

WORKERS COMPENSATION COMMISSION

CERTIFICATE OF DETERMINATION

Issued in accordance with section 294 of the *Workplace Injury Management and Workers Compensation Act 1998*

Matter Number: 739/20
Applicant: Michael Ceccato
Respondent: Australian Steel Mill Services Pty Ltd
Date of Determination: 28 April 2020
Citation: [2020] NSWCC 131

The Commission determines:

1. Award for the respondent.

A statement is attached setting out the Commission's reasons for the determination.

Catherine McDonald
Arbitrator

I CERTIFY THAT THIS PAGE AND THE FOLLOWING PAGES IS A TRUE AND ACCURATE RECORD OF THE CERTIFICATE OF DETERMINATION AND REASONS FOR DECISION OF CATHERINE McDONALD, ARBITRATOR, WORKERS COMPENSATION COMMISSION.

S Naiker

Sarojini Naiker
Senior Dispute Services Officer
As delegate of the Registrar



STATEMENT OF REASONS

BACKGROUND

1. Michael Ceccato was employed by Australian Steel Mill Services Pty Limited (ASMS) as its Environment and Quality Manager. He claims compensation as a result of a psychological injury, deemed to have been suffered on 22 May 2017, as a result of events in the workplace, described as bullying and harassment.
2. ASMS concedes that Mr Ceccato suffered a psychological injury but says that it was wholly or predominantly caused by reasonable action with respect to the provision of employment benefits, relying on s 11A(1) of the *Workers Compensation Act 1987* (the 1987 Act).
3. ASMS does not dispute that Mr Ceccato has been, and remains, incapacitated for work.
4. Mr Ceccato claims compensation from 22 May 2017 when he ceased work until 10 May 2018 when payments commenced and then from 2 May 2019 to date and continuing.

PROCEDURE BEFORE THE COMMISSION

5. The matter was listed for conciliation conference and arbitration hearing by telephone on 25 March 2020 when Mr Horan of counsel appeared for Mr Ceccato and Mr A B Parker of counsel appeared for ASMS.
6. I am satisfied that the parties to the dispute understand the nature of the application and the legal implications of any assertion made in the information supplied. I have used my best endeavours in attempting to bring the parties to the dispute to a settlement acceptable to all of them. I am satisfied that the parties have had sufficient opportunity to explore settlement and that they have been unable to reach an agreed resolution of the dispute.
7. The Application to Resolve a Dispute and attached documents (ARD) did not include a claim for s 60 expenses. That claim was added by consent at the telephone conference on 12 March 2020.
8. At the conclusion of the arbitration hearing, the parties had not agreed on Mr Ceccato's pre-injury average weekly earnings and I directed that any material on which the parties relied the issue be provided to the Commission by close of business on 27 March 2020. In an email dated 27 March 2020, ASMS conceded that Mr Ceccato's pre-injury average weekly earnings were \$2,287.74

EVIDENCE

9. The following documents were in evidence before the Commission and taken into account in making this determination:
 - (a) ARD;
 - (b) Reply, and
 - (c) Mr Ceccato's Application to Admit Late Document dated 5 March 2020.
10. There was no oral evidence.
11. The evidence in the file is voluminous and I have considered it in detail. I set out the salient points in the analysis which follows.

12. Mr Ceccato provided a long, and very detailed, statement of 34 pages dated 15 January 2020 to which he attached a series of documents.
13. Mr Ceccato commenced employment with ASMS in 1991 after completing a degree majoring in geology and environmental science. He was appointed to the position of Environment and Quality Manager in 2010. He reported to the General Manager, Richard Bartkowiak. His duties were to ensure statutory compliance and adherence to ASMS's contract with BlueScope Steel (BlueScope) and to maintain a Quality Assurance Program.
14. In 2015 ASMS introduced new employment contracts which removed the right to unlimited sick leave, reduced redundancy entitlements and removed company cars from salary packages. Employees were permitted to choose between keeping the car and not receiving a pay rise or relinquishing the car and being paid a salary component in respect of it. They were asked to sign a letter indicating their choice. The letter provided that the same choices would be offered at the end of the lease period.
15. Mr Ceccato said;

“As expected, when the new EBA was signed in 2017, I was immediately already 8 weeks worse off under the new employment letter. Worse still, my redundancy would be no different now to say in 15 years' time, unlike for Wages colleagues whose redundancy entitlement is based on their full length of service. As the longest serving current staff member (and with considerable more years of service than almost all current staff members), this constituted a major loss of benefit as Mr Bartkowiak was changing a condition (ie staff redundancy as per EBA) that had previously been in place for over a quarter of a century.

I was the only Staff member person in the organisation not to sign the contract. I elected to keep the car in good faith, based on what Richard issued in writing to all staff.

In deciding to keep the car, I did not get a pay rise in 2015 or 2016, being the only person in the organisation of over 90 employees not to receive a pay rise for each of those years.

I was not happy about it but did not make a fuss and continued to do my work.

In November 2016, I was given a letter by the company, saying that they were going to take the company vehicle in July 2017 in any case, and it would no longer be part of my package. Not only had I not received a salary increase for a third consecutive year, but the company now intended to forcibly remove my car despite it being in my contract of employment from 2002.”

16. Mr Ceccato said that the removal of the car was “unreasonable” and that Mr Bartkowiak had “moved the goalposts.” I have not been able to locate the letter of November 2016 in the file.
17. In late 2016, until he went on “stress leave” in 2017 he said there were “ethical issues at work that were compromising my integrity, as I felt that BlueScope was being deliberately misled on contractual items related to my role.”
18. There were four broad safety and ethical issues to which Mr Horan took me in submissions, described in detail in Mr Ceccato's statement which he said compromised his integrity.

19. The first issue related to the performance contract between ASMS and BlueScope Steel, related to a pollution reduction program. That program required BlueScope to reduce emissions during slag processing at its No 5 Blast Furnace and ASMS was required to maintain average water temperatures in the slag granulator of the blast furnace and report the figure monthly. Mr Ceccato said he became aware that the figure reported was incorrect during 2016. After he was asked to check the Cooling Tower design criteria, Mr Ceccato sent an email to ASMS management on 30 August 2016. He said that in the email:

“without being confrontational to minimise risk of reprimand, I diplomatically reminded all that the temperature algorithm calculation was incorrect.”

20. The email is attached to the statement. It says in part:

“Just to clarify also, as outlined in Schedule 1 (Performance Criteria Measurement Protocol) of the ASMS/BSL contract, the 45 degree monthly average water temp. is only meant to be calculated for periods of granulation only (ie excluding aborting & non-slag-casting times). This is also implied in the attached design spec. listing 45 degrees as the max. maximum cooling tower outlet temperature.”

21. Mr Ceccato did not receive a response and was frustrated. He considered that Bluescope Steel was being “deliberately misled.” He described the way in which the testing was done which was “unrepresentative of normal operating conditions.” He said:

“it was clear to me that this was not ‘normal process’ and that we were misleading both Bluescope and the EPA on this point, by manipulating the conditions of the tested cast to achieve an outcome of compliance.”

22. The second issue on which Mr Ceccato relies arose when he was acting in the role of OH&S Coordinator while Joy Lawrence was on leave. On 30 December 2016 he received notification that a worker had struck a pothole whilst driving, causing a dental bridge to snap. Mr Ceccato maintained that this was an “MTI” and reportable. In a meeting with the worker’s manager and Shane Bourke, Mr Ceccato was told that it was not a reportable injury. He said:

“The tone of this meeting was not an amicable discussion, but instead what I considered condescending and a directive. It was clear to me from the meeting that the injury was not to be reported as per the normal process.”

23. Mr Ceccato described the events which followed and said that ASMS management “applied significant undue pressure on me” not to follow the company’s System Procedure about incident reporting. In May 2017, just after Mr Ceccato ceased work, a BBQ lunch was held to celebrate three years without a lost time injury (LTI). Mr Ceccato said he was “upset that this deception occurred under my tenure of performing the safety role for ASMS.” I will refer to this issue as the LTI issue.

24. The third incident on which Mr Ceccato relies occurred on 4 January 2017 when

“an ASMS pot carrier drove straight through the boom gates when entering the Bluescope BOS east end building. This had been an ongoing issue which I had strongly protested against at the time”.

25. Mr Ceccato said that unauthorised changes had been made to procedures implemented after an investigation into a potential fatality incident in 2010. Mr Ceccato raised the issue with Mr Bartkowiak and received an email he “perceived to be threatening as I understood it to mean that I would be reprimanded or worse if I continued my complaints.” Mr Ceccato set out the history leading to the incident in detail. He said:

“Mr Bartkowiak responded in red cap locks and bold writing asking me all sorts of questions which I deemed irrelevant as the ICAM actions were not followed for the BOS Building entry process and he was dismissive of the Veolia drivers alarm at being possibly run over as an ‘overreaction’”.

26. An email exchange between 4 and 12 January 2017 is attached to the statement. While the email is not printed in colour, it appears that Mr Bartkowiak’s comments are in bold and are inserted into Mr Ceccato’s email near the content to which is responds. The comments on 10 January 2010 are in capitals but the email is addressed to Mark Cross and Joy Lawrence, copied to Mr Ceccato. Mr Ceccato responded. Mr Bartkowiak returned the email to him with a covering email stating “comments below” with words inserted in bold.”
27. When Mr Ceccato said “I don’t see the point in further correspondence on this matter”, Mr Bartkowiak said:

“Careful Michael, this sounds like a dismissal whether intentional or not and I don't think that it is appropriate to make that statement! The decision to continue this discussion with you is mine. I have found that it is always important to understand history when making decisions and you are ASMS's historian, but change is nevertheless, inevitable.

All I can do is point out the issue again to Management following last week's incident & leave it at that.

