

Tribunal considers the meaning of “in a reasonable manner” *O’Callaghan and Comcare (Compensation) [2019] AATA 4378* (29 October 2019)

Key Points

- Mr O’Callaghan claimed to have suffered a psychological condition as a result of a meeting held to discuss his performance as a police officer.
- The Tribunal found that the meeting was not undertaken in a reasonable manner and that Mr O’Callaghan was entitled to workers’ compensation for his psychological condition.

Background

Stuart O’Callaghan commenced employment as a police officer with the Australian Federal Police in 2007. In June 2016, a complaint was lodged with the AFP about a failure on Mr O’Callaghan’s part to properly investigate an incident which occurred in November 2015. An investigation was undertaken into the complaint and it was found that Mr O’Callaghan’s conduct fell short of what was expected of him as a police officer. The investigation recommended that Mr O’Callaghan be counselled in respect of the standard of investigation. Following this, Mr O’Callaghan alleged he was bullied and harassed by his supervisors.

After completing his shift on 2 August 2016, Mr O’Callaghan was asked to attend a meeting with his superiors. During the meeting, Mr O’Callaghan’s supervisors said that they raised a number of issues with Mr O’Callaghan’s performance. Mr O’Callaghan was told that he would be subject to performance management. Shortly after the meeting, Mr O’Callaghan attended his GP complaining of psychological issues. He was subsequently diagnosed with an adjustment disorder and anxiety as a result of the meeting held on 2 August 2016.

On 26 September 2017, Mr O’Callaghan made a claim for workers’ compensation for “*adjustment disorder*” sustained as a result of the meeting on 2 August 2016. Liability for this condition was denied on the basis that the meeting held on 2 August 2016 constituted reasonable administrative action undertaken in a reasonable manner. Mr O’Callaghan submitted an appeal to the Administrative Appeals Tribunal.

The Tribunal was required to consider whether the meeting held on 2 August 2016 in respect of the investigation into his conduct constituted reasonable administrative action, undertaken in a reasonable manner.



The Decision

Section 5A(1) of the SRC Act provides that liability for an injury will be excluded where the injury is sustained as a result of reasonable administrative action taken in a reasonable manner in respect of the employee's employment.

In *Comcare v Stewart* [2019] FCA 365, Robertson J set out that, when looking at whether reasonable administrative action has been undertaken in a reasonable manner, it is important to consider whether the actions taken were consistent with "*the ordinary standards of reasonable employers in all the circumstances of the case*".

Conclusion

The Tribunal accepted that Mr O'Callaghan's psychological condition was significantly contributed to by his employment with the Australian Federal Police. The Tribunal was then required to consider whether Mr O'Callaghan's claim was excluded on the basis that it arose as a result of reasonable administrative action.

The Tribunal found that the meeting on 2 August 2016 was held to discuss Mr O'Callaghan's performance, with a view of performance managing Mr O'Callaghan. The Tribunal accepted that this was administrative action.

Next, the Tribunal was required to consider whether the administrative action was undertaken in a reasonable manner. The Tribunal noted that Mr O'Callaghan:


- was not given prior warning of the meeting;
- was not told that the meeting was to discuss his underperformance;
- was not given any time to prepare for the meeting; and
- was not offered the opportunity to bring a support person.

Only brief notes were made during the meeting, the door to the meeting room was open and other staff could potentially hear what was said. The Tribunal also noted that Mr O'Callaghan was not given a right of response to the allegations surrounding his conduct. Taking into account the employer's policies around managing underperformance and the authority in *Comcare v Stewart*, the Tribunal did not accept that this conduct was consistent with the reasonable standards of ordinary employers in the circumstances. On this basis, the Tribunal did not accept that the meeting was undertaken in a reasonable manner.

The Tribunal decided that Comcare could not rely on the reasonable administrative action defence. The reviewable decision was set aside and, in its place, the Tribunal found Mr O'Callaghan was entitled to compensation.

Lessons Learnt

This decision is a reminder that to enliven the reasonable administrative action defence, any administrative action, such as a performance management meeting, must be undertaken in a reasonable manner. This includes, but is not limited to, following company policies and procedures regarding performance management, giving adequate warning of meetings to discuss performance, clearly communicating the purpose of any such meeting to the employee, allowing for a support person to be present and keeping detailed notes.





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