

EMPLOYER LIABLE FOR REPORTER'S FORESEEABLE PSYCHIATRIC INJURIES

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The Age, as an employer, was found to have a duty of care to an employee, to prevent psychiatric injury, in the circumstance where the employee was exposed to traumatic events in the course of their work, and where The Age was aware of the employee's symptoms.

In issue

Whether an employer has a duty of care to identify and prevent psychiatric injuries in the context of also considering personal autonomy and privacy.

The background

The plaintiff (respondent in this case) commenced proceedings against her employer, The Age Company Limited (**The Age**), for breaching its duty of care by failing to implement measures to identify and avoid psychiatric injuries caused by exposure to traumatic events in the course of her employment.

The plaintiff was employed by The Age as a reporter. Between 2003 and 2009, she worked as a crime reporter, attending numerous traumatic crime scenes, which included more than 30 murders. During her employment as a crime reporter, the plaintiff also reported on a number of underworld killings. She reported that the work caused her to feel awful as well as threatened.

In 2009, the plaintiff reported on the murder of Darcey Freeman by her father and witnessed as emergency services attempted to perform CPR on the deceased child. Upon returning from the scene, the plaintiff said 'I'm done, I can't do this anymore. I've had enough of death and destruction'.

Because of the plaintiff's response to the Freeman case, she was transferred to sports reporting from February 2009 to April 2010. In early 2010, the deputy editor of The Age approached the plaintiff three times to transfer to Supreme Court reporting. The plaintiff was initially reluctant but ultimately agreed after being offered a pay rise.

As it transpired, the plaintiff ended up reporting on the Freeman case, among other confronting matters. After the Freeman trial the plaintiff reported feeling traumatized. The plaintiff became jumpy, with a short fuse, had trouble sleeping and abused alcohol.

By 2013, the plaintiff's symptoms worsened and she could no longer continue in her role. The plaintiff was moved to the Sydney Age.

The decision at trial

The Trial Judge accepted that the plaintiff suffered from PTSD as a result of her work. The Trial Judge found that the risk of psychiatric injury to the plaintiff was substantial and foreseeable. It was found that The Age breached its duty by failing to (1) institute training of staff in a peer support program in order that signs of psychiatric injury could be identified and dealt with (2) provide adequate support in the form of immediate access to an Employee Assistance Program (**EAP**) (3) encourage a culture of reporting psychiatric injuries rather than repression of symptoms (4) consider rotating employees from duties involving contact with traumatic events and (5) prevent the plaintiff's transfer to court reporting despite her voicing symptoms and reluctance.

The issues on appeal

The Age appealed the Trial Judge's decision on the bases of duty of care and causation, arguing that the Trial Judge ought to have given proper regard to the employer's need to respect employees' autonomy and privacy, and the Trial Judge did not give adequate reasons as to his conclusion that the breach of duty caused the injury.

The decision on appeal

The Court was not persuaded that the Trial Judge ought to have had regard for employees' privacy and autonomy in discharging The Age's duty of care. However, the Court was also not satisfied that there was any breach of duty by The Age before 2009. The Court found that even if The Age had trained staff for peer support and ensured more ready access to the EAP, there was no guarantee this would have prevented the plaintiff's injury as the Court could not be persuaded the steps would have resulted in the plaintiff rotating out of crime reporting prior to 2009.

The Court was satisfied, however, that a breach of duty did occur when the plaintiff's position changed from sports reporting to court reporting in 2010, as The Age was aware of her symptoms and her reluctance. The 2010 breach of duty was therefore responsible for the deterioration in the plaintiff's already entrenched psychiatric injury.

As the Trial Judge assessed damages based on a breach from 2009 rather than 2010, the appeal was partially granted and referred back to the Trial Judge to reassess damages accordingly.

Implications for you

While employers do have a duty to prevent foreseeable risks of psychiatric injury to employees, it needs to be carefully considered whether preventative measures, if implemented, would have actually prevented the injury as this might affect the existence and extent of any liability on the employer's part.

The Age Company Limited v YZ [2019] VSCA 313

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