

INDUSTRIAL MAGISTRATES COURT OF QUEENSLAND

**Appellant: STATE OF QUEENSLAND**

**Respondent: Q-COMP**

**Decision.**

- [1] On the 10<sup>th</sup> November 2008 Mr. Piccinelli lodged an application for Workers Compensation.
- [2] The basis of the application was a diagnosis by Dr. Fraser of acute anxiety syndrome.
- [3] The application for compensation was accepted by Workcover on the 5<sup>th</sup> December 2008.
- [4] On the 10<sup>th</sup> February 2009 the Respondent confirmed the decision of Workcover to accept the claim.
- [5] The appellant appeals that decision.
- [6] Mr. David Piccinelli is a Corrective Services Officer employed at the Townsville Correctional Centre. He has been employed within the prison service since 1995 and in 2008 he held the rank of Correctional Supervisor.
- [7] The basis of the claim for compensation is the injury Mr. Piccinelli suffered on the 28<sup>th</sup> October 2008 when he was called to a meeting with the General Manager of the Townsville Correctional facilities, Mr. John Harrison.

- [8] Mr. Harrison had been made aware of allegations of impropriety against Mr. Piccinelli and another Corrective Services Officer a Mr. May. The allegations had previously been raised with him by the union representative at the jail, Mr. Harry Spiegler. Subsequent to the disclosure by Mr. Spiegler, a specific complaint was made to Mr. Harrison about Mr. Piccinelli's behaviour on a course he had conducted.
- [9] The allegations were serious and involved suggestions of sexual harassment on the part of Mr. Piccinelli and of an even more serious nature with regard to Mr. May.
- [10] Mr. Harrison dispatched a Mr. McNulty to ask Mr. Piccinelli to attend a meeting with him. The meeting was to be held in the Assistant General Manager's Office in the Women's jail which at that stage had not been commissioned thus making access to and from the office easier.
- [11] Mr. Piccinelli proceeded to the meeting via his vehicle where he collected his identity card which was needed to gain access to the Women's jail. He was in high spirits because he contemplated hearing good news about a position he had applied for in the soon to be commissioned women's prison. His hopes in that regard were soon dashed.
- [12] Mr. Piccinelli was asked to enter the room in which the meeting was to be held by Mr. Davis, a Centre Services Manager. Mr. Davis remained in the room with Mr. Harrison and Mr. Piccinelli for the duration of the meeting.
- [13] Reading from an electronic script, Mr. Harrison advised Mr. Piccinelli that there had been serious allegations made against him and that there was likely to be an investigation conducted by the Ethical Standards Branch. In reality an investigation was almost certainly going to be commenced

having regard to the conversations Mr. Harrison had had with that branch prior to his meeting with Mr. Piccinelli.

[14] Mr. Piccinelli was taken aback by these revelations and was quite incredulous – suggesting that the meeting was a “gee up” and that the allegations were “bullshit”. He became upset, tears welled in his eyes and after he left the meeting he was in tears.

[15] Mr. Piccinelli was advised by Mr. Harrison that he was “stood down” as a trainer in the Entry Level Training Program that he was involved in immediately prior to attending the meeting and that he was to resume in his substantive position as a supervisor in the men’s prison.

[16] Mr. Piccinelli left the meeting feeling “dirty”, “gutted” and “ashamed”. He felt “gutted” because of the nature of the allegations levelled at him, also because he felt that he was not trusted by the General Manager.

[17] Mr. Piccinelli went back to his office, via the training group from which he had just been stood down and with Mr. May advised the training cohort of the allegations levelled against them and the action that had been taken against them. This activity it seems was in direct contravention of a direction not to do so by Mr. Harrison.

[18] Mr. Piccinelli contacted the union representative Mr. Spiegler who was confused as to what had happened to Mr. Piccinelli. Mr. Piccinelli contacted Mr. Harrison to clarify the situation, it seems to me for the benefit of Mr. Spiegler, Mr. Piccinelli was quite clear as to what had happened and where he was next to report to work.

[19] Mr. Piccinelli went home where he was very unsettled. He was unable to sleep or eat, his generally regular digestive regime was disrupted and he became constipated. It is clear that at that time he was suffering from an acute anxiety syndrome which was later diagnosed by Dr. Fraser.

