Equal Opportunity Tribunal of NSW (EOT) 18 of 1997

Mitchell v South Sydney Junior Rugby League Club Limited

Terry Stern, Sydney

This recent decision of the EOT will be of interest to plaintiff lawyers for a number of reasons, one being the significant amount of the damages awarded.

The applicant alleged discrimination on the grounds of sex and victimisation in the area of employment. The applicant was represented by Stern & Tanner instructing Kylie Nomchong and the respondent by Heaney Richardson & Nemes instructing Stephen Rothman SC. The case was heard over 6 days in late 1997 and judgement was delivered on 3 February 1998.

The applicant, fundamentally, alleged that she was a victim of two separate campaigns of verbal and physical sexual harassment by two employees of the respondent, that she made formal complaints and, as a result was subjected to victimisation by other employees. She further complained that the respondent took no effective action to prevent sexual harassment or victimisation in the work place.

The applicant relied on Section 24(1) of the *Anti-Discrimination Act 1987* (the Act) and on the decision in *O'Callaghan v Loeder & Anor (1984) EOC 92-024* which is to the effect that conduct of the nature complained of, i.e. unwelcome sexual advances, is contemplated by Section 24 of the Act.

The applicant also argued that the applicant was entitled to rely on a single incident as constituting harassment for the purposes of the Section.

The EOT held (at page 32) that:-

"The provisions of Section 53 apply to make the respondent responsible for the acts of...its employee...who victimised the complainant after she made the complaints about sexual harassment in the work place of the respondent."

The EOT further noted that:-

"even where the employer...has a relevant sexual harassment or anti-discrimination policy, unless the employer takes adequate and sufficient steps to police and enforce that Policy, then the employer is failing in its obligations...and will be held responsible..." (at page 33)

Costs do not follow the event in the EOT. In this case, the EOT exercised its discretion to award costs under Section 114(2) of the Act. The EOT accepted the complainant's submission that she has sought the Orders on grounds of Public Policy which had an interest in:-

"...ensuring that such a large work place with the predominance of women in supervised positions be made safe. On the basis that the relief sought took this case out of the ordinary and places a public policy issue in the hands of the Tribunal." (at page 34)

The EOT awarded the applicant general damages of $30,000 for humiliation, intimidation, loss of weight, loss of appetite, loss of sleep, nervousness, aversion to men, strong sense of disillusionment and stress.

The EOT also ordered the payment of special damages for economic loss of $23,400 and costs of $17,500. ■

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Anderson v Mount Isa Basketball Association Inc

Stephen Roche Toowoomba

Stephen Roche

This unreported decision of the Queensland Court of Appeal handed down on 3 October 1997 may be of some interest to personal injury lawyers specialising in the sports injury arena. In a majority decision, the Court found for the Plaintiff, overturning the decision of the trial judge.

The Plaintiff was 22 at the time of her accident and had played basketball at school until age 15. Over those years she also acted as referee in a number of school basketball games but received no instruction in refereeing. She did not take up basketball again for several years until 1990 when she commenced playing C Grade in Mt Isa.

There was frequently an insufficient number of referees available and the appellant, amongst others, volunteered to referee and from that time on she refereed at least one game on the night on which