Agree. Whether you like the decision or not, you should continue to point out these issues to Management so that they can be discussed and decisions made, one way or the other.”

28. On 17 January 2017, Mr Ceccato forwarded the email exchange to Barney Mate and said:

“Just got your email & thanks for that but if you read this, you'll see that I have to shut up or else I'm going to sacked. Just lucky nothing happened to anyone in the latest incident because I think ASMS would have been prosecuted & heavily fined.”

29. Mr Ceccato responded to Mr Bartkowiak’s statement. He described the change of procedure as a “haphazard approach to safety.” He said:

“Mr Bartkowiak says in his statement that ‘trying to get changes with Michael were always difficult’, and that Michael ‘thought that he owned the Quality System and its content’. I find such comments offensive and belittling as I have no problem with change, but do have issue with due process not being followed. It was always my fear that someone could be killed and that as QA Manager and responsible for implementation of the system, I would have to live with that burden as a direct result of systems intentionally not being followed, as well as find myself in the witness box at a coronial inquest, which I knew would take a very different view to ASMS Management on this ICAM issue, considering it a wilful systemic failure and leaving the Company exposed to prosecution.”

30. Mr Ceccato described an email sent to a colleague, Barney Mate. He said that he felt he had been threatened and “the whole incident had left me feeling pretty low.” He said:

“I strongly believe that Mr Bartkowiak and Mr Cross resented long term employees such as myself who knew the history of ASMS and were prepared to question Management on issues. I also believe that is why many long term employees were made redundant during Mr Bartkowiak's and then Mark Cross's tenure as GM, only to be replaced by many new employees to do the same roles,

but under different titles. Issues at ASMS were normally dealt with by 2-3 individuals, who had a tendency to ignore protocol and perceived interference was treated with indifference by the GM. This culture is captured succinctly in the statements of Bartkowiak and Bourke where a common theme was that the LTI issue 'was not a decision I was required to make or be further involved with, which shows a clear contempt for what is stated in procedures and smacks of personal agendas.'

31. I will refer to that issue as the boom gate issue.
32. The fourth issue on which Mr Ceccato relies is a series of "eruptions" of molten slag in February 2017, which he said arose from "unauthorised changes to procedures". He said:

"In the next Management meeting on 07/03/17 after the Feb. 17 eruption incidents, I reported again the actions which ASMS was not doing as per the PRP requirements. In response, one of the PRP actions (clean out of Potwash Bay) was recorded in the minutes but only as a one-off as opposed to the 3 monthly commitment as per the PRP obligations. The action was then removed from the following minutes without it being carried out and without any discussion and so I had to raise it again in writing to Management on 22/03/17, before it was eventually completed, but only as a one-off and not every 3 months as per the PRP obligations. I felt that this was continuing to mislead BSL in the process. ..., I felt that my role had become a charade, with a complete disregard for procedural, legal, contractual and moral requirements."

33. Mr Ceccato's annual performance appraisal took place on 20 February 2017 and he did not describe it in his statement. He said:

"On 21 February 2017, I received an email from Richard about my performance appraisal he conducted the day prior. He stated that after reflection overnight he'd added a comment in the last section regarding my difficulty in positively embracing change. I emailed and questioned Richard about this saying, 'We didn't actually talk about this. Can you explain what you mean?' He replied that the comment relates to 'my difficulty in accepting the changes to the employment contract, especially the personal leave provisions, resulting in you being the only staff member not to sign (have you signed it since?)'.

Such comments I felt failed to recognise the significant loss of benefit the new letter of employment had for myself, as a long serving employee and typified the pressure the Company had regularly exerted on me to sign a new employment contract that significantly reduced my entitlements and was far less favourable to me than the contract I had been on. I felt that his comment in the same email regarding 'a new GM should know how his staff people have reacted to changes in the work environment' unfairly created a prejudice against me with a new GM before he had even met me and merely for me exercising a workplace right."

34. He set out other examples of the "difficulty I experienced in carrying out my role at ASMS under Mr Bartkowiak."
35. Mr Ceccato described events immediately before he ceased work. Referring, I presume, to the letter sent in November 2016, he said:

"After receipt of the letter regarding removal of the car, I had tried to negotiate with Richard, but to no avail. I said to him, 'At no time prior to the November 16 letter did you ever indicate verbally or in writing that you intended to remove the vehicle'. His response was, 'It was a Cement Australia decision'. I felt that was

a poor excuse to shift the blame elsewhere. I asked him to at least consider adjusting my pay to what I would have been in 2017 with the salary increases of 2015 and 2016 applied if I were to now relinquish the car.

However, that was met with a stern 'No - you had the car'.

On 9 May 2017 I sent Richard an email regarding the new contract of employment and stating, 'I am writing to state that I do not accept these conditions and wish to remain under my existing contract of employment including the company vehicle.'

On 15 May 2017, I was called into the office by Shane Bourke and the door was closed. It was just Shane and I in the room. Shane brought up my email to Richard and said, 'You made Richard so angry that he has not spoken about anything else'. Further statements made by Shane included, 'You have muddied your name', 'You are not doing yourself any favours', and 'You are undoing all the good work you have done in the past'. Shane also told me that the Steelworks future was still very uncertain and that I would only receive 3 months payment, in the event of a redundancy.

This was the third time, I had been spoken to privately by Shane and pressure applied to me in relation to the new contract letter. On the previous occasions, I had been told by Shane that I was 'leaving myself exposed' and that there was 'safety in numbers'. I took that to mean that there was a threat of termination, as a consequence of not signing a new employment contract.

I was so upset during the meeting with Shane that as a means of resolving the impasse, I offered to Shane to leave the Organisation if a redundancy was offered. In response, he repeatedly told me, 'If you are not happy, you should just leave'. He said that his advice has always been for employees that if they are not happy, to just leave.

A couple of days after my meeting with Shane I went off work. I was experiencing chest discomfort and was feeling very unwell. I felt great trepidation about going to work and was feeling anxious. I could not focus on my work anymore. I felt I had always worked hard at ASMS, and now felt very badly let down by management."

36. Mr Ceccato ceased work on 18 May 2017. He said that he had not previously consulted a medical practitioner about how he was feeling. He said that "Workers Compensation was not a consideration at that time because I was mindful of it affecting the ASMS MTI/LTI statistics."

37. On 21 June 2017, Mr Bourke delivered a letter to Mr Ceccato's letterbox, telling him that the lease on the car had expired and would not be renewed and was to be return to the lease company. Mr Ceccato said:

"The letter also stated that it 'would be inequitable to apply a different set of circumstances to one employee', as a validation for removal of the Company car, yet there was no recognition that unlike all other employees I had already being deprived of salary increases in both 2015 and 2016, as a result of being misled about the choice to retain the car being up to the employee."

38. After further communication with Mr Bartkowiak, Mr Ceccato said:

“On 26 June I responded to Richard stating, ‘The primary reason I am off is the menacing response from the Company as a result of me sending you a polite one line email exercising my workplace right to remain under my existing employment contract. This has had a profound effect on both my physical and mental health and confidence’. I stated, ‘This issue has been ongoing and protracted and has been taking a toll on my health and family life. I will send you an email on this tomorrow’ ”.

39. Mr Bartkowiak sent a further letter dated 30 June 2017 which does not appear in the file and Mr Ceccato sent a response dated 10 July 2017 which is attached to his statement. It comprises three closely typed pages. Mr Ceccato began by pointing out:

“I have an existing contract letter dated 11 /06/02 which has no expiry date and was issued when I accepted my current role. The letter states that I will be provided with a Company vehicle and that my salary will be reviewed annually.

In 2015, the Company issued documents stating that employees who did not relinquish their Company vehicle and sign new employment contracts would not receive a pay increase. I exercised my workplace right to remain under my existing contract with a Company car. This means that in an Organisation of over 90 employees, I was the only ASMS employee not to receive a pay increase in 2015 and again in 2016 I therefore forfeited pay for the sole reason of the Company not wanting to honour my existing letter of agreement.”

40. He said:

“The most distressing part of this convoluted issue is the manner in which ASMS has handled this matter, I have been employed by ASMS for nearly 27 years, having always been passionate about slag, ASMS and my Job. I have never been in trouble or had previous issue at ASMS and have built up a good rapport with BSL personnel and yet now myself with great trepidation and anxiety just to come to work. After I sent an email on 09/05/17 stating that I wished to remain under my existing contract including the company car, I was called into the office by the Finance & HR Manager Shane Bourke on 15/05/17. The door was closed and then I was told such comments as; ‘you have made Richard so angry, he hasn’t spoken about anything else since’ and that I ‘had muddied my name’, ‘was not doing myself any favours’ and ‘was undoing all the good work that I had done in the past’. I was also told that by not signing I would only receive 3 months payment in the event of a redundancy. In relation to me not accepting the new terms and conditions, this was the third such time that I had been pulled aside by Shane and the issue of the new contract letter raised. In addition to the 3 month payment for redundancy, on the previous occasions I was told that I was ‘leaving myself exposed’ and that there were ‘safety In numbers’, which I took to mean the possibility of termination as a consequence of not signing a new employment contract. I was so upset by the content of the meeting on 15/05/17 that as a means. of resolving this impasse and for you to achieve your objectives, I offered to Shane to leave the Organisation if a redundancy was offered. In response I was repeatedly told that ‘if you are not happy, you should just leave.’”

