

## *Perera and Comcare [2013] AATA 589 (22 August 2013)*

### Key Points

- The Tribunal had to consider whether action taken by managers in respect of Ms Perera was **administrative action** undertaken in a **reasonable manner**
- The Tribunal held that team meetings which became informal counseling sessions constituted reasonable administrative action for the purposes of the SRC Act

### Background

Ms Perera commenced employment with the Department of Health and Ageing (**agency**) in 2007 and left the agency in June 2011.

On 8 July 2011 Ms Perera lodged a claim for workers' compensation for an '*anxiety state*', which she claimed arose as a result of two incidents. By determination on 15 August 2011, liability was denied, which was affirmed by reviewable decision on 16 December 2011. Ms Perera requested review of the decision of 16 December 2011 by the Administrative Appeals Tribunal.

#### *Incident 1: 6 September 2012*

Ms Perera was suffering from gastrointestinal problems causing her to be away from her desk from around 2:00pm to 2:30pm. Ms Perera did not tell anyone where she was going and did not answer the blocked call from Ms W while she was in the bathroom. Ms C had told the employees that they were expected to advise their supervisor where they were and for how long, if they were to be absent from their desk for more than ten minutes. Upon returning, Ms Perera was questioned by Ms W about where she was and the length of time taken. The exchange occurred in the open plan office and within earshot of Ms Perera's colleagues. Ms Perera was later heard talking loudly about the exchange on the telephone.

On the day of the first incident, the agency was expecting a visit from the Australian National Audit Office ('ANAO').

#### *Incident 2: 25 November 2010*

Ms Perera was responsible for the flight detail spreadsheet for travel arrangements taking place in a few days' time. A team member emailed Ms Perera stating "*there were a number of errors based on human error*". Ms Perera took this as a personal criticism, however she admitted her mistake.

Ms Perera spoke to the team member who had sent the email regarding the spreadsheet and during the conversation the team member began to cry. Ms Perera said she tried to comfort her, however Ms W witnessed Ms Perera standing in an intimidating position over the team member. Ms W advised Ms Perera in a team meeting that day that the spreadsheet should have been updated. According to Ms W, Ms Perera was not being co-operative and continued to protest her innocence. Ms Perera also stated, which she denied, "*I suppose if I cried people would believe me*". According to Ms Perera however, Ms W stated "*Stop it. You made my staff member cry. Don't you ever speak*

to me or my staff ever again". Ms W's version of the conversation was "Please don't speak to my staff like that again".

There was a further meeting held that day, according to Ms Perera, Ms C stated that Ms Perera had been "very rude, and that ever since I joined the team everyone has been very unhappy. She said that she had already spoken to HR and that I would be contacted by the end of next week". During the meeting, Mr Perera produced a tape recorder and asked whether Ms C would like to say that on tape. Ms C then concluded the meeting suddenly and, according to Ms Perera, slammed the door.

## The Law

Section 5A(1) of the Act states that a disease or injury suffered by an employee in the course of their employment:

*"does not include a disease, injury or aggravation suffered as a result of reasonable administrative action taken in a reasonable manner in respect of the employee's employment."*

Section 5A(2) of the Act further defines reasonable administrative action to include:

*"a reasonable counselling action (whether formal or informal) taken in respect of the employee's employment and a reasonable disciplinary action (whether formal or informal) taken in respect of the employee's employment."*

As outlined in the decision of *Commonwealth Bank of Australia v Reeve*<sup>1</sup> administrative action is 'action with respect to the employee as employee and his or her employment relationship with the employer.' It was further stated that administrative action was 'action... directed specifically to the employee as opposed to it affecting him or her because of the ordinary feature of his or her work, workplace or environment of otherwise connected to his or her employment.'<sup>2</sup>

## Conclusion

The Tribunal held that in respect of both incidents, the actions taken by the manager of Ms Perera were 'administrative actions' as they were actions related specifically to Ms Perera and her employment.

In relation to the question of whether the administrative actions were taken in a reasonable manner, it was held that 'reasonable' must be interpreted within context.<sup>3</sup> Whether the action is reasonable will also depend on "the facts and circumstances giving rise to the requirement for the administrative action, the way in which the administrative action impacts upon the worker and the circumstances in which the administrative action was implemented."<sup>4</sup>

### Incident 1

The Tribunal held that it was justifiable for Ms W to question Ms Perera's absence, given the failure of advance notification by her of her absence, the non-response by Ms Perera of Ms W's phone call

<sup>1</sup> *Commonwealth Bank of Australia v Reeve and Another* [2012] FCAFC 21; (2012) 199 FCR 463 at 30.

<sup>2</sup> *Commonwealth Bank of Australia v Reeve and Another* [2012] FCAFC 21; (2012) 199 FCR 463 at 57.

<sup>4</sup> *Keen v Workers Rehabilitation and Compensation Corporation* [1998] SASC 7056; (1998) 71 SASR 42 at 47.

and the pressure on the employees to update their files pending the visit from ANAO.

### Incident 2

In relation to the first meeting, the Tribunal found that the urgency in having a correct flight schedule, Ms Perera's comments about attracting sympathy and Ms W's concern about the upset team member resulted in Ms W having a sharp word to Ms Perera.

At the second meeting, Ms C, who had no advance warning of the tape recorder, was understandably shocked and needed time to consider her next action.

The Tribunal held that, given the circumstances of both incidents, the administrative action which was taken was not unreasonable. Whilst people were emotional in both incidents, it was as a result of the actions of Ms Perera and administrative action was therefore not considered to unreasonable.

### Lessons Learnt

The decision of the Tribunal allows for more clarity on what is considered to be administrative action taken in a reasonable manner in respect to an employee's employment. When considering what is reasonable, the term '*reasonable*' is to be considered in its ordinary meaning and the context of the action needs to be considered.

In respect to the circumstances of this matter, whilst the incidents were not intended to be counselling sessions of Ms Perera, they turned into informal sessions and were still considered to be reasonable administrative actions in the circumstances.

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