

RECENT DECISIONS

Perception versus reality: workplace bullying

Bailey v The Workers Compensation Nominal Insurer [2017] NSWDC 57 (22 March 2017)

[Link to decision](#)

Summary

In this case, a worker failed to establish that his psychological injury was a result of bullying and harassment by his supervisor.

Background

The worker commenced working for the employer in early 2009. He reported to a supervisor, Mr G. It was common ground that the worker initially got on well with Mr G.

The worker injured his back on 6 October 2009. His injury occurred as a result of a faulty seat in a truck which he had been working in that day. It was alleged that the faulty seat had previously been brought to the attention of Mr G.

The worker submitted his time sheet containing his account of the seat problem prior to going to a toolbox meeting on 7 October 2009. At the meeting, Mr G. expressed concern about employees smoking in the workplace. After the meeting, the worker and another employee were summoned to Mr G's office. The worker alleged that Mr G. gave him a 'thorough berating' about smoking in the office and told him his back injury was 'a crock'. The allegations were denied by Mr G. However, Mr G. did admit that there had been 'yelling and unpleasantness' when the worker attempted to justify smoking in the workplace.

Decision

The matter was heard by Judge Gibson in the District Court. Judge Gibson observed that the evidence of the worker and Mr G. was 'starkly different.'

In considering the reliability of the witnesses' evidence, Judge Gibson found that the worker was 'less than frank concerning his medical history' and prior workers compensation claims. In addition, Judge Gibson considered that the worker's accounts of his workplace difficulties to medical practitioners varied not only from his oral evidence but between each other. Conversely, Judge Gibson considered that Mr G. 'answered questions directly and without evasion.' In those circumstances, Judge Gibson preferred Mr G's evidence over the worker's evidence.

When considering liability, Judge Gibson noted that there was only generalised evidence of prior incidents from the worker about the asserted bullying by Mr G. There was no evidence from other employees of the worker being singled out for abuse or bullying. On balance, Judge Gibson was satisfied that the worker's perception of Mr G's treatment of him was not based on real events.

Overall, Judge Gibson concluded that work arguments, where the worker's own conduct was part of the problem, 'falls far short of amounting to evidence of sustained bullying in the workplace.' The Judge was satisfied that there was no evidence of sustained bullying, and that the worker's injury was not foreseeable given his employer was not given any notice of a psychological disturbance.

Accordingly, the worker's proceedings were dismissed.

**For more information,
please contact:**



Adele Fletcher

Partner

T: 02 8257 5708

M: 0408 862 995

adele.fletcher@turkslegal.com.au



Eliza Hannon

Senior Associate

T: 02 8257 5730

M: 0418 613 090

eliza.hannon@turkslegal.com.au