41. The letter dealt only with the issues arising from the terms of his employment contract and the removal of the car, except in the following paragraph:

“Since you issued the new employment contracts in 2015, I have felt immense pressure with the expectation to sign the contract. Since this time I have also felt that my role has been undermined by interference in my professional judgement, resulting in me not being able to carry out my role as intended. This combined with what I consider as unfair treatment of some of my closest colleagues has created an extraordinary stress within me and resentment of top management - something which I had never experienced in all my previous years of employment at ASMS, a company which until then I had considered as an extension of my family. The latest comments from the impromptu meeting with Shane in May were a tipping point, having a profound effect on both my physical and mental health which I won't go into detail here, but suffice to say has significantly adversely impacted on my life to the extent that I am unlikely to return to work soon. Sending Shane around to personally drop the letter dated 21/06/17 (regarding removal of the vehicle from my residence on 14/07/17), and again on 26/06/17 into my letterbox when you emailed them anyway and could have posted the hard copy without violating my personal space after I already made it clear to you that I was off for workplace stress, further compounded my situation.”

42. In relation to the letter dated 30 June 2017, Mr Ceccato said:

"Richard's letter of 30th June, 2017 also made comment that I made reference to removal of the car as being a contributor to my current absence. At no stage did I say this. In my email of 26/06/17, I clearly indicated that the primary reason was the way the Company handled the situation and in particular the degrading comments made to me post my email of 09/05/17. The Company was changing the goalposts and I was feeling intimidated, coerced and bullied as a result of Company managers turning this into a personal issue.”

43. Mr Bartkowiak wrote to Mr Ceccato on 11 July 2017 and the letter is annexure K to his statement. The letter began:

“Thank you for your correspondence of 10 July 2017.

You have raised a substantial number of Issues. however we do not intend to address them. In writing and believe that it is best to leave discussion on these issues until you are fit to return to work. The issue. regarding the car however needs to be addressed as the lease is about to run out.

In relation to the car, I trust you will notify us this week on whether your preference is to return the vehicle to us or for us to collect it from you. To avoid any doubt, there are no options available to you other than the return of the vehicle on that date as the lease and registration are expiring and it must be returned to the lease company. Once the lease expires, neither ASMS nor you have any legal right to retain possession of the vehicle. We trust that you understand this and will co-operate with the return of the vehicle on 14 July 2017 to avoid any possible legal action by the lease company to recover the vehicle.”

44. The letter requested information about Mr Ceccato's condition and said that it would be necessary to arrange a medical examination if it was not provided. Mr Bartkowiak said:

“We do not consider the information that you have provided to date to be sufficient and we need more information on your medical status and in particular the prognosis so that we can make appropriate plans to cover you, absence. The current arrangements for cover are not suitable in the longer term as they are putting additional stress on your colleagues We need to put in place a longer term strategy and for that we need to understand your current medical status, the likelihood of a date of return to work and also if there is anything that ASMS can do to support you in your return to work.”

45. Mr Ceccato responded on 12 July 2017:

“On 19/07/17, you then sent me an email reading ‘We send our best wishes for a speedy and full recovery and I am sure that with the treatment recommended by your doctor, you will get back to good health’. Surprised by this dismissiveness, I immediately responded that I was off for stress caused by workplace issues and I heard nothing back from the Company, other than a letter hand delivered by Shane to my letter box on 21/06/17, regarding removal of the car. I was particularly upset by this invasion of the work/home boundary, particularly as. it was. done by Shane who had made the upsetting comments to me on 15/05/17.”

46. Mr Ceccato said that he received a letter from Mr Bartkowiak dated 21 July 2017 which was “contrary to what I had expected.” Mr Bartkowiak said that he had “taken advice on the financial rationale behind your claim that once the car is returned, you should start to receive the foregone salary increases” and proposed a salary increase which would place Mr Ceccato “from that date on equal footing regarding salary increases as your colleagues.” He said that he would not make any further requests that Mr Ceccato sign the contract of employment, that he would remove the comment on the 2016 performance appraisal regarding embracing change positively and that he was addressing Mr Ceccato’s allegations about the meeting with Shane Bourke with Mr Bourke. Mr Ceccato said that the “damage was already done.” He remained off work.

47. On 15 April 2018, Mr Ceccato wrote to John Guyden, ASMS’s new general manager. He attached his last two letters to ASMS which he said

“outline in detail how I was misled and deceived in terms of my contract of employment by the then GM Mr Richard Bartkowiak, as well as the bullying and harassment against me by both Mr Bartkowiak and Mr Shane Bourke as a result of me exercising a workplace right to remain under my existing contract of employment.

Additionally, my allegations of significant undue influence in carrying out my role as Environment & Quality Manager (and safety coverage in the Safety Co-ordinators absence) were not even acknowledged, let alone investigated. ! note during my absence that a Union complaint against the Safety Co-ordinator was promptly and impartially investigated and yet in my situation, ASMS did not follow its own policies and procedures in following up on my complaint of significant interference in my role by Senior ASMS Management.

For the reasons outlined above, I ask how can I be expected to return to work? My current contract of employment has been breached and so I would be returning to different conditions than as outlined in my contract. Further my integrity has been compromised and with the Company failing to acknowledge and address these concerns, I feel as though my situation is untenable.”

48. A return to work was proposed in May 2018 and Mr Ceccato met Kylie Reed, ASMS’s HR Business Partner. He said:

“During my meeting with Kylie she said that she had hoped that I could go back to work but understood my position and how I felt. I had also detailed other issues to Kylie, around the interference in my role, including removal of steps in procedures that had been implemented and agreed to by previous ASMS Management and BSL and other regulatory authorities and these could not be removed without following a set process. As incidents continued to occur, I raised with Richard my concerns about the removal of preventative steps and he became aggressive both in his email responses as well as verbally, including in one Management meeting where I was badly chastised.

This was not an isolated example of Richard exerting undue influence on my role to manipulate the outcome. These issues are all still outstanding.”

49. Liability for the claim was declined on 10 August 2018. Mr Ceccato sought a review and liability was accepted on 14 September 2018. On the same day “ASMS terminated access to my work emails.” Liability was again disputed on 17 April 2019 and Mr Ceccato was

“surprised by this decision as I found that the review decision of 02/05/19 relied on total acceptance of the version of Mr Bartkowiak despite a complete lack of supporting evidence and an overwhelming amount of irrefutable evidence to the contrary.”

50. Mr Ceccato’s employment was terminated on 18 July 2019. Before the termination, Mr Ceccato was given an opportunity to respond and he wrote a letter dated 4 July 2019 to the company’s new General Manager, John Guydan. He said:

“The Company has repeatedly denied me procedural fairness by not taking my complaints seriously and denying me my right to be heard, as well as failing to follow its own complaints procedures, which stipulate a timely and impartial investigation of any complaints. This failure to act has taken an enormous toll of my health, but there is no consideration of this and instead a steadfast refusal by the Company to follow protocol in order to protect any scrutiny of the behavior of others, effectively absolving them of any accountability and responsibility.

Interference in my role included, but was not limited to, the deliberate cover-up of an LTI injury whilst I was carrying out the Safety role at ASMS, flagrant breaching of clearly defined protocols for changing procedures (including unauthorised removal of corrective actions implemented on the instruction of Bluescope following a potential fatality incident), unauthorised removal from procedures and discontinuation of legally binding commitments with the EPA (all with the deliberate omission of informing Bluescope whose licence under which ASMS operate and who must sign-off with the EPA for approval of any such changes), deliberate prevention of me from fulfilling Bluescope contractual requirements and the deliberate and ongoing deceit of Bluescope on major contractual and other financial items, for which Bluescope continues to this day to pay a very heavy high price. Your persistent failure to even ask what I was referring to here shows an incredible contempt for Bluescope even after I have repeatedly stated to you since shortly after your inception as ASMS GM that I couldn't continue in my role when Bluescope is being deliberately deceived and misled in facets of my role and with the full knowledge of certain ASMS Management.

...

This is addition to my correspondence to Mr Bartkowiak on 10th July, 2017 where I stated very clearly that my role was been undermined by interference in my professional judgement, resulting in me not being able to carry out my role as intended.

...

With the Company's failure to address my complaints and to act on my repeated concerns about returning to an environment where there is underlying hostility, harassment and bullying, I really don't know what you expect me to say now other than what I have already conveyed to you on significantly more times than I should have had to, as evidenced by the multiple attachments.”

51. Mr Ceccato said :

“I worked for ASMS for 26 years and never been in trouble and never thought my career would end like this. I have worked under every General Manager, bar John, but I felt Richard was overbearing in his management style and perhaps because he was also as an ASMS Board Member, felt he above having to follow due process. Richard had an agenda and he didn't care what he steamrolled in the process of achieving it.”

52. He said that there are no factors outside work contributing to his condition.

53. Mr Ceccato provided a statement to ASMS's investigator dated 12 June 2018 which contains some of the information in his own statement. It did not contain any evidence with respect to the instances of bullying and harassment on which he relied. Documents were said to be attached to that statement but they were not in the copy attached to the Reply.

54. Mr Ceccato also prepared a statement dated 5 March 2020 in which he said that his payments had not been backdated and personal leave recredited. He referred to a letter dated 24 November 2016 from his employer stating that accrued personal leave would be paid out when a staff employee's employment is terminated on grounds of a personal illness that results in that employee not being able to perform the inherent requirements of their role. Mr Ceccato said that he lost this benefit.

ASMS's evidence

Richard Bartkowiak

55. Mr Bartkowiak provided a statement dated 14 June 2018. He said the shareholding in ASMS is held as to 50% by Edw. C. Levy Co (Levy), a United States company and 50% by Cement Australia. This explains the involvement of HR staff from Cement Australia in the preparation of the new contracts and in relation to Mr Ceccato's employment.

56. He said that in 2015 the company introduced new employment contracts for all staff. He said:

“As part of the new contracts, the car was not going to be supplied from a certain date, which was usually from the end of the lease date and from that point in time, each employee was going to be credited with the deemed value of the motor vehicle and there would be no change in their Fixed Annual Remuneration (FAR) and would be no worse off. We said to employees that in fairness that if they wanted to keep the car they would then forgo any salary increases whilst they had the car. Rather than everyone losing their cars, we gave them this option. Every ASMS employee bar Michael, agreed to forgo the car and handed their car back.”