[20] It is this diagnosis that identifies the injury that the Respondent says is compensable, it being an injury within the definition of Section 32 of the *Workers Compensation and Rehabilitation Act 2003* (the Act). The appellant contends that the injury is removed from the definition by operation of one or both of paragraphs (a) and (b) of Section 32(5) of the Act.

[21] It is accepted by both parties that Mr. Piccinelli has suffered an injury, it is also accepted that injury arose out of his employment, more precisely Mr. Piccinelli suffered the injury at the meeting with Mr. Harrison on the 28<sup>th</sup> October 2008.

[22] Clearly then the question to be determined is whether Section 32(5) applies? That is to say was the conduct of Mr. Harrison reasonable management action taken in a reasonable way?.

[23] Mr. Murdoch who appeared for the respondent accepts that the action of advising Mr. Piccinelli that allegations had been made and then removing him from the training course and having him return to his substantive position, was, in the circumstances, reasonable management action – he contends that the method by which Mr. Piccinelli was advised was not reasonable. He says that the method fails the second test in paragraph (a) of subsection 5, that is to say it was reasonable management action but it was not taken in a reasonable way.

[24] To that end I am referred to a number of cases that give some guidance as to what is reasonable management action and what should be taken into account in determining if that action was taken in a reasonable way. It is said that there should be a consideration and assessment on the circumstances that arise in the particular case, it is said to include a consideration of the delivery of the action and it is said to include an appreciation what is fair to the worker in the circumstances.

[25] It is clear that in Mr. Piccinelli's circumstances, he was to be advised as soon as possible of the allegations raised against him. It seems to me that it was important that he be told personally by the General Manager and not by a third party or an intermediary and it seems to me that it was important that Mr. Piccinelli be advised of the almost inevitable investigation of the allegations by the ethical standards branch. All these things were done.

[26] Mr. Piccinelli complains of a lack of opportunity to answer the allegations and the anonymity of the accuser – it seems to me that with respect to the first issue, it would be both improper and unfair to Mr. Piccinelli for Mr. Harrison to entertain a defence of the allegations and Mr. Harrison quite properly discouraged that course of action. With respect to the identity of the accuser, Mr. Harrison was not in possession of a written complaint and it would seem to me to be imprudent to disclose the identity of the complainant in the absence of a written complaint.

[27] Mr. Murdoch submitted that Mr. Piccinelli's upset would have been ameliorated by the presence of a support person at the meeting. I am not sure as to how that could have been facilitated. The purpose of the meeting was to advise him of the allegations and it was conducted in such a way that the number of people who were aware of the allegations was kept to a minimum. If Mr. Piccinelli was advised that he was to come to a meeting with the General Manager and that he should bring with him a support person, it seems to me that that would be unnerving at best and potentially injurious. The force of the submission is compromised by the evidence of Mr. Piccinelli himself who said that it was the nature of the allegations that upset him so much and the presence of a support person would not have mitigated that upset.

[28] It seems to me that the circumstances that prevailed at the time were difficult for all concerned – there was bad news to be delivered, it needed to be delivered promptly and there was no easy way to deliver it. In my view the news was conveyed in a manner that was appropriate in

the circumstances and the reluctance to engage in a conversation about the merits of the allegations protected Mr. Piccinelli from himself inasmuch that any admissions or explanation made in the absence of the opportunity to seek independent advice may have been adverse to his interests.

[29] I am of the opinion then that Section 32(5)(a) of the Act applies in this instance and I find that Mr. Harrison's actions in his dealings with Mr. Piccinelli were reasonable management action and they were taken in a reasonable way.

[30] That finding having been made it is not then necessary to consider the operation of Paragraph (b) of Section 32(5) of the Act.

[31] I allow the appeal and make the following orders:

- i. That the respondent's decision of 10<sup>th</sup> February 2009 to accept the Mr. Piccinelli's claim for compensation be set aside;
- ii. That Mr. Piccinelli's claim for compensation be rejected;

[32] With respect to costs, I order the Respondent pay the Appellant's costs. The quantum of those costs is to be agreed to by the parties and if no agreement can be reached then the matter is to be brought on before me by giving fourteen (14) days notice to the Registry.

Ross Mack  
Industrial Magistrate  
Townsville  
9<sup>th</sup> October 2009.