

**INDUSTRIAL MAGISTRATES COURT**

*Workers' Compensation and Rehabilitation Act 2003*  
*Section 550*

**FILE NO: 2794/09**

**APPELLANT:** Kaye Esterne MATHEWS

**AND**

**RESPONDENT:** Q-COMP

**DECISION**

This is an appeal brought by Kaye Esterne Mathews against a decision by QComp (the workers compensation regulatory body) to uphold a decision by WorkCover Queensland, to reject Ms Mathews' claim for compensation for a psychiatric injury sustained between April 2007 and August 2008.

The hearing of the appeal is *du novo* and I have heard evidence from Ms Mathews, Mr Cecil Stuart, Ms Donna Stuart, Ms Glisson-Galore and Drs Rananan for Ms Mathews. A report from Dr John McIntyre has also been entered into evidence. The Respondent has called evidence from Mr Leon Carlish, Ms Michelle Walden, Ms Maree Perry, Ms Cheryl Cordingley, Mr Jeff Cook, Ms Angela Sullivan and Ms Trish Squelch all employees or former employees of Withcott Seedlings, Ms Mathews's former employer.

I have received written submissions from both parties.

**Background**

Ms Mathews commenced employment at Withcott Seedlings in April 2007 and last worked for them in September 2008. She left Withcott Seedlings as a result of alleged abuse and harassment in August 2008, but returned to work for a short time in

September 2008, again leaving when she was unable to continue because of her diagnosed psychiatric disorder.

The parties agree that Ms Mathews was a "worker" as defined in the *Workers' Compensation and Rehabilitation Act 2003*, and also that she suffers a psychiatric disorder.

The questions to be decided by me are whether, pursuant to Section 32 of the Act –

- (a) Ms Mathews's condition arose out of or in the course of her employment;  
and
- (b) her employment was a significant contributing factor to the condition.

Ms Mathews states that during her employment with Withcott Seedlings she was the subject of continued abuse and harassment by fellow employees, Maree Perry, Cheryl Cordingley and Michelle Waldron, such as to satisfy the requirements set out in section 32 of the Act.

**Did the injury arise out of or in the course of employment and was the employment a significant contributing factor?**

The phrase *arising out of* has been found to involve a causal or consequential relationship between the employment and the injury. It does not require a direct or proximate relationship.<sup>1</sup>

In her Application for Compensation, Ms Mathews states that her injury occurred as a result of verbal abuse over the period of her employment with Withcott Seedlings. She stated that she suffered stress as a result of fighting, name calling, bullying and stand over tactics by fellow employees as well as the team leader encouraging other fellow employees to "have a go" at her.

Ms Mathews was employed as a nursery hand and worked in the tree crops section at Withcott Seeds propagating olives, potting and fertilising. She was then transferred to

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<sup>1</sup> *Lackey -v- WorkCover Queensland [2000] QIC 43*

the hygiene section and then moved to "Smart Salads". Whilst in the hygiene area, she was required to knock out the seedling trays, wash crates and stack racks and pallets with the trays. Her supervisor was Leon Carlish and Jeff Cook was his offsider.

Marie Perry was a long term employee of Withcott Seeds and she worked exclusively in the hygiene section. She had previously been a team leader, but at the time of Ms Mathews's employment was no longer in such a position. There was evidence given by Ms Perry that Mr Carlish would ask her to show new employees how to "knock out" the trays and carry out other tasks in the hygiene area.

Ms Mathews gave evidence that Ms Perry spoke to her in a loud voice, calling her a stupid bitch and telling her how to do her tasks. Ms Cheryl Cordingley gave evidence that Ms Perry had very fixed views on how things were to be done and told the others how to do them. She was very "blunt" and came across as very abrupt.

Ms Mathews gave further evidence, which I accept, that the way Ms Perry was telling her to do her tasks was different to the training she had received from her supervisor, Mr Carlish, when she started work at Withcott Seeds. I accept that Ms Perry is set in her ways and finds it difficult to adapt to any change. This was confirmed by her own evidence.

A great deal was made of the fact that Ms Perry did not swear – ever, and that swearing in the workplace was frowned upon by management and would simply not be tolerated. However, in cross examination, Ms Perry did admit using the word "bitch" in referring to Ms Mathews. Mr Carlish admitted that the word "fuck" was used in the workplace fairly regularly, but that he did not take this to be swearing. His evidence suggested that such a word was part of ordinary everyday language used by the majority of the population. I disagree.