57. He said that all staff signed their contracts but

“Michael produced his 2002 contract letter saying his position came with a car and unlimited sick pay etc and wanted to stay on that.

As Michael chose to keep the car, he did not receive his 2015 and 2016 pay increases. In 2016, we extended the lease on Michael's car for a further 12 months.”

58. At the end of 2017, Mr Bartkowiak informed Mr Ceccato that the car would not be supplied for private use from 1 July 2017 when the lease ran out.

59. Mr. Bartkowiak said that there was an incident when he and Mr Ceccato did not “see eye to eye”, when ASMS discussed change of a critical procedure with BlueScope after the boom gate incident. He said:

“We agreed with the Production Manager of ASMS that we were going to change a critical procedure. Michael took exception of changing the procedure because of an ICAM investigation from a previous incident, 8-10 years prior. Michael said to us, ‘You can’t change that’ and we said that we can change it, as we had discussed this with the owner of the plant and he has agreed there was an unnecessary step, and we were not going to do it anymore. This was one occasion I recall Michael and I did not see eye to eye. We were trying to simplify the quality system and it was too big and not being used by anyone. It was so large and we combined many procedures, to lessen the number of steps. This clashed with Michael, and he did not like the idea.”

60. Mr Bartkowiak said:

“Michael definitely changed over the 4 years of my tenure. He became quieter and more reserved. His demeanour definitely changed. I had 100 people to look after and could not make changes just for Michael and treat him different to everyone else. I could not change his view of the world. Michael was very conscious when it came to the environment. Any incidents we had relating to environment, he was on top of, or any customer complaints, he was on top of, but I don’t think he had a good grounding in commercial reality and did not accept that commercial reality in the decisions, I had to make. I did not make decisions because I was anti Michael, they were decisions I had to make.”

61. With respect to the 2016 performance appraisal, Mr Bartkowiak said;

“With Michael’s performance appraisal of 2016, I did comment regarding his difficulty to embrace change. It was not just about the car but trying to get changes with Michael, were always difficult. He was not marked down in that category and on that comment and it did not change the score. The second page of the appraisal, talks about behaviour modification, and there was one little line I wrote about Michael embracing change. I also explained that the incoming General Manager, has the right to know, and needs to know what his employees are like. In further reflection, and after letters received from Michael, I took the comment out of his appraisal.”

62. Mr Bartkowiak said that notices were hand delivered to Mr Ceccato’s home because of human resources and legal advice.

63. Mr Bartkowiak discussed the LTI incident in December 2016 relied on by Mr Ceccato. He said that the classification of the injury was discussed with BlueScope and that

“what Michael did not realise, was that it was discussed with BSL and we would not hide that from BSL. and it was reported to the board and a determination made with the Chairman and BSL representative. The decision has no affect on Michael.”

64. Mr Bartkowiak described the impact of a lost time injury on ASMS’s performance based contract with BlueScope.

65. He also considered the issue when a driver ran into a boom gate. Mr Bartkowiak said:

“There was a set of boom gates there and the operator has to do certain things before they open the gates and drive through. (There had been an ICAM incident more than 10 years ago, and steps in place around the boom gate). The Operator went to the boom gates and did what he needed to do so people knew where he was going but what happened was he forgot to lift the boom gate and ran over it. There was an investigation with BOS, the Operations Manager and the employee. Out of that investigation, we changed some things. One thing we changed was that the Operator did not have to notify the crane driver they were coming but notify the supervisor who would operate the boom gate and act as the pot carrier watcher. Michael said, ‘You can’t do that, you have to notify the crane driver’. I explained to Michael that we had spoken with the owner, and he agreed that we don’t have to. In an email exchange with Michael I said that notifying the crane driver would not have changed this incident. He kept going on that it was part of ICAM but I said the manager of BOS was a member of ICAM 10 years ago and now agreed we don’t need to do it anymore and I said in the end that whether he likes it or not, he needs to accept it. At the end of this email exchange, Michael said, ‘I don’t want to talk about this anymore’. So we didn’t. We did not talk about it again.”

66. Mr Bartkowiak provided a supplementary statement dated 31 October 2018. He said that a new Employee Handbook was issued in 2015 when the company’s policies had been reviewed. There was a lot of discussion with staff on an individual and group basis when this occurred.

Shane Bourke

67. Shane Bourke is ASMS’s Manager for Finance and HR and its company secretary. He observed that Mr Ceccato was “quiet, shy and introverted.” In the year before Mr Ceccato ceased work his interactions became mostly limited to management meetings when he observed that Mr Ceccato was more introverted.

68. Mr Bourke said that Mr Ceccato was eager to report the LTI incident to BlueScope but Mr Bourke pointed out that there was no obligation to report immediately and suggested that it wait until Ms Lawrence’s return. When Ms Lawrence returned, she discussed the matter with BlueScope and it was agreed that it was not a lost time injury.

69. With respect to the boom gate incident, Mr Bourke said that the change in procedure was agreed by appropriate staff. He said:

“Nothing is forever and just because a corrective action is put in place many years ago, does not mean it will be current forever. Michael found change very difficult to deal with and was very routine orientated.”

70. With respect to the change in employment contracts, Mr Bourke said:

“As the secretary, I am privy to what goes on with the board. We had some serious safety related incidents in 2013 in quick succession which precipitated some management changes. At that point in time, the Board appointed a Director and Richard (both from Levy) to the General Manager and Operations Manager roles to steady the ship and look closer at the business. In addition, Cement Australia sent a HR person down to help and review what was in place. There was a recommendation to replace a number of policies and procedures. A lot of

our employment letters were simplistic as some people had been here a long time and CA recommended introducing new employment letters and re-engage with people. We came up with a plan on how to do that and changed policies and introduced new employment letters.

Many employees had a company car as part of their salary package, which they could take home and could use it for private use. It was decided the company cars were not cost effective. There were things we needed to change and the cars from a cost perspective were not sustainable to keep.

We initially started looking at the cost of company cars around the end of 2013. After ongoing consideration it was decided to make a change to the company car policy early in 2015.”

71. The company gave staff the option of handing their car back when new employment letters were signed or at the end of the car lease. Mr Ceccato was the only staff member who declined to sign the letter and return the car. The lease had two years to run and Mr Ceccato was told that if he kept the car there would be no salary increase. Shortly after Mr Bartkowiak wrote to Mr Ceccato on 26 November 2016, Mr Ceccato told Mr Bourke that he would not sign the contract letter and would wait until closer to the time that the car was to be returned. Mr Bourke “did suggest it was in his interests to sign.”

72. Mr Bourke said:

“Out of the blue on 9 May 2017 about 4.00pm Michael wrote Richard an email, which I believe was along the lines of, ‘not accepting the changes or giving up the car.’ In my mind the email was unprompted as there was nothing to my knowledge that had happened, and there had been no other conversations had, other than my previous conversation with Michael in November 2016.

There were certainly no other conversations between Michael and I, and I am not aware of any others between Richard and Michael, either that prompted the email.

Michael was then going to be off work on 10, 11 and 12 May 2017, returning back on 15 May 2018. Richard was going to be off on 15, 16 and 17th May.”

73. Mr Bartkowiak spoke to Mr Bourke about the email and Mr Bourke offered to speak to Mr Ceccato. He said that he saw Mr Ceccato in passing on 15 May 2017 and invited him into his office for a conversation:

“I explained why Richard was pissed off regarding his position on the car and had sent the email at the end of the day and knowing Richard was going on leave. I explained to Michael it would have been better to have a conversation with Richard. I asked Michael why he thought he had a permanent entitlement to the car and he referred to his employment letter of 2002, which he said could only be changed by agreement. At that point I opened his file and we reviewed the letter together. He said he had obtained legal advice which backed his position. I said the company had not sought legal advice but was confident we could remove the car and the value added to his salary to compensate.”

74. The conversation lasted about an hour. Mr Bourke said:

"We discussed how his salary would be adjusted and he explained to me that Richard told him that he could keep the car. I said I could not comment on previous conversations with Richard. Michael said he had felt hard done by and missed out on two salary increases. We went through the calculations on my whiteboard and agreed on all the maths about it. He remained steadfast in his position about not giving up car. I did say that company could give him a 'one-way letter', to remove the car and adjust his salary.

I also asked Michael if there were any others issues other than the car and the main issue was around the redundancy as the letter referred to the 2014 Enterprise Agreement, which meant it would not improve further if the EA changed. I explained to Michael that this was far better than the minimum required by law, which was 12 weeks max. I did say that not signing letter will leave Michael 'exposed' but to clarify, I explained that whilst the company might have paid redundancies to staff consistent with the EA many years ago, there was no guarantee this would always continue - which is why the letter 'locks in the entitlement' and is better for us (ie salary employees). I never said he had 'muddied his name' but said words to the effect that he was not doing himself any favours.

I told Michael he had done a great job over the years and had received good performance appraisals, good salary increases and bonuses and asked him why he had taken such a strong position on the car and diminish his relationship with the company. Michael could not explain it and would not explain it.

Once I thought we understood each others position, I asked how he thought we could remedy the situation. Michael's only solution was to be made redundant, and saying something like, 'Give me a redundancy'. I explained that redundancy was unlikely as he role needed to be performed by someone. ... I asked Michael why he thought a redundancy was his only possible remedy and at that point he told me that the issue about the car was causing him concern and was seeking help from Mentor Services, which is our EAP. He indicated that he had done so, for some time."

75. Mr Bourke said that he discussed whether Mr Ceccato still wanted to be at ASMS and

"stated to him that if he did not want to be at ASMS that he could leave at any time to pursue another opportunity. His response to that was, 'I won't leave ASMS without a redundancy'."

76. Mr Bourke said that he placed letters in Mr Ceccato's letterbox because he lived nearby and that he did not do it again after Mr Ceccato sent an email to Mr Bartkowiak.

