

SBS not liable for hairdresser's stress claim

Lord and Comcare [2019] AATA 2965

Key Points

- The Tribunal was required to consider whether SBS were liable to pay compensation for a psychological condition suffered by a hair and make-up artist.
- The Tribunal found in favour of the employer.

Background

Ms Belinda Lord (the applicant) began working for SBS as a hair and makeup artist in 1994. First as a sub-contractor and then as a casual employee of SBS, working around 30 hours per week. Ms Lord was recognised as a highly skilled and valued member of staff at SBS and she had a close working relationship with her Manager, Ms Pirri Wynard. The applicant undertook additional duties in order to assist in running the hair and makeup department at SBS, and Ms Wynard referred to the applicant as her second in charge (2IC).

This situation changed when Ms Wynard left SBS and the hair and makeup team was merged with another team within the organisation. Ms Lesley Crawford became the applicant's direct manager. In 2017, Ms Crawford underwent difficulties in her personal life, when her husband became very ill. Those circumstances, as well as changes in the SBS business model led her to formally seek to hire an administration co-ordinator to deal with issues such as rostering, which had previously been dealt with by the applicant.

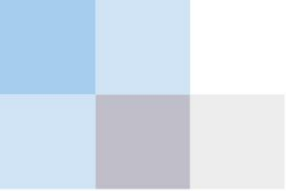
The applicant claimed she was "*blindsided*" when she saw the new position advertised on Facebook. The applicant claimed to be hurt and confused at the time this occurred. The new position was given to Ms Farrah Bidgoli.

The applicant attended her General Practitioner on 18 July 2017, who diagnosed her with "*anxiety and mild depression*". The applicant submitted a claim for workers' compensation dated 20 September 2017 for her psychological condition and her claim was denied. The applicant filed an application for review at the Administrative Appeals Tribunal.

At hearing, it was agreed by both parties that the applicant suffered from an ailment described as an "*adjustment disorder*" that was contributed to, to a significant degree, by the events in the workplace and therefore satisfied the definition of "injury" under the SRC Act. The issue for the Tribunal to consider was whether the actions of SBS in relation to the changes in the applicant's work, fell within the exclusionary provisions contained in section 5A(1) of the SRC Act.

The Law

Section 5A(1) of the SRC Act provides that an injury means a disease suffered by an employee, but does not include a disease, injury or aggravation suffered as a result of reasonable administrative action taken in a reasonable manner in respect of an employee's employment.



Section 5A(2) sets out a number of actions which are taken to be included within the definition of reasonable administrative action, in particular subsection (f) states that reasonable administrative action is taken to include anything reasonable done in connection with the employee's failure to obtain a promotion, reclassification, transfer or benefit, or to retain a benefit, in connection with his or her employment.

Conclusion

The Tribunal found that although the applicant referred to herself as the 2IC to Ms Wynyard and others in the department saw her as such, it was an informal arrangement, not recognised officially by SBS. Although the applicant took on extra duties, she received no official recognition for doing so and this was not reflected in either her salary band or her official SBS staff classification.

The applicant argued that it was irrelevant that she had never been formally appointed as 2IC of her department, it was sufficient that she considered herself to be 2IC and that in reality she was the 2IC until her responsibilities were changed upon the hiring of the new co-ordinator. The applicant argued that the appointment of the new co-ordinator caused her distress and she considered she had been "*demoted*".


SBS argued that the applicant's employment contract with SBS did not include any of the extra duties she carried out, as that was only an informal arrangement and those duties would have carried a higher classification and salary range, and that would have needed to be approved by SBS Senior Management. SBS drew the Tribunal's attention to evidence that there had been complaints made about the applicant in terms of rostering shifts to favour herself and that the applicant's main concern was losing control of the rostering which affected her income because she could no longer roster herself on to the most lucrative shifts.

The Tribunal found that the changes in the workplace were discussed with the applicant and the processes which Ms Crawford followed which led to the creation of the co-ordinator role, were consistent with normal practices at SBS including engagement with the Human Resources Department and her Senior Manager. The actions that were taken to advertise and appoint a new co-ordinator and to discuss this with the applicant, were seen to be taken in a reasonable manner and the procedure adopted was considered open and transparent.

The Tribunal noted there were negotiations conducted in good faith between the applicant and SBS to try and address the applicant's concerns and to give her additional work hours. As part of this process, the applicant put forward a number of matters for consideration. In the context of reasonableness, the Tribunal noted that those actions occurred over a lengthy period of time, with discussions taking place on a regular basis.

The Tribunal accepted the evidence of SBS that the applicant was informed from the beginning of the process that efforts were made to address her concerns and explain the need for the position, along with the reasons someone else was considered suitable for the role once a selection had been made.

The Tribunal concluded that the actions taken by SBS were reasonable administrative action carried out in a reasonable manner and the decision to deny liability for the claim was affirmed.





Lessons Learnt

Changes in the workplace which include creating a new position, advertising the role, and employing a suitable candidate, be considered reasonable administrative action. More specifically, those actions may fall within the definition set out in section 5A(2)(f) of “...*the employee’s failure to obtain a promotion, reclassification, transfer, or benefit...*”

The Tribunal will look carefully at the evidence to ascertain whether the actions were taken reasonably. In this particular case, the Tribunal found that due consultation and communication with the applicant over a period of time, meant that the process was conducted reasonably.

The fact that the actions may have caused the applicant some distress, did not mean in itself, that it was unreasonable.

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