

Workplace stress claims determined according to ordinary principles

Mannall v State of New South Wales [2001] NSWCA 327

Facts

The plaintiff was employed by the Department of Housing. As part of a departmental restructuring, the plaintiff was appointed as clerk grade 7/8 at the department's Wagga Wagga office. The plaintiff obtained this position in competition with a Mr Rolfe who had held the position prior to the restructure.

The plaintiff alleged that she was subjected to victimisation, harassment, humiliation and abuse. She alleged that the defendant had breached its common law and contractual obligations by failing to prevent the conduct as a result of which she suffered a psychological illness of anxiety depressive disorder.

The plaintiff's evidence was that she was treated in an unfavourable manner by co-workers and, in particular, her supervisor, Mr Singh. She alleged that Mr Singh was unsupportive of her and ignored her complaints about her treatment by him and other staff members and often spoke to her in an offensive manner.

The plaintiff wrote to Mr Singh complaining about his treatment of her and a copy of this letter was forwarded to the Regional Director. The Regional Director then instructed Mr Singh to have a meeting with the plaintiff to remedy the situation. While this meeting was amicable the conduct continued.

The Regional Director later telephoned the plaintiff and stated that he was worried about her health and the

plaintiff informed him that she didn't know how much more she could take.

The conduct culminated when the plaintiff returned to the office to discover that a meeting had been held in her absence. Mr Singh presented her with a memorandum signed by most of those in attendance, which was very critical of the plaintiff and was in fact described by Sperling J to be mutinous.

The plaintiff was later declared to be unfit for work.

Finding at First Instance

The trial judge found that management style was not an issue that could be determined by the courts. He stated, "I do not consider that a court in determining whether or not there has been a breach of a duty of care can determine that question by setting a standard as to the best management option." He found that there was no breach of any duty of care on the part of the defendant.

Findings on Appeal

Sperling J (Heydon JA & Ipp AJA in agreement) found that the trial judge had erred. He relied on the decision in *State of New South Wales v Seedsman*¹ in finding that claims "for psychological injury from workplace stress are justiciable, and... the same principles apply as in relation to liability for work-related injuries generally." He then went on to outline the principles to be applied in such cases.

Firstly, the risk of psychological injury must be a foreseeable risk. He found that on the basis of the available evidence the risk of injury of the kind sustained was foreseeable by the defen-

dant. In particular he noted the telephone call made by the Regional Director in respect of his concerns about the plaintiff's health.

Secondly, it needs to be found that the defendant unreasonably failed to implement reasonably practicable means of avoiding the foreseeable risk. In this case he found that there were measures that could reasonably have been undertaken to avoid the risk.

Lastly, the failure of the defendant to undertake those means must cause or materially contribute to the plaintiff's injury.

The court held that the trial judge had made an error of law in finding that claims for psychological injury from workplace stress were not justiciable. There was sufficient evidence upon which the case could have been decided in the plaintiff's favour and hence a new trial was ordered.

Conclusion

This case should place employers on notice in regard to their duties to address workplace situations that place employees under unnecessary or avoidable stress. While case law in this area frequently notes that all workplaces are stressful, the above case demonstrates that there are circumstances where the stress placed on workers is unreasonable and compensable. In assessing the prospects of success in litigation the vital question for plaintiff's lawyers is whether or not the risk of psychiatric injury (of some form) was foreseeable. **PL**

Footnote:

¹ [2000] NSWCA 119 (12 May 2000)

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