EMPLOYMENT & INDUSTRIAL RELATIONS LAW

CASE NOTES

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Stevens v Brodribb Sawmilling Company Pty Ltd (1986) 160 CLR 16

Source: http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/cth/HCA/1986/1.html?stem=0&synonyms=0&query=title%28Stevens%20and%20Brodribb%20Sawmilling%20%29

Note: This case established the test for determining whether workers are in an employment relationship or if the worker is engaged as an independent contractor. The case is therefore authority for the test which assists to determine whether a worker is an employee or a contractor. The court considers the 'totality of the relationship, within which, control is an important aspect'.

Court details: High Court of Australia.

Procedural history: Appeal from the decision of the Full Court of the Supreme Court of Victoria.

Facts:

- Brodribb operated a sawmill in Victoria.
- The company engaged 'fellers' to cut trees and 'sniggers' to roll the logs up ramps to the haulage trucks.
- The 'truckers' then delivered the logs to the sawmill.
- Stevens was a 'trucker'.
- Whilst a truck was being loaded by a snigger, a log dislodged and rolled onto Stevens resulting in severe injuries.
- Stevens submitted a workers compensation claim.

Issue: The issue here was whether Stevens was an employee or contractor.

Reasoning / Decision (Commentary): The High Court held that on the facts, neither Stevens nor the snigger were employees of Brodribb Sawmilling Company Pty Ltd. The company was not vicariously liable nor personally liable for the breach of the duty of care. On the evidence, the logging season lasted six months; both workers provided their own equipment, set their own hours of work and received fortnightly payment which was not fixed as it was determined by the amount of timber they delivered. Further, Brodribb Sawmilling Company Pty Ltd did not deduct income tax. Stevens made himself available daily but the company did not guarantee him work. Stevens was also free to seek other work in bad weather or in other circumstances.

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Ratio:

- Mason J: His Honour stated, 'control is not now regarded as the only relevant factor. Rather it is the totality of the relationship between the parties which must be considered' [20]. And finally, 'Here, Gray [the snigger] had not in any sense assumed control or supervision of Stevens during the loading operation. And, if as I have found, Brodribb did not exercise control of, or retain a right to control or supervise, the loading operation. In these circumstances if can scarcely be suggested that Stevens could reasonably expect that Brodribb would see to it that due care was exercised in the loading operation by Gray' [31].
- Wilson, Dawson JJ: In a joint judgment, their Honours considered 'no want of care on the part of Brodribb was established on the evidence' [33]. With respect to control, their Honours stated, 'The classic test for determining whether the relationship of master and servant exists has been one of control, the answer depending upon whether the engagement subjects the person engaged to the command of the person engaging him, not only as to what he shall do in the course of his employment but as to how he shall do it: *Performing Right Society, Ld. v. Mitchell and Booker (Palais de Danse), Ld.* (1924) 1 KB 762. The modern approach is, however, to have regard to a variety of criteria. This approach is not without its difficulties because not all of the accepted criteria provide a relevant test in all circumstances and none is conclusive. Moreover, the relationship itself remains largely undefined as a legal concept except in terms of the various criteria, the relevance of which may vary according to the circumstances' [9].
- Brennan J: Broadly concurred with Mason J however, in a separate judgment stated, 'The duty to use reasonable care in organizing an activity does not import a duty to avoid any risk of injury; it imports a duty to use reasonable care to avoid unnecessary risks of injury and to minimize other risks of injury. It does not import a duty to retain control of working systems if it is reasonable to engage the services of independent contractors who are competent themselves to control their system of work without supervision by the entrepreneur. The circumstances may make it necessary for the entrepreneur to retain and exercise a supervisory power or to prescribe the respective areas of responsibility of independent contractors if confusion about those areas involves a risk of injury. But once the activity has been organized and its operation is in the hands of independent contractors, liability for negligence by them within the area of their responsibility is not borne vicariously by the entrepreneur. If there is no failure to take reasonable care in the employment of independent contractors competent to control their own systems of work, or in not retaining a

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supervisory power or in leaving undefined the contractors' respective areas of responsibility, the entrepreneur is not liable for damage caused merely by a negligent failure of an independent contractor to adopt or follow a safe system of work either within his area of responsibility or in an area of shared responsibility' [2].

Obiter:

- Deane J: Dissented but indicated, 'on balance, the preferable view is that both Stevens and Gray were independent contractors and not employees' [1]. His Honour placed greater emphasis on the 'substantive content, rather than the technical characterization, of that relationship' [2]. In doing so, his Honour's judgment the goes on to consider the common law of negligence and does not place weight on the working relationship…….

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