77. Mr Bourke explained the policy in the new contracts with respect to sick leave and said:

"From discussions with employees, it became apparent that some employees thought (incorrectly) that they had a right to unlimited sick leave forever. What we did to address that, was state the terms of sick leave in the employment letters and policies. We went through all employees start dates and back dated sick leave calculations deducting known dates of sick leave which for most employees gave a generous balance of sick leave. We built that in, but from then on, sick leave would be accrued properly and tracked. That was all done back in 2014 or early 2015. People at the time thought they had been hard done by, and even to the point of people joking and remarking, they were going to take all their sick leave, before they leave the company. I feel as

though Michael's approach to this whole process is that he has contrived to use all his sick leave. As he has been here for so long, he had from 22 May 2017 to 11 May 2018 on sick leave. He used the entire lot of his sick leave, and the day it expired, it turned into a worker's compensation claim. Leading up to the end of his sick leave, Michael even contacted Heidi Kay (who performs the salary payroll) to enquire as to the exact date his leave was going to expire. I felt the whole episode was contrived. Essentially, Michael would have received about 12 months' pay, if he had a redundancy."

Joy Lawrence

78. Ms Lawrence is ASMS's Safety and Training Coordinator. She said that she noticed a change in Mr Ceccato in later 2016 and 2017 when he became quite withdrawn.
79. In respect of the LTI incident, Ms Lawrence said she was aware that the matter was reported to ASMS's workers compensation insurer straight away but that an investigation was undertaken before reporting it to BlueScope. When she spoke to BlueScope her contact said that ASMS could assess the incident and determine if it was "reported in the stats." ASMS determined "after reviewing all the information and discussion with BSL, that we were not reporting it as a Loss Time Injury (LTI)."
80. With respect to the boom gate incident, Ms Lawrence said that the process was changed by consensus but that Mr Ceccato and Mr Mate said they did not believe it should be changed.
81. Ms Lawrence said she had never seen any undue influence in Mr Ceccato's role. She said that she had tried to contact Mr Ceccato while he was on leave to arrange a medical examination as ASMS often did when workers are off work for extended periods. He did not respond.

Kylie Reed

82. Most of Ms Reed's statement is not relevant to the question of causation of Mr Ceccato's injury so that I have not summarised that part of it.
83. Relevantly, she met with Mr Ceccato and his sister in May 2018 in an effort to restart communication between Mr Ceccato and ASMS. She said that Mr Ceccato was adamant that he would not return to work. She said:

"Michael then raised some additional issues I don't think I was aware of previously. One was about a Bluescope ICAM a few years ago where he felt the company had managed it inappropriately and were morally wrong in what they did, and another was a safety incident that happened on site with an employee. Michael believed it was not appropriately recorded as an MTI and he again felt this was morally corrupt. I think these were new issues and issues that had not been raised before and so I wasn't sure why he was raising them."

Barnabas Mate

84. Mr Mate is ASMS's Furnace Department Maintenance Engineer. He described Mr Ceccato as a very serious person. Leading up to May 2017 he noticed a change in Mr Ceccato in that he was

"getting more and more frustrated with him carrying out his job. He took his job seriously and would do his job to the letter, with no deviation. I did notice a change in Michael but I did not think it was serious enough for him to leave the workplace. I thought he was mentally tougher. He would stick up for himself and did what he was told at the end."

85. Mr Mate said:

“The frustrations that Michael had, was that he could not carry his job that he was supposed to carry out. One of his roles was to report to Bluescope Limited (BSL) about our safety stats. A couple of times he would say to me, something had happened but management were telling him not to report it to BSL, and he was very frustrated with that. Michael told me that when he raised this with management, he was told, that he should not take it any further.”

86. Mr Mate cited the LTI issue and the boom gate issue as examples.

87. With respect to the new employment terms, Mr Mate said he had had a vehicle until he worked out it was not to his financial advantage. He said:

“Michael had a vehicle in his package and he did not want to relinquish that vehicle because it was also the family car. I believe he told Richard CEO that he was not going to accept the new contract, because he was not going to hand the car back. From that day, Richard, Shane, Mark Cross and I believe to some degree Joy, were hounding Michael about his decision. This was what Michael spoke to me about and was saying Richard told him this and Shane told him that. This went on for some time prior to Michael leaving.”

88. Mr Mate said that the reduction in sick pay in the new contracts was not reasonable and the new redundancy package was not fair. He said:

“Either you signed it, or there was no pay rise and bonus. There was no talking about it, or negotiations, and for Michael, he was devastated that his car had to go, so he refused to sign it and that it when management started to make life difficult for Michael.”[sic]

Ferit Uyguc

89. Mr Uyguc is a Product Process Engineer with ASMS. He said that Mr Ceccato was generally a happy person. He did not notice a change in Mr Ceccato but was aware that he had issues with Mr Bartkowiak regarding his contract. He had no evidence that Mr Ceccato was bullied or harassed. He was aware of the LTI issue and said:

“A loss time injury is always debatable and I cannot comment on whether it was reasonable or not, that it was considered a report only. This is more Joy's responsibility. I know Michael thought it should have been a loss time injury.”

Decision notices

90. Mr Ceccato did not claim weekly compensation immediately on ceasing work and he used leave entitlements. He claims compensation from 22 May 2017 to 10 May 2018 and from 2 May 2019. The first certificate of capacity was provided from Dr Tut dated 12 May 2018.

91. The scheme agent managing the claim (EML) issued a notice under s 74 of the *Workplace Injury Management and Workers Compensation Act 1998* (the 1998 Act) on 10 August 2018, denying liability based on the factual investigation it had commissioned. The insurer considered that any injury was “sustained due to the contract changes and the benefits of the work car.” It referred to Dr Tut's notes, summarised below, though noted that Dr Tut had changed his opinion to say that the condition was caused by bullying and harassment. The insurer considered that an independent medical examination was warranted.

92. Mr Ceccato sought a review on 30 August 2018, providing a covering letter from his sister and a long and detailed document commenting on the s 74 notice and the factual investigation report. Mr Ceccato said that his injury was the result of significant “undue influence” in his role but the tipping point was the harassment and bullying he experienced “as a result of me exercising a workplace right to remain under by existing contract of employment.”
93. Mr Ceccato set out 10 reasons why he disputed the denial of liability. He said:
- (a) ASMS did not act reasonably by pressuring him to sign the contract and insinuating that his employment would be terminated if he did not;
 - (b) ASMS did not act reasonably by making insulting comments and sullyng his reputation for not signing the contract;
 - (c) ASMS did not act reasonably by creating prejudice with the new general manager by making comments in his performance appraisal about not signing;
 - (d) ASMS did not act reasonably by directing that he not speak to colleagues and delivering letters to his home after he told Mr Bartkowiak that he felt unsafe psychologically;
 - (e) Mr Bartkowiak declined a staff request for a group meeting to discuss concerns, issued a document instead then reneged on it;
 - (f) he was not afforded procedural fairness because EML’s investigator did not interview witnesses he had nominated in support of his claim;
 - (g) Mr Bartkowiak failed to follow complaint procedures after Mr Ceccato told him that he was “off for bullying and harassment”;
 - (h) ASMS did not address the complaints even after Mr Ceccato told the new General Manager, Mr Guydan, that there was “interference and deception” in his role and that he could not return with those issues unresolved;
 - (i) the investigation of the examples he provided of “undue influence” was flawed because it relied on interviews with those complicit in that conduct, and
 - (j) he refuted Mr Bourke’s statement about what was said and referred to Mr Bartkowiak’s letter dated 21 July 2017.

94. In that document, Mr Ceccato said:

“Mr Bartkowiak and certain Management Team members applied significant undue influence on myself and did not allow me to fulfil the legal, procedural and moral requirements of my job. It was always my belief and remains so that these should be dealt with by the Company as opposed to the insurer and so I only outlined in detail the LTI issue in my statement, as I had given that example in my letter to John Guydan.”

95. On 14 September 2018, EML told Mr Ceccato that a review of its decision had been completed. It set out the circumstances on which it relied to withdraw the decision dated 10 August 2018:

“The factual evidence indicates that there was a lack of consultation with you and other employees about the change to the employment contract.

The factual evidence indicates that negotiations regarding the contract of employment had been ongoing since 2014.

The available evidence indicates that you were the only employee who had not signed the revised employment contract and there was pressure for you to do so.

The available evidence indicates that your employer was aware of your sensitivity to the changes in the employment contract.”

96. On 9 April 2019, EML issued a notice under s 78 of the 1998 Act, relying on the factual investigation and on a report by Dr P Whetton. It said:

“While you suggest that the employer's practices may have contributed to your psychological condition, the recurring issue described by you in your evidentiary statement is the change in your employment benefits (for example: company car, salary increases, leave and redundancy entitlements) following the introduction of a new employment contract in 2015.

...

While Dr Whetton accepted that you suffer from a chronic adjustment disorder with depression, he was of the opinion that your condition was wholly or predominantly caused by the provision of employment benefits.

It has been determined that your psychological injury was wholly or predominately cause by reasonable action taken by the employer with respect to the provision of employment benefits. Therefore you have no entitlement to weekly compensation or treatment expenses.”

97. Mr Ceccato prepared a further detailed application for review. He said:

“The circumstances are disputed because EML has always merely accepted the unchallenged versions of those complicit in the bullying and harassment I experienced in relation to my employment contract and the gross improper influences I was subjected to in carrying out my role. EML completely ignores the overwhelming factual evidence that I have provided that verifies the bullying and harassment and improper influences. I have provided an array of emails, company procedures, letters and other correspondence as evidence. Other than an unverifiable and unchallenged file note from Shane Bourke, ASMS has not produced a single piece of factual evidence to support its version of events, much of which I have proven are lies with the deliberate intent to mislead.”

