
Vicarious liability for race and disability discrimination in the workplace cont...

DAMAGES

Federal Magistrate Raphael accepted medical evidence that Mr Gama experienced a severe depressive illness and that the events found to have amounted to unlawful race and disability discrimination contributed to that illness.

On the basis of the evidence that the comments alone would not account for the extreme seriousness of Mr Gama's condition, his Honour reduced the amount of general damages that he would have otherwise awarded. In doing so, he noted that Mr Gama "has only been able to persuade me of the existence of a general attitude of racial intolerance and a few unpleasant incidents". His Honour awarded Mr Gama \$40,000 in damages, representing a 20 per cent contribution to the pain and suffering he experienced as a result of the comments noted previously.

Interestingly, this appears to be one of the largest awards for general damages in the federal discrimination law jurisdiction since the jurisdiction was transferred to the Federal Court and Federal Magistrates Court.⁴

COMMENT

The case provides a warning to employers that they need to continue to be vigilant in having practices in place to eliminate discriminatory behaviour. Significant awards of damages may otherwise result due to the vicarious liability provisions that exist in all of the federal discrimination legislation.

Likewise, the case provides another warning about the difficulties for complainants who seek to persuade courts that inferences should be drawn about systemic racism and discrimination in workplaces. An appeal and cross-appeal have been lodged in the Federal Court

and a hearing date is yet to be listed.⁵

ENDNOTES

1. Gama v Qantas Airways Ltd (No.2) [2006] FMCA 1767 (8 December 2006).
2. Gama v Qantas Airways Ltd (No.2) [2006] FMCA 1767, [10]-[22].
3. Gama v Qantas Airways Ltd (No.2) [2006] FMCA 1767, [97].
4. For an overview of damages awarded under the RDA, DDA and Sex Discrimination Act 1984 (Cth), see Federal Discrimination Law 2005, Human Rights and Equal Opportunity Commission, chapter 7. Available online at www.humanrights.gov.au/legal/fed_discrimination_law_05/index.html.
5. Qantas Airways Ltd v Gama (NSD2539/2006).

SOMETHING IN THE WATER AT CRIDLANDS

Readers will remember from previous Muster Rooms that Cridlands has been making a play for the award of "family friendly" firm of the Northern Territory, with the beginnings of its very own creche enrolment over the last couple of years.

And the creche continues to grow - is there something in the water or is it the lovely harbour views at the commercial litigation end of the building getting people in a romantic mood?

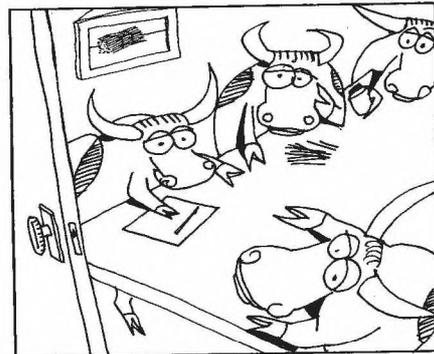
Now excitedly awaiting the births of their first offspring are Paula Edwards-Moffat, and Rhona Millar. Congratulations to both ladies and their respective partners, Ricky and Brian.

We note a couple of other former Cridlanders have also recently become first-time parents, Kathryn Martin, Anna McGill and Luke Stapleton, and we trust they are enjoying the experience.

LAWYERS A SAD BUNCH

Lawyers are among the most depressed workers in the country, according to a recent study of over 17,000 Australians.

The Muster Room



The study, conducted by Beaton Consulting in conjunction with Beyondblue: the national depression initiative, indicated that professionals had higher than average depression scores compared to the general population, and that respondents from legal professions in particular were more likely to report symptoms of moderate to severe depression. Legal professionals were also more likely to use alcohol or non-prescription drugs to reduce or manage feelings of sadness and depression.