

Trainee's attempted murder not mishandled; Optus wins appeal against \$3.9 million award

Optus Administration Pty Limited v Glenn Wright by his tutor James Stuart Wright [2017]
NSWCA (17 February 2017)

Key Points

- The Plaintiff was a labour hire employee who suffered a serious case of Post Traumatic Stress Disorder (PTSD) when a co-worker attempted to kill him.
- This is the latest in a long line of unsuccessful damages claims for injuries caused by the criminal conduct of others.

Background

The Plaintiff was attending a training course operated by Optus when a fellow attendee (Mr George) left the course and went to an unauthorised place on the roof balcony of the fourth floor.

The course supervisor found Mr George acting strangely and reported this to two superiors who went to the roof balcony and observed Mr George in a trance-like state and repeatedly asking for the Plaintiff. In an attempt to resolve the problem one of them asked the Plaintiff to see whether he might be able to calm Mr George down.

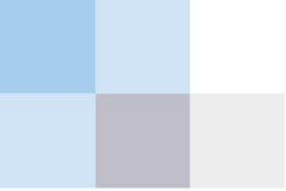
The Plaintiff said that he hardly knew Mr George but reluctantly went to see if he could be of assistance. Mr George then invited the Plaintiff to look at a car in the car park below, following which he attempted to lift the Plaintiff off his feet and throw him over the balcony. One of the superiors intervened to prevent serious injury but the Plaintiff subsequently developed severe PTSD. The trial judge had awarded him \$3.9 million.

While there was some evidence that one of the supervisors had described Mr George as "psychotic" the unanimous evidence was that prior to the assault they had assessed Mr George as being calm.

The Decision

By a two to one majority, the court upheld the appeal and dismissed the Plaintiff's claim on the following basis:

- While people may have been "apprehensive at the strange behaviour exhibited by Mr George, it was not predictable that such behaviour might lead to violence". As such the court found that the incident was not foreseeable and hence Optus did not owe the Plaintiff a **relevant** duty.

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- Even if the injuries were foreseeable, the trial judge was not permitted to combine the knowledge of the Optus staff members who handled the incident so as to make it the corporate knowledge of Optus.
 - That Optus was not vicariously liable for the actions of any of the employees as each of them acted responsibly and reasonably in the circumstances.
 - That it was not reasonable for Optus to have and enforce a specific policy as to how to deal with such an unusual incident.

Comment

Although the duty of an employer or host employer is obviously a very high one, it continues to be very difficult for Plaintiffs to succeed in cases involving the criminal conduct of third parties. Given the severity of the Plaintiff's injury in this case, one can sympathise with his plight and his argument that he ought to be successful if he established that it was foreseeable some kind of incident could have occurred.

However obviously it is undesirable to impose obligations on employers or host employers to respond to events that are unpredictable. As pointed out in the judgment, it is not practical for employees facing a critical incident to go off to some kind of manual to find out what to do. This case demonstrates that employers will not be blamed where its employees deal with a critical incident in a commonsense way.

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