
Bullied or the bully?

Pharmacist Tamer Eskander made an application to the Fair Work Commission for an order to stop bullying, alleging that he was expected to work at the Wyoming pharmacy without adequate staff to support him on Saturdays.

The Commission found no such bullying occurred and found that in the preceding three months, Eskander would spend between 76 - 113 minutes per Saturday shift on his phone and that the only unsatisfactory conduct which could amount to bullying was that of his own.

In Issue

- Pharmacist seeks an order to stop bullying
- Allegation that unreasonable workload and lack of adequate staff constituted targeted bullying
- Evidence indicated that the only unreasonable conduct was the applicants own

The Background

Tamer Eskander was an experienced pharmacist with over 12 years' experience. At the time of making the application for an order to stop bullying, Eskander had been employed by the company for just over a year.

At the core of Eskander's claim was that he had been expected to work at the Wyoming pharmacy without adequate staff to support him on Saturdays and that this amounted to the alleged bullying.

Eskander alleged that his employer continued to roster an intern pharmacist on the Saturday shift with him as a form of targeted bullying. For Eskander, working with the intern meant that he 'ended up doing double and sometimes triple the effort to get things done on Saturdays'.

Following an incident with the intern, Eskander alleged that he suffered a great deal of stress and said that he could no longer work at the pharmacy on Saturdays.

Eskander had since been on personal leave and at the time of the judgment was receiving workers' compensation.

The Decision at Trial

The evidence presented at trial completely discredited Eskander's claim.

Senior Deputy President Hamberger found that the Pharmacy traded at half the capacity on a Saturday in comparison to other days of the week and that this workload did not warrant a second pharmacist to be rostered on.

The employer further provided CCTV footage of Saturday shifts for the past three months which showed that Eskander would typically spend between 76 to 113 minutes sitting down while using his phone, which excluded the morning tea break.

Hamberger was not satisfied that an unreasonable workload was imposed on Eskander and held that he was not overworked.

On a review of witness accounts, it was held that the 'only clear evidence of unreasonable behaviour in this matter concerns [Eskander's] own conduct'.

It was found that in the incident regarding the intern Eskander had in fact been the aggressor and yelled at the intern to go home in front of staff and customers. The intern was left in tears and at least two staff who were present on the day sought counselling.

Evidence provided to the Commission was that Eskander would 'yell, point at staff or in their face, slam his hands down on the bench and throw his arms around'. Eskander had needed to be relocated because he had instilled fear in the other staff at the pharmacy.

Finally, it was also found that the real reason Eskander was on personal leave was by reason of an incident where he was assaulted by a methadone patient.

Implications for you

Whether bullying has occurred requires an objective assessment of whether unreasonable repeated behaviour has occurred. An employer that can provide evidence that no such conduct has occurred, or that the conduct concerns reasonable management action taken reasonably, will be able to defend such an application.

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[Tamer Eskander \[2019\] FWC 2579](#)