98. EML issued a further s 78 notice on 2 May 2019, maintaining its decision. It said:

“The available evidence supports your employer introduced a new employment contract in 2015 that changed employee entitlements to company cars, salary increases, leave and redundancy entitlements.

The changes to entitlements it is noted were required to create a uniform equitable contract of employment for all employees that were consistent with up to date legislation.

Dr Peter Whetten (psychiatrist) has provided a report dated 19/12/2018. Dr Whetten states your psychological injury was predominantly as a result of concerns regarding the provision of benefits from the employer but, particularly from the history you gave in the manner in which this was handled and what you believed to be the 'lies in legal documents' on the part of the employer."

Medical evidence

99. Mr Ceccato's general practitioner is Dr Mon Tut of Corrimal. The notes in the ARD commence with an incomplete note for 24 March 2017. The front page of the notes shows that Mr Ceccato has been consulting the practice since 2009.
100. On 22 May 2017, Dr Tut recorded that Mr Ceccato was "stressed. Anxious related to work. Wakes up in the middle of the night thinking about work." He diagnosed "anxiety, possible work related." Dr Tut also treated a post nasal drip and provided a medical certificate which does not appear in the file. He noted that Mr Ceccato had seen Dr Brillante, who may be the cardiologist Mr Ceccato says he saw on 18 May.
101. On 5 June 2017, Dr Tut recorded:
- "Stressful at work. Still not ready to return to work. Thinking about work a lot. Sleep disturbance. Seeing psychologist at work. Would like a couple of weeks off."
102. On 13 June 2017, Mr Ceccato saw Dr Hilliar who diagnosed Viral UTRI and queried whether it was an episode of community acquired pneumonia.
103. On 19 June 2017, Dr Tut diagnosed bronchitis. On 23 June Dr Tut recorded:
- "Still under stress. His work is saying that he needs to sign a new contract. If not he won't get pay rise. He lives with no pay rise for a couple of years. Now they are taking back company car. He chose to remain on current contract. The next day, HR Manager called him in and upsets and saying that he is mudding his name. He is aware of he could choose what he wants. As a result, he has been having stress, anxiety and seeing a psychologist. Sleeps disturbed. Seeing Nicci Rowe , Mental Services Wollongong. Was told that he should do work cover. With the new Employment contract, 70% of his redundancy package will be wiped off" [sic].
104. On 7 July 2017, Dr Tut wrote:
- "Slight improvement from increased dose of Lexapro. Still does not want to go back to work yet. Has 1800 hours. However he got a letter from his Boss stating company can terminate if he takes 3 months of sick days within 12 months. He would like to have another two weeks sick days. Michael said not to give the diagnosis and: prognosis in the medical certificate. Still getting coughs a lot."
105. There was no reference to the condition arising from work in Dr Tut's notes for 21 July 2017. On 7 August 2017, Dr Daya recorded "stress, his son not well, behavioural problems." Mr Ceccato saw Dr Daya again on 19 August and the notes deal only with gastro-intestinal issues.
106. On 4 September 2017, Dr Tut wrote:
- "Still under stress. Cannot go back to work His Boss is leaving in November. He will be able to go back to work then. he will be using his sick days."

107. On 16 September 2017, Dr Tut recorded “Still stressful. Needs medical certificate extension.”
108. An entry for 29 September 2017 deals with complaints of pain and shortness of breath. On 7 October 2017, Dr Daya noted “Anxiety – worried about his health – becomes very anxious.” Other health issues were discussed at other consultations on 16 and 20 October. Dr Tut noted anxiety without reference to a cause on 30 October 2017 and said that it was improving on 14 November 2017. On 11 December 2017, Dr Tut recorded:
- “His Manager retired. he feels that he could be OK to go back to work, he would like a couple of weeks more off work.”
109. On 9 January 2018, Dr Tut noted that Mr Ceccato “still cannot go back to work” because of stress and anxiety and that he still had some more medical leave. On 24 January, Dr Tut noted that Mr Ceccato was “under stress related to his dad” and was not ready to go back to work. Similar notes were recorded on other visits in March 2018.
110. On 10 May 2018, Dr Tut wrote:
- “Has been under stress since May last year. He was asked to sign a new contract which will lead to loss of benefits such as loss of company vehicle, significantly reduced redundancy package. Therefore he declined signing contract. Since then, the Boss had taken that personally. Since then his relationship with Boss is not smooth. There was an interference in his role. His managers gave undue influence pressuring on him not to follow the set processes which he feels misleading and compromising his integrity. Dangerous to people. There are many incidents. He has been anxious, sleep disturbance, had been waking up in the middle of the night. He has been on anti-anxiety medication. Saw mental services after that. Since he has been feeling that he could not go back to work in such a place. At first he felt that he could get better after a few weeks off. His intention was always to go back to work. However his work’s advice was not helpful and even worsen his medical conditions. His boss threatened him that he would have to go through medical examination. His anxiety escalated and requiring taking medication. Since 22/05/2017, he started taking medical leave.”
111. On 15 May, Dr Tut noted that Mr Ceccato was suffering from anxiety and depression related to work place harassment. He also noted that Mr Ceccato had anxiety over “potential health related to dust disease.”
112. On 2 January 2019, Dr Tut recorded that he had prepared a referral letter to Dr Sharat Lal.
113. Dr Tut wrote to Mr Guydan on 6 June 2019 and said that Mr Ceccato was not fit for any kind of duties. He said that more detailed information could be obtained from his psychiatrist, Dr Sharat Lal. On the same date, Dr Tut’s notes record:
- “Due for W/C certificate.
Still very depressed. He feels that he may not be able to work in any capacity anymore. Explained that he is still young. he might still be able to do the jobs that are not too stressful.”
114. Marcelo Di Martino, psychologist, prepared a report dated 26 September 2019 to Mr Ceccato’s solicitors. He set out the treatment provided in general terms. His only comment regarding causation was that the condition was a result of “bullying and harassment in the workplace.”

115. The main medical evidence on which Mr Ceccato relies is the report of Dr M Allan, psychologist, qualified by his solicitors and dated 2 August 2019. Dr Allan recorded:

“In mid-2018 after commencing his WorkCover claim having been off sick for 12 months and managed on medication only over that time, he commenced seeing Dr Lal, his psychiatrist, whom he sees approximately every two to four weeks and psychologist, Mr Di Martino, whom he sees monthly at this time.”

116. Dr Allan said:

“Mr Ceccato reports he has completed an extensive statement outlining his experiences in his workplace. Unfortunately this was not provided in the supplied documents for my review prior to seeing Mr Ceccato today.

Mr Ceccato had gone off work initially on sick leave in mid-2017 and his case switched to being managed under WorkCover in 2018. He gave the background as dating back to 2015. At that time he reports there were ‘new contracts’ being issued within the company and as such he and fellow employees wished to talk about their concerns about the new contracts with their employer. Their boss had ‘refused a group consultation’ but said to individuals that he would give them the choice of keeping their company cars but there would be a salary constraint in conjunction with this. Mr Ceccato made the decision to keep his car and accept the salary restrictions. He states ‘I didn't think it was fair but I accepted it.’”

117. Dr Allan summarised Mr Ceccato’s history with respect to the events concerning the contract and the meeting with Mr Bourke in May 2017. He recorded:

“Other incidents Mr Ceccato recalls in his workplace which further contributed to his stress there included ‘unauthorised changes to procedures’. He described how a near fatality incident had occurred and corrective actions had been put in place but these were later removed by seniors which caused Mr Ceccato to become greatly concerned about the safety in his workplace. He recalls that he would raise issues and become ‘vocal’ but as a result would be ‘chastised and ridiculed’ for expressing his opinion. He states he repeatedly experienced ‘thinly veiled themes of dismissal’ in correspondence from Mr Barkoliak.”

118. Dr Allan said:

“Such was Mr Ceccato's concerns about the difficulties experienced in the workplace he pursued some assistance from a workplace mentor in the early months of 2017. He was encouraged to get legal advice and some attempts to address his psychological wellbeing were raised at that time but it was only after May 2017 and an interaction with the HR manager as a response to further issues regarding a new contract that Mr Ceccato had finally felt overwhelmed with his psychological state and took sick leave eventually remaining off for a year before his case came under the Work Cover system. He remains off and has not regained any capacity to work.

Mr Ceccato's symptoms appear to have initially developed in late 2016 with an increasing sense of ruminative distress, frustration, irritability, an increase in his appetite and a level of social withdrawal evident from that time. From the history, he describes there was a gradual worsening of his symptoms during 2016 and into 2017.”

119. Mr Ceccato denied that personal issues contributed to his condition. Dr Allan noted that his son has autism and his father died last year but

“he does not describe being unduly distressed to a pathological degree as a result of these non-work related stressors rather his difficulties and frustrations focuses on the challenges he had in his workplace.”

120. When describing his examination, Dr Allan wrote:

“His sense of frustration was palpable. He was extremely fixated on the difficulties he had had while in the employ of Australian Steel Mills especially over his last 12 to 18 months of working there.

...

Overall, Mr Ceccato's thought content was dominated by frustration at his experiences between 2016 and 2017 in his workplace.”

121. Dr Allan's diagnosis was:

“In my opinion, the difficulties outlined above which occurred in Mr Ceccato's workplace are the direct cause of him developing a Major Depressive Disorder as per the DSM 5.”

122. There is no further report from Dr Allan and no indication that he has been provided with Mr Ceccato's statement.

123. There is no detailed medical report from Dr Tut in the file and there is no evidence at all from Dr Lal, the psychiatrist to whom he referred Mr Ceccato.

124. The only medical evidence relied on by ASMS is the report of Dr P Whetton dated 19 December 2018. Dr Whetton recorded:

“He stated that at the time when he ceased work, he was feeling unfairly treated. He said that he had acted in good faith, had been with the company for a long time and that the general manager had decided to renege on what he had agreed to in writing in terms of the contract for work for Mr Ceccato.