Ms Walden worked with Ms Mathews up to December 2007 and then from April 2008. She also used foul language in the workplace and abused Ms Mathews when she (Ms Mathews) accidentally hosed her. She admitted that she and Ms Cordingley

were both ignoring Ms Mathews or "shoving her out" towards the end of her time at Withcott Seeds.

Ms Cordingley admitted that she swore most of the time in conversation, using the words "fuck" and "cunt" quite freely. She also openly admitted that she called Ms Mathews a "fucking stupid slut" and "fucking stupid moll". I found Ms Cordingley to be quite open and frank in giving her evidence which I have accepted as to the swearing and abuse she directed towards Ms Mathews. I also note that Ms Cordingley was reprimanded with regard to foul language in the workplace by the Human Resources department.

Evidence was given by Mr Cecil Stuart that he witnessed Ms Perry "getting up" Ms Mathews – going "crook at her all the time" in a "nasty way". Ms Stuart also witnessed the interaction between Ms Mathews and Ms Perry, describing Ms Perry's tone of voice as "sarcastic" when stating to both Ms Mathews and Ms Stuart that "you are doing it bloody friggin' wrong" with regard to their work. She also witnessed Ms Cordingley using phrases such as "wide load" and "fucking bitch" with regard to Ms Mathews. Ms Cordingley also laughed at Ms Mathews when they were working near to each other.

As a result, Ms Stuart saw Ms Mathews become tearful and quiet. She told Ms Stuart that she didn't "feel like coming to work".

The relationship between Ms Mathews and Ms Cordingley when Ms Cordingley first started in the hygiene section was good. There was a dispute between them with regard to a CD which Ms Cordingley burned for Ms Mathews. A number of songs burnt on to the CD were repeated a couple of times and Ms Mathews took this, on top of the way she was being treated by Ms Perry and Ms Walden, as being in some way insulting to her. It may be that she over reacted to this situation, but Ms Cordingley's response – the ongoing swearing and abuse – was simply uncalled for.

Ms Cordingley also referred to Ms Mathews as "that senile old cunt over there".

Ms Glisson-Galore also gave evidence that she witnessed the language and tone of voice used by Ms Perry to both Ms Mathews and herself.

Ms Mathews states that she complained to her supervisor Leon Carlish about being picked on by Ms Perry, Ms Cordingley and Ms Walden, with the response being not to worry about it and just get on with her job. He stated that the bickering happened "a few times", but he couldn't recall if Ms Mathews had complained further to him. Ms Mathews states that she felt her concerns were being brushed off and did not have confidence to approach Mr Carlish again. Mr Carlish was responsible for the staff in the hygiene section meeting their KPIs (Key Performance Indicators) and he admitted that he concentrated more on this aspect, rather than ensuring an harmonious workplace

I accept that Ms Mathews made more than one complaint to Mr Carlish about what was occurring in the work place, but that he did nothing about the situation.

Mr Cook is hard of hearing and admitted that he was unaware of what was going on between the workers in the hygiene area. The area could be noisy and he spent most of his time on the forklift and did not observe what went on. I find his evidence unhelpful.

I find that Ms Mathews' injury arose out of her employment and that her employment was a significant contributing factor to her injury.

**Was the injury caused by reasonable management action taken in a reasonable way?**

There was one written complaint made to Trish Squelch (in HR) and this was with regard to the CD incident. Ms Squelch agreed in cross examination that she could only act on complaints if she received them. Despite Ms Mathews making complaints to Mr Carlish about the abuse she was suffering, these were not reported to Ms Squelch and therefore nothing was done. Ms Squelch states that after the written complaint, she did ask Ms Mathews on several occasions how things were going and Ms Mathews responded "OK".

The respondent argues that the employer took all reasonable management action in dealing with the written complaint made by Ms Mathews with regard to the CD issue. By this time, I accept that Ms Mathews was in a position where she felt that she was receiving no support from her employer and that there was nothing she could do.

I find that supervision of staff in the hygiene area at Withcott Foods to be deficient in the extreme. It appears that so long as staff were meeting their KPIs, then any problems voiced by staff went largely unaddressed.

Unfortunately for Ms Mathews, the employer did nothing to alleviate the situation, leading to Ms Mathews's eventual inability to continue in the workplace.

I find for these reasons, that the employer did not take any (or little) management action in response to Ms Mathews's complaints and that the injury was not therefore caused by reasonable management action taken in a reasonable way.

### **Finding**

I allow the appeal and order that the respondent pay Ms Mathews's costs of the appeal to be agreed or assessed.