

Workplace Stress - Some Guidelines from the Employment Relations Authority



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Claims of workplace stress continue to be common in employment litigation. In fact, it's now unusual to see a claim from an aggrieved employee that doesn't allege stress arising from work or the work environment.

However, few of these claims are reaching the Employment Relations Authority or the Employment Court. Nearly all are resolved by agreement between the parties before they reach a hearing.

One recent claim of workplace stress, however, failed to settle before reaching the Authority. The decision therefore makes interesting reading and gives useful guidance for employers handling the difficult situations that can arise.

KINGSTON V GEN-I LTD – THE FACTS

In *Kingston v Gen-I Limited* (CEA 325/03, 12 May 2005), the employee brought a claim against his employer for breach of the employment agreement, including failing to adequately monitor and regulate his workload to ensure he did not suffer undue stress or psychological harm.

Mr Kingston was employed by Gen-I as a sales director. He had had a long, successful and therefore lucrative career with the company. In March 2002 he had a nervous breakdown. Gen-I denied having had any knowledge of the depressive illness that led to the breakdown. Mr Kingston claimed he had told his manager that he suffered from depression over a drink one night several years before the breakdown. He also claimed that he

impliedly put his employer on notice that his workload was excessive when he responded to a restructuring proposal by calling for more practical support. After the breakdown, Gen-I provided Mr Kingston with extended leave on full pay. With his consent, it also consulted with his medical advisers about a safe return-to-work programme.

Mr Kingston returned to work part-time. But he soon found that he couldn't cope at work and went on leave again for some months. When he returned to work again, Gen-I presented him with sales targets for the forthcoming year that were higher than his previous year's figures. Despite Mr Kingston's protests, Gen-I declined to reduce the targets. It offered instead to consider alternative, non-sales positions within the company to allow him a "lifestyle-based career change". Mr Kingston refused to consider these alternative positions. After a series of meetings, Mr Kingston resigned, claiming constructive dismissal and breach of the employment agreement.

THE ISSUES TO BE DETERMINED

The Employment Relations Authority applied the three-stage test set out by the Court of Appeal in *Attorney-General v Gilbert* (a case that received a lot of media attention in 2002, involving a probation officer who resigned after his employment conditions caused physical and mental "burnout", including heart problems). In Mr Kingston's case, the Authority saw the issues as follows:

- The first issue was what caused Mr Kingston's health problems – "whether the job was the problem".
- If the work did pose a risk to the employee's health, the next issue was foreseeability – "whether the employer knew or ought to have known about the risk" – either that the job was inherently stressful or that the employee was otherwise vulnerable.
- If there was foreseeable risk, the next question was "did the employer take all reasonably practicable steps to manage the risk?"

THE RESULT

On the first issue, the Authority noted that there was nothing to indicate that Mr Kingston's work in sales posed an inherent

risk to psychological wellbeing. Mr Kingston produced medical reports and records, spanning some years, which concluded that his depressive illness was caused or exacerbated by workplace stress. However, the Authority said that "a patient's own assessment of the causes of his illness ... [is not] conclusive proof of what he or she alleges". The Authority was very cautious about relying on reports produced by experts who had heard only from the employee.

The Authority next addressed whether Gen-I knew, or ought to have known, of Mr Kingston's particular vulnerability. It found that before the 2002 breakdown Mr Kingston had not formally notified Gen-I that he was suffering from depression or was generally vulnerable to stress. The comments to his manager over a drink and in response to the restructuring proposal did not amount to formal notice.

The Authority found that, once Gen-I became aware of the problem in 2002, it took all reasonably practicable steps to manage the risk. It liaised with the medical advisers to work out a return-to-work plan and provided further leave when this was necessary. Gen-I also offered to consider, with Mr Kingston, lifestyle-based career changes.

In the final analysis, the Authority considered that Mr Kingston's "sad but inevitable" resignation was "in no way the fault of Gen-I".

So, although claims of stress of various types and degrees will continue to generate employment disputes, it is important to realise that the obligations on employers in this area are limited. Employees claiming a particular vulnerability to harm resulting from stress have an obligation to formally notify their employer of this vulnerability. An employer is not expected to shield employees – or "cocoon" them, in the words of the Court of Appeal in *Gilbert* – from work stress. Rather, the employer is obliged to take all reasonably practicable steps to manage the risk of harm if it is an inherently stressful job or if the employer is on notice that the employee is specifically vulnerable.

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