Mr Ceccato said that when he challenged the actions of the general manager, ‘it got ugly’.”

125. Dr Whetton noted:

“Mr Ceccato said that he had known the job very well but that the manager was overriding protocols. There had been incidents at work which had occurred in the setting of the lack of protocols being followed.

He referred particularly to the manager taking some safety protocols out of procedures and resulting contention surrounding this. Mr Ceccato appears to have been a diligent man at work, taking his job seriously and not wanting to compromise correctness and safety.”

126. At the time of Dr Whetton's examination, Mr Ceccato had not been referred to a psychologist or psychiatrist.

127. Dr Whetton recorded:

“He said that in 2017 new contracts were announced and employees were given a choice regarding remaining on the same contract or relinquishing their company vehicle. He said that he opted to keep the company vehicle and would, therefore, relinquish a pay rise. He said that the general manager then reneged on the contract. He said that he was the only one of many employees that did not get a pay rise, and he said that he was ok about this, however then he said the company car was to be taken away. He considered that he had been misled by the company. There was the question of a change in redundancy, and he believed that he was unfairly treated. He said that the matter was not negotiated and that he was pressured to sign a new contract. He indicated that he took the matter very seriously and persisted in attempts to resolve it.

Mr Ceccato mentioned that his job has required him to be meticulous in his record keeping, and therefore, he has evidence to support his claims. He said that he had wanted the matter to be settled so that he could return to work, and he added: ‘I have been cheated out of a job.’”

128. Dr Whetton diagnosed chronic adjustment disorder with depression. He was asked if the injury was wholly or predominantly caused as a result of concerns with the provision of benefits from the employer. He said:

“From the history and examination, his psychological injury was predominantly as a result of concerns regarding the provision of benefits from the employer but, particularly from the history that he gives, the manner in which this was handled and what he believes have been the lies in legal documents on the part of the employer.”

SUBMISSIONS

129. Mr Horan said that ASMS had not, on the evidence, satisfied its onus with respect to s 11A. He argued that Mr Ceccato’s injury was caused by workplace difficulties rather than the negotiations concerning contractual entitlements. If I did not accept that argument, Mr Horan argued that ASMS would not satisfy me that the action taken with respect to employment benefits was reasonable.
130. Mr Horan took me to the four issues described in Mr Ceccato’s evidence which he said showed that the practices of ASMS were unethical or reckless with respect to safety. He said that taking those issues into account, ASMS could not say that the injury was predominantly caused by issues relating to employment benefits.
131. The medical evidence, particularly Dr Allan’s report, showed that the safety and ethical issues were the direct cause of the major depressive disorder which Mr Ceccato suffered. Mr Horan said that the history obtained by Dr Allan corresponded to the four broad areas set out in Mr Ceccato’s evidence and provided a fair climate for a finding that those incidents were the cause of the injury. The timing of the onset of symptoms married with those incidents.
132. Mr Horan contrasted Dr Whetton’s opinion which did not accord with a history of broader problems. His response to the specific questions he was asked include a reference to “lies in legal documents” so that there was no proper basis for his opinion that the injury was wholly or predominantly caused by action taken with respect to employment benefits.
133. Mr Horan submitted in the alternative that the action taken by ASMS was not reasonable action for the 10 reasons set out in Mr Ceccato’s response to the s 74 notice. The position taken by Mr Bartkowiak was inconsistent and “shifted the goal posts.”

134. The second reason why the conduct was said not to be reasonable is that Mr Ceccato received communications over the years insinuating that his employment may be terminated if he did not agree to the new contract terms. Mr Horan took me to Mr Ceccato's evidence about his conversation with Mr Bourke on 9 May 2017 and said that the "private chat" was not reasonable conduct because it created a perception for Mr Ceccato of coercion. Mr Ceccato ceased work soon after, feeling unwell.
135. Mr Parker's first submission was that the cause of Mr Ceccato's condition is set out in his statement – that he was not happy about the changes to his pay and conditions. His main support is from Dr Allan, qualified by his solicitors but he was treated by a psychiatrist, Dr Lal, from whom there is no report and a psychologist. Dr Allan's report shows that he was not provided with the statement on which Mr Ceccato relies.
136. Mr Parker took me to the history in Dr Tut's notes which was inconsistent with what Dr Allan was told. Dr Tut recorded that the reason Mr Ceccato had ceased work was his dissatisfaction with the new contract. Dr Tut's notes disclosed that Mr Ceccato had seen another psychologist, Nicci Rowe, from whom there was no report.
137. Mr Parker took me to the letter dated 11 July 2017 from Mr Bartkowiak which he said deferred discussion of the issues raised by Mr Ceccato until he was fit to return to work but explained that it was necessary to collect the car because the lease was about to expire. The terms of the letter were not as abusive as Mr Ceccato portrayed them.
138. Mr Parker took me to the letter from Mr Bartkowiak dated 12 July and said that it was hard to characterise it as dismissive. The statements from ASMS staff – in particular that of Ms Lawrence – showed the workplace was not the uncaring situation that Mr Ceccato sought to portray.
139. Mr Parker argued that the changes proposed to the employment contract were reasonable action, creating equality with other employees. It was those actions which caused Mr Ceccato's injury. The other matters relied on by Mr Ceccato were irrelevant because they were raised only after the condition developed.
140. Mr Horan did not make submissions in reply.

FINDINGS AND REASONS

Causation

141. Section 11A(1) of the Workers Compensation Act 1987 provides:

"No compensation is payable under this Act in respect of an injury that is a psychological injury if the injury was wholly or predominantly caused by reasonable action taken or proposed to be taken by or on behalf of the employer with respect to transfer, demotion, promotion, performance appraisal, discipline, retrenchment or dismissal of workers or provision of employment benefits to workers."

142. There is no dispute that Mr Ceccato suffered a psychological injury which caused him to cease work on 22 May 2017. There is no dispute that he is incapacitated for work. The dispute is about the causation of that injury.
143. Some of the witnesses – for example, Mr Bartkowiak – noted a change in Mr Ceccato's demeanour over a period of years leading up to his cessation of work. Mr Mate merely said that Mr Ceccato was a serious person. There is no evidence that he suffered a psychological injury before he ceased work nor any complaint to his general practitioner.

144. Mr Horan accepted that the relevant action, for the purposes of s 11A, on behalf of ASMS was the provision of employment benefits. That action includes the issues concerning the new contract – encompassing complaints about the removal of the car, the lack of salary increases and changes to redundancy and sick leave entitlements. The parties approached the issue on the basis that all of the conduct of ASMS’s staff with respect to the new contract was the relevant action.
145. Section 11A applies if the injury was wholly or predominantly caused by relevant reasonable action on the part of the employer. Wholly and predominantly are different concepts and it is necessary that there be a finding made as to one or the other.¹
146. Because the evidence about why Mr Ceccato did not return to work after his cardiologist appointment is scant, I am not satisfied that the injury was wholly caused by ASMS’s conduct concerning the provision of employment benefits to Mr Ceccato.
147. For the reasons which follow, I am satisfied that the predominant cause of Mr Ceccato’s injury was the action taken by ASMS with respect to the new contract. Predominantly caused means mainly or principally caused.²
148. There is little evidence about the actual cause of Mr Ceccato ceasing work on 18 May 2017 other than that he had a planned appointment with a cardiologist on the following day. He said that he ceased a few days after his meeting with Mr Bourke on 15 May because he was feeling unwell. He saw Dr Tut on 22 May 2017 and was given a medical certificate. He was absent from work for a year on sick leave before making a claim for compensation. During that time, he did not make any complaints to his treating doctor, Dr Tut about any work related issue besides his refusal to sign the new contract and return his car. Dr Tut’s initial notes are general and refer to nothing more than stress causing anxiety about work.
149. Dr Tut recorded on 23 June 2017 that Mr Ceccato was seeing Nicci Rowe, a psychologist. There is no evidence to explain why, other than the contract issues. In September 2017, Dr Tut recorded that Mr Ceccato was using his sick leave until Mr Bartkowiak retired.
150. Dr Tut noted other issues that were impacting on Mr Ceccato such as his own health, his father’s health and his son’s autism.
151. In May 2018, when Mr Ceccato had exhausted his sick leave, Dr Tut recorded a detailed note before providing the first “WorkCover certificate.” The reason was in summary that Mr Ceccato had declined to sign the contract which would lead to loss of benefits, which his boss had taken personally and there was interference in his role, placing pressure on him not to follow processes which compromised his integrity. His anxiety worsened after being asked to attend a medical examination.
152. There is no detailed report from Dr Tut, nor is there any report from Ms Rowe, the first psychologist he saw. There is no report from Dr Lal, the psychiatrist to whom Mr Ceccato was referred. Dr Tut’s report dated 6 June 2019 to Mr Guydan dealt with fitness for work rather than causation. Often the notes of treating practitioners provide detail about the cause of ceasing work which assists in determining the cause of the injury. That kind of evidence is lacking in this case.
153. Dr Allan was qualified by Mr Ceccato’s solicitors and was not provided with Mr Ceccato’s detailed statement. Dr Allan did not see Mr Ceccato until more than two years after he ceased work. The history provided related initially to the new contract and the removal of the car but Mr Ceccato also described unauthorised changes to procedures. He said he was chastised and ridiculed when he expressed his opinion and that there were thinly veiled themes of dismissal in Mr Bartkowiak’s correspondence.

¹ *Smith v Roads and Traffic Authority of NSW* [2008] NSWCCPD 130 at [62].

² *Ponnan v George Weston Foods Ltd* [2007] NSWCCPD 92.

