Employers' liability for workplace stress

Koehler v Cerebos (Australia) Ltd [2005] HCA 15, High Court of Australia, 6 April 2005

By Tracey Carver

The High Court's decision in *Koehler v Cerebos* has important implications for employees and employers alike, further restricting the circumstances in which employers can claim compensation for psychiatric illness sustained in the workplace.

THE FACTS

The appellant (Koehler) worked three days a week as a merchandising representative. She had repeatedly requested changes to her workload, advising her employer (the respondent, Cerebos) that she could not perform the duties expected of her in the time allocated; however, no changes were made. Five months after commencing her employment, Koehler fell ill and was diagnosed as suffering from a psychiatric illness caused by overwork. She claimed that Cerebos's failure to act was a breach of:

- the employer's duty of care to provide a safe system of work;
- an implied term of her employment contract; and
- the employer's statutory duty.

While successful at first instance, on the basis that her workload was found to be excessive and Cerebos 'needed no particular expertise to foresee that there was a risk of injury to the appellant',[1] this decision was reversed on appeal.[2] Here, only the negligence claim was pursued.[3] The High Court was therefore required to consider whether 'an employer's duty of care oblige[d] the employer to avoid a risk of psychiatric injury to an employee by altering the work expected' of them.[4] This raised issues relevant to the second element of the negligence action, namely breach of duty.

THE DECISION

The High Court affirmed the Court of Appeal's decision that Cerebos had not breached its duty of care, on the basis that Koehler had not proved that her employer 'ought reasonably to have foreseen that she was at risk of suffering psychiatric injury as a result of performing her duties'.[5] The following factors were significant to this finding.

(a) No external symptoms

Although Koehler had complained about her work being excessive, the manner in which the claims were put did not (either expressly or impliedly) suggest that her health was at risk. Additionally, there were no visible signs that would have alerted the employer to the existence of a foreseeable risk of psychiatric injury due to the system of work in place. This was supported by the fact that neither Koehler nor her doctor initially thought that she was suffering such an illness.[6]

(b) Contractual agreement to perform duties

Although the terms of Koehler's contract of employment were limited (saying nothing as to the specific duties she was to perform), in accepting her position, Koehler was taken to have agreed to the scope of the work proposed. The Court held that while overwork might amount to a departure from an industry standard, and give rise to an entitlement to industrial action, an employer's insistence upon the performance of a contract could not be a breach of a duty of care.[7] Koehler's agreement to undertake the tasks was therefore a factor contrary to her contention that Cerebos ought to have appreciated that their performance posed a risk to her psychiatric health. Justices McHugh, Gummow, Hayne and Heydon stated that:

> 'The employer engaging an employee to perform stated duties is entitled to assume, in the absence of evident signs warning of the possibility of psychiatric injury, that the employee considers that he or she is able to do the job ... seeking to qualify the operation of the contract as a result of information the employer later acquires about the vulnerability of the employee to psychiatric harm would be no less contradictory of basic principle.'[8]

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However, while this reasoning is also appropriate when considering the scope of the duty of care owed,[9] it may not assist in determining breach where an employer subsequently varies the duties originally required to be performed.[10]

CONCLUSION

The High Court's decision is consistent with the concern that the law of negligence should:

- develop consistently with other areas of law (here contractual allocation of responsibility);[11] and
- not use notions of reasonable foreseeability to allow liability to be attributed too easily – thus failing to meet community expectations as to the role of the courts in securing what might be thought to be 'fair justice'.[12]

However, in doing so, the case emphasises the importance of preserving an employee's entitlement to compensation for work-related stress, of clearly articulating both the scope of the employment contract (in terms of duties to be performed), and any concerns that an employee may have regarding the impact of their work upon their psychiatric health. Nevertheless, this may impose a heavy onus, particularly if the employee is not aware of their condition, or is commencing a new area of employment. ■

1 District Court of Western Australia (Commissioner Greaves) in [2005] HCA 15, [4]. **2** *Cerebos (Australia) Ltd v Koehler* [2003] WASCA 322 (Malcolm CJ, McKechnie and Hasluck JJ). **3** [2005] HCA 15, [19], [26], [47], [50]. The alternative claims were treated as raising issues no different to those in negligence. **4** *Ibid* [18]. **5** *Ibid* [26]. See also [42] (McHugh, Gummow, Hayne and Heydon JJ); [52], [58] (Callinan J). **6** *Ibid* [10-14], [28], [41] (McHugh, Gummow, Hayne and Heydon JJ); [45], [55-56] (Callinan J). **7** *Ibid* [28-31], [36-40] (McHugh, Gummow, Hayne and Heydon JJ); [57-58] (Callinan J). **8** *Ibid* [36]. **9** *Ibid* [19-25]. **10** *Ibid* [37], [57].
11 See, for example, *Sullivan v Moody* (2001) 207 CLR 562.
12 See, for example, *Tame v New South Wales* (2002) 211 CLR 317 and *Civil Liability Act 2002* (NSW) s5B(1) (corresponding legislation in other jurisdictions).

Tracey Carver *is an Associate Lecturer at the Faculty of Law, Queensland University of Technology.* **PHONE** *(07) 3864 4341* **EMAIL** *t.carver@qut.edu.au*