

Tell 'em who's boss (but do it the right way): Tribunal finds Administrative Actions not reasonable

O'Connell and Comcare [2017] AATA 178

Key Points

- The Administrative Appeals Tribunal was asked to consider whether an informal meeting with an employee, and a Notice to that employee that she had been referred for a Fitness for Duty assessment, constituted reasonable administrative actions undertaken in a reasonable manner for the purpose of section 5A(1) of the *Safety, Rehabilitation and Compensation Act 1988* (Cth) (**the SRC Act**).
- The Tribunal found that the reasonableness of the administrative actions, and the way they were carried out, were to be considered irrespective of the conduct of the worker.

Background

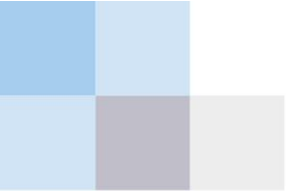
Ms O'Connell was a Customer Service Officer working at Centrelink. Prior to 2013, she experienced a number of personal and health events giving rise to her taking unplanned leave. In February 2013, complaints were raised with Ms O'Connell's manager by her colleagues. The complaints related to her manner in dealing with customers on the telephone. The complaints led to a meeting being called between Ms O'Connell and her team leader, Mr Rugari, on 7 February 2013. The meeting caused Ms O'Connell significant distress and resulted in her being absent from work.

Ms O'Connell absences from work, in addition to a number of assessments and decisions made by Comcare, led to her being issued with a notice that a Fitness for Duty Assessment had been arranged for her in January 2014. The referral, and the circumstances surrounding it, also caused Ms O'Connell significant distress.

On 8 July 2014, Ms O'Connell lodged a claim for compensation for severe anxiety and stress. In her claim, she attributed her condition to the meeting which occurred on 7 February 2013. She described the cause of her condition as the "*allegations of complaints*" from her team members regarding her "*work performance*", as well as "*Harassment & Bullying tactics from management*".

Comcare issued two separate determinations. The first denied liability to pay compensation for "*adjustment disorder*" sustained on 7 February 2013, the date of the meeting. The second denied liability for "*anxiety state*" sustained on 22 January 2014, being an aggravation of the adjustment disorder sustained on 7 February 2013. The determinations were each affirmed by reviewable decisions, and Ms O'Connell applied to the Tribunal for review of both decisions.

Conclusion



Comcare conceded that Ms O'Connell had suffered a disease, being an adjustment disorder pursuant to section 5B of the SRC Act, that was significantly contributed to by her employment, specifically the meeting. Comcare also conceded in respect of the aggravation sustained after being notified of her FFD assessment in January 2014.

The issue for the Tribunal to decide was whether the meeting and the notice amounted to reasonable administrative action taken in a reasonable manner, so as to exclude compensation liability pursuant to section 5A(1) of the SRC Act.

The meeting

The Tribunal concluded that the meeting, which was informal, did not constitute a reasonable administrative action, nor was it carried out in a reasonable manner. Its reasons were as follows:

1. Passing on negative feedback to Ms O'Connell without detail or context rendered the action unfair;
2. The call that Mr Rugari listened to in preparation for the meeting was found to have been dealt with in a satisfactory manner;
3. Ms O'Connell had worked as a team member supervised by Mr Rugari since March 2011 (albeit with periods acting in a higher position elsewhere); and
4. Mr Rugari had several better options available to him to deal with the complaints of Ms O'Connell's behaviour reasonably.


The Tribunal found that Ms O'Connell's 'rude' conduct in taking telephone calls with customers was irrelevant. The meeting, if it was held, was not malicious, aggressive or inappropriate, however Mr Rugari was not in an informed position to have put the feedback to Ms O'Connell without context, and the meeting should not have been held.

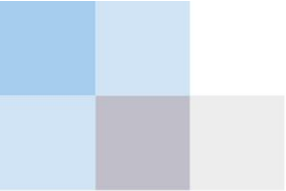
The notice

It was held that, on the evidence before the Tribunal, typical practice was to secure a medical appointment for an FFD assessment well in advance of any conversation with the employee about the assessment. The Tribunal was not satisfied that the specific issue of Ms O'Connell's FFD had been discussed with her before she received the notice on 13 January 2014, at a time when the decision had already been taken. It concluded that (at [79]):

"Whilst slavish adherence to policies may sometimes produce absurd or unintended consequences, in our view, it was appropriate that they be followed in this case. In our view, the fact that the issue of fitness for duty was not discussed with Ms O'Connell in the particular circumstances of this case has the result that the action of referral at that time was not reasonable, or undertaken in a reasonable manner."

It is important to note that the Tribunal acknowledged Ms O'Connell had taken periods of employment which "*warranted investigation*" from her employer, and that she did not fully appreciate this. However, as with the meeting in February 2013, Ms O'Connell's conduct ultimately had no bearing on the Tribunal's assessment of the reasonableness of her employer's actions.





The Tribunal held that neither the meeting nor the notice, while both administrative actions, constituted *reasonable* administrative actions undertaken in a reasonable manner, and that her ailments were not excluded from the definition of “injury” in section 5A(1). Comcare was found to be liable to pay compensation to Ms O’Connell with respect to her injuries arising from both events.

Lessons Learnt

This matter serves as an important reminder that the conduct of an employee does not alleviate the requirement for all administrative actions to be carried out reasonably by an employer.

In this case, the employee was apparently blindsided with a surprise meeting and a notice of a medical assessment without context or reason. Employers must maintain transparency with workers to help avoid situations such as this.

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