154. Dr Allan said that Mr Ceccato's symptoms appeared to have initially developed in 2016 and Mr Horan argued that timing was consistent with the four broad issues on which Mr Ceccato relied.
155. Mr Ceccato saw Dr Whetton on 19 December 2018, more than 18 months after he ceased work. The history Mr Ceccato provided focussed on the issues about the contract and Mr Ceccato's perception that Mr Bartkowiak had reneged on an agreement. Mr Ceccato told Dr Whetton that the "manager was overriding protocols" and "taking safety protocols out of procedures." He said that he felt he had been cheated out of a job. Dr Whetton noted Mr Ceccato's statement that he took the matter of the new contract seriously.
156. Dr Whetton considered that the predominant cause of Mr Ceccato's condition was the provision of benefits. He accepted that "what he believes have been the lies in legal documents" were relevant. Contrary to Mr Horan's submission, he did obtain a history about Mr Ceccato's other concerns and he did accept that they were relevant .
157. There is no contemporaneous evidence that the four broad issues or any perceived interference in his role contributed to Mr Ceccato ceasing work. Those matters were set out in detail for the first time in Mr Ceccato's response to the s 74 notice and elaborated on in his statement. Even at that time, he said that it was his belief that the issues should be dealt with by ASMS rather than its insurer.
158. The overwhelming tenor of the evidence is that the issues which led to the injury and the cessation of work were those related to the contract. Those were the only issues about which Mr Ceccato told Dr Tut and, with one exception, the only issues of which he complained to ASMS in his correspondence.
159. The one exception is that on 10 July 2017, in a long email to Mr Bartkowiak, Mr Ceccato said that his "role has been undermined by interference in my professional judgement, resulting in me not being able to carry out my role as intended." He said that some of his closest colleagues had been treated unfairly. There is no more detail in the email about the events which were said to have constituted interference. There is no more evidence about unfair treatment of Mr Ceccato's colleagues in his statement dated 15 January 2020.
160. Mr Mate's evidence supports Mr Ceccato's version of events to an extent with respect to the alleged interference in his role in that he observed that Mr Ceccato was frustrated. However, his evidence is based on what Mr Ceccato reported to him and not his own observations. He did not think those frustrations were serious enough to cause Mr Ceccato to leave the workplace and he thought Mr Ceccato was "mentally tougher."
161. Ms Reed said that when she met Mr Ceccato on 14 May 2018 he told her about the safety issues. She described them as additional issues that she was not aware of previously. The meeting took place a year after Mr Ceccato ceased work and a few months before the issues were ventilated in detail for the first time in the response to the s 74 notice.
162. Mr Ceccato's description of those issues is at odds with the statements of other staff of ASMS. An example is the LTI issue, in respect of which Mr Bartkowiak and Ms Lawrence describe factors of which Mr Ceccato may not have been aware and conversations in which he was not involved to explain why they took the action they did. Their explanation is consistent and plausible.
163. Mr Bartkowiak's emails dated 10 and 12 January 2017 concerning the boom gate do not, on careful reading, contain a threat that Mr Ceccato's employment would be terminated, though Mr Ceccato he told Mr Mate that he perceived it that way. He did not elaborate why. Mr Bartkowiak's use of the word dismissal, could not be said to refer to dismissal from employment.

164. It does not necessarily follow that Mr Ceccato's perception of those events was not capable of causing injury. In *Attorney General's Department v K³ Roche* DP said:

- “(a) employers take their employees as they find them. There is an ‘egg-shell psyche’ principle which is the equivalent of the ‘egg-shell skull’ principle (Spigelman CJ in *Chemler* at [40]);
 - (b) a perception of real events, which are not external events, can satisfy the test of injury arising out of or in the course of employment (Spigelman CJ in *Chemler* at [54]);
 - (c) if events which actually occurred in the workplace were perceived as creating an offensive or hostile working environment, and a psychological injury followed, it is open to the Commission to conclude that causation is established (Basten JA in *Chemler* at [69]);
 - (d) so long as the events within the workplace were real, rather than imaginary, it does not matter that they affected the worker's psyche because of a flawed perception of events because of a disordered mind (President Hall in *Sheridan*);
 - (e) there is no requirement at law that the worker's perception of the events must have been one that passed some qualitative test based on an ‘objective measure of reasonableness’ (Von Doussa J in *Wiegand* at [31]),
- and
- (f) it is not necessary that the worker's reaction to the events must have been ‘rational, reasonable and proportionate’ before compensation can be recovered.” (at [52])

165. There is no evidence that Mr Ceccato's perception of the way the four broad issues were handled was the predominant cause of his injury or his ceasing work. The complaints made to Dr Tut concerned those issues as did his conversation with Mr Bourke on 15 May 2017, which was reasonably contemporaneous with his commencing sick leave. The other matters were relied on only after Mr Ceccato had ceased work and not amplified until a year after ceasing work.

166. The predominant cause of the injury was the conduct of ASMS with respect to employment benefits.

Reasonable action

167. The test of whether ASMS's action with respect to employment benefits was reasonable is an objective test.⁴ I am required to consider the conduct itself and the manner in which it was effected⁵.

168. In *Irwin v Director General of School Education*⁶ Geraghty J said:

“The question of reasonableness is one of fact, weighing all the relevant factors. The test is less demanding than the test of necessity, but more demanding than a test of convenience. The test of ‘reasonableness’ is objective, and must weigh the rights of employees against the objective of the employer. Whether an action is reasonable should be attended, in all the circumstances, by a question of fairness.”

³ [2010] NSWCCPD 76.

⁴ *Commissioner of Police v Minehan* [2003] NSWCA 293, *Jeffrey v Linitipal Pty Ltd* [2008] NSWCA 138.

⁵ *Ivanisevic v Laudet Pty Ltd* – Compensation Court, Truss J, unreported 24 November 1988.

⁶ Compensation Court, unreported 18 June 1998.

169. Because the conduct must be assessed objectively, Mr Ceccato's perceptions of the conduct, even if influenced by a "flawed perception" because of a "disordered mind" are not relevant to that determination.
170. Mr Horan said that the action of ASMS with respect to the provision of employment benefits was unreasonable for the "10 reasons" set out in Mr Ceccato's response to the s 74 notice. Mr Horan did not further elucidate those reasons. Some of them relate to the investigation of the claim for compensation rather than the actions of ASMS in the provision of employment benefits. Others relate to events which occurred after Mr Ceccato ceased work.
171. Mr Horan said that the pressure to sign the contract, insinuating termination if Mr Ceccato did not agree, and the private discussion with Mr Bourke on 15 May were particularly relevant.
172. As I set out above, none of the correspondence about employment benefits which Mr Ceccato said insinuated the possibility of termination appears in the file. Apart from his own, none of the correspondence or statements which do appear in the file raise any possibility that Mr Ceccato risked termination of his employment for any reason.
173. The correspondence which does appear in the file could not, in my view, be described as dismissive. Mr Bartkowiak's letter dated 11 July 2017 indicates that the company sought that Mr Ceccato return to work and supports further therapy with Mentor Services which it funded.
174. Mr Bartkowiak did not merely request Mr Ceccato undergo a medical examination but explained why ASMS needed him to do so, being that the information provided about his condition was insufficient to allow ASMS to make appropriate plans to cover his absence and consider a longer term strategy if he was unable to return to work. It was reasonable that Mr Bartkowiak consider the needs to ASMS's business and the tone of the letter is respectful.
175. The letter dated 21 July 2017 was expressed to be sent in the spirit of opening up a dialogue. It confirmed ASMS's plan that Mr Ceccato return to work.
176. Mr Ceccato's complaint is that the goalposts in relation to the contract terms were shifted. However, the evidence shows that Mr Ceccato sought to rely on an agreement in 2002 that he be provided with a car. His evidence refers to his "workplace right" that the terms of employment agreed to at that time remain in place. Mr Ceccato said that he had three meetings with Mr Bourke in which he was pressured to sign a new letter.
177. Mr Bartkowiak and Mr Bourke each explained the way in which the employment contracts were changed, over time and after negotiation and consultation with the workforce. The desire to update employment contracts is not, or itself unreasonable. Mr Bartkowiak said that it was necessary to bring all employees under the same terms and conditions. He explained that the contract had included a car before Fringe Benefits Tax was implemented and that the provision of the car had become expensive. Mr Ceccato was given a choice of annual salary increases or the car and he kept the car. When he no longer had the car, he was paid salary increases, while he was off work on sick leave.
178. Mr Bourke described the commencement of consideration regarding phasing out company cars for private use in 2013 and the decision to change the policy in 2015. He described the process of communicating the company's decision and the initial discontent about the new employment contracts. He said that he discussed signing the letter briefly with Mr Ceccato in November 2016 and suggested it was in his interests to sign.

179. Mr Ceccato and Mr Bourke gave different descriptions of the meeting on 15 May 2017. Mr Bourke accepted that some of the words attributed to him by Mr Ceccato had been said. Mr Bourke's description of the meeting is detailed and sets out the matters discussed and the explanations provided.
180. Mr Bartkowiak's statement in his letter dated 21 July 2017 that he was discussing the conversation with Mr Bourke can be read as no more than indicating that a conversation was taking place. It does not constitute any kind of admission about the meeting.
181. I accept Mr Bourke's description of the meeting on 15 May 2017.
182. The action of ASMS in renegotiating the terms of Mr Ceccato's contract was not unreasonable when the remainder of its workforce had accepted the new contract, nor was the way in which the action was undertaken. ASMS declined to permit pay rises while Mr Ceccato kept the car. Once the car was returned, a pay rise backdated to the date of the return of the car was made, placing Mr Ceccato on an equal footing with other staff.
183. For those reasons, I am satisfied that ASMS has proved that Mr Ceccato's injury was predominantly caused by reasonable conduct with respect to the provision of employment benefits,
184. I make an award in favour of the respondent.