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The Importance of Taking Critical Incidents Seriously – Carer awarded $454K in damages for client assault

Greenway v The Corporation of the Synod of the Diocese of Brisbane [2016] QDC 195

Key Points

- Courts will take a common sense and realistic approach as to an employer's duty to prevent incidents by carers by their clients.
- However, once an incident occurs, courts will take a stringent approach as to what an employer is required to do in response.
- In claims for psychological injuries, courts are largely bound by the expert psychiatric evidence before them.

Background

The Plaintiff was a carer employed by Anglicare who was looking after a 15 year old boy assessed as having complex support needs. The boy had a propensity for threatening behaviour and violence, having previously assaulted a female youth worker and stealing the staff car.

On 25 August 2013 the boy became verbally abusive and physically aggressive towards the Plaintiff culminating in threats to kill himself, breaking a window, picking up a large shard of glass and making threats.

The Plaintiff's supervisor was aware of the incident after initially being called by the boy himself when it started occurring and secondly when the Plaintiff called to advise what occurred. Although exactly what was said in the second conversation was disputed, it was common ground that the Plaintiff said she was okay and the supervisor did not offer to relieve her leaving the Plaintiff alone with assailant throughout the rest of the shift. The Plaintiff went on to develop Post Traumatic Stress Disorder (PTSD).

The Decision

The Plaintiff claimed Anglicare breached its duty for failing to prevent the incident **and** failing to adequately respond to the telephone calls.

In a common sense assessment of the issues relating to the **prevention** of the incident, the judge's key findings were:

- Given the assailant was the very type of person described for placement with a single carer in the service agreement between Anglicare and the Department, it was

not feasible for Anglicare to refuse the placement.

- Likewise, the service agreement would also have made it impractical to provide a second carer because it would have needed to be done at Anglicare's expense. In any event, although the assailant had been in some concerning previous incidents, he was appropriately classified as having complex needs.

- Finally, the Plaintiff's training (which appeared to be relatively standard), was assessed as appropriate.

The more contentious issue was what the supervisor should have done after receiving the telephone calls. With respect to the first call, the judge found it was reasonable for the supervisor to wait before responding as the Plaintiff was trained and appeared to be handling the situation appropriately.

Anglicare argued that given that in the second call the Plaintiff said she was okay it was a reasonable response for the Plaintiff to do nothing. However, Anglicare's argument was rejected on the basis of disputed evidence from the Plaintiff that she had also discussed whether the police should be called, that the supervisor statement that she had effectively de-escalated the situation would have discouraged her from seeking assistance, and that the incident itself was sufficiently serious to require the supervisor to make further enquiries regardless of what the Plaintiff said.

Anglicare was therefore found liable for not establishing guidelines as to how team leaders should support workers caring alone for people with complex support needs and how a supervisor should assess a worker's welfare in the aftermath of a critical incident.

In what was at first blush a surprising finding, the judge rejected Anglicare's request for her to draw an inference that the injuries would have occurred even if the supervisor had visited on the night as speculative. A Defendant may well argue that it is the Plaintiff that bears the onus of proof and that the opposite inference was also speculative. However in this case Anglicare's own expert (Dr Chalk) agreed that it was not inevitable the Plaintiff would have been so overwhelmed by the incident itself that she would have developed PTSD. Further, that staying in the house with the young person overnight would have added an additional level of anxiety that "would be seen as a contributing factor" to the injury.

Given the Plaintiff was assessed with a 19 to 21% permanent impairment, and there was no clear evidence as to when she could return to work, it followed that the Plaintiff received a significant award of $454,000. This was inclusive of $292,000 for future economic loss based on the assumption the Plaintiff would not work for 5 years and after that would have a disadvantage on the labour market. Having said that, it appears there was a distinct lack of evidence about what outside relatively lowly paid employment as a carer the Plaintiff could have done.

Conclusion

Companies employing people to care for others at their residences face complex responsibilities. It is certainly helpful to receive the court's approval regarding classification, staffing and training levels which appeared to be relatively industry standard. However, the case does underline the fact that employers do need to have strong systems in place

regarding what to do after there is an incident. More generally, it appears any previous reluctance courts may have shown to be less generous in claims for psychological injury is well and truly on the wane.

Contact

For more information on this article, please contact:

Chris Murphy
Partner
T: +61 (0) 7 3307 5504
M: 0405 537 425
chris.murphy@hbalegal.com