



RANKIN ELLISON CASE NOTES

Employer liable for fight between colleagues

Colwell v Top Cut Foods Pty Ltd [2018] QDC 119

The Queensland District Court recently determined that an employer was liable in negligence for injuries resulting from a physical altercation between two of its employees.

Material Facts

The Plaintiff, Jamie Colwell, was employed by the Defendant Company as a butcher. The Plaintiff worked in very close proximity with a colleague, Mr Parks, at the Defendant's meat processing plant. Mr Parks openly spoke of his violent criminal history, which included a string of assaults causing grievous and actual bodily harm for which he served a term of imprisonment. The parties developed an interpersonal conflict which culminated on 20 January 2014 when Mr Parks assaulted the Plaintiff. The Plaintiff suffered severe physical injuries as a consequence of that assault.

The Plaintiff sued the Defendant for damages on the basis of two causes of action - negligence and breach of contract. The Plaintiff claimed that the Defendant failed to provide a safe workplace and to heed his warnings about Mr Parks.

District Court Trial

The following factual evidence was adduced at trial:

1. In 2013, the Plaintiff advised his supervisor that he was concerned about his personal safety as a

consequence of Mr Parks' emotional instability and that the situation was "like a ticking time bomb".

2. Mr Parks informed his supervisor, Mr Blatch, that he previously served a custodial gaol sentence. Mr Blatch regularly joked with Mr Parks, asking whether he had "killed anyone yet?" or "bashed anyone up yet?".
3. In January 2014, Mr Parks advised his supervisor that he was "building inside in anger and frustration" and that he was close to "losing it". He requested that either he or the Plaintiff be transferred away from the other.
4. In January 2014, Mr Parks was behaving aggressively and was audibly threatening physical harm against an unspecified colleague.
5. On the day of the assault, Mr Parks approached the Plaintiff and apologised for his behaviour referred to in paragraph 4 above. The Plaintiff responded in a way which caused Mr Parks to agitate for a fight with the Plaintiff. A supervisor intervened and instructed the parties to attend his office. On the way to the office Mr Parks assaulted the Plaintiff.

It was not in dispute that the Defendant, as the Employer of the Plaintiff, owed a non-delegable duty for

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take reasonable care to provide a safe working environment for the Plaintiff. The primary issues for determination were whether the assault was reasonably foreseeable and whether the Defendant failed to take reasonable precautions to avoid or minimise the risk of the assault materialising.

In light of the various warnings given by both the Plaintiff and Mr Parks and the jokes made by Mr Blatch, the Court determined that the Defendant had actual knowledge of Mr Parks' violent tendencies. Further, the Court was satisfied that the various warnings were sufficient to put the Defendant on notice that Mr Parks was a genuine danger to the Plaintiff. On that basis it was decided that the assault was reasonably foreseeable.

The Court found that the Defendant was on notice of Mr Parks' behaviour from as early as 2013. In the week immediately preceding the assault, Mr Parks advised the Defendant that he was having difficulty with the Plaintiff and requested to be moved away from him. Had the parties been separated as requested, Mr Parks would not have conducted himself in such a manner which warranted him apologising to the Plaintiff. Mr Parks' apology to the Plaintiff directly precipitated the assault. The Court found that the Defendant's failure to separate the parties prior to and/or on the day of the assault amounted to a breach of the Defendant's duty of care. Additionally, it was established that separating the parties was a relatively simple and inexpensive step to prevent the assault.

It was concluded that the Defendant's breach of its duty of care was directly causative of the Plaintiff's injuries in that it materially increased the risk of injury and that risk materialised. Thus, the Defendant was held liable for the Plaintiff's injuries and his claim succeeded.

Implications

This authority highlights the positive obligation on employers to investigate complaints and to take precautionary action against the risk of harm to its employees. Further, this decision evinces the material impact an employer's conduct (through its employees/agents) has on establishing foreseeability.

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