
Dean Russ, Barrister, Bridgeside Chambers, Christchurch, for respondent