PARTIES:	WATTYL AUSTRALIA PTY LTD
	v
	BARRY ROBIN YORK
TITLE OF COURT:	SUPREME COURT OF THE NORTHERN TERRITORY
JURISDICTION:	Appeal from the Work Health Court exercising Territory Jurisdiction
FILE NO:	No 198 of 1996
DELIVERED:	4 July 1997
HEARING DATES:	17 December 1996 and 27 June 1997
JUDGMENT OF:	Angel J

REPRESENTATION:

Counsel:

Appellant:	Mr J E Reeves
Respondent:	Mr P M Barr

Solicitors:

Appellant:	Cridlands
Respondent:	Elston & Gilchrist Lawyers

Judgment category classification:	C - restricted distribution
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ang97015

IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

No. 198 of 1996

IN THE MATTER of an appeal under
the WORK HEALTH ACT 1986

BETWEEN:

WATTYL AUSTRALIA PTY LTD
Appellant

AND:

BARRY ROBIN YORK
Respondent

CORAM: ANGEL J

REASONS FOR JUDGMENT

(4 July 1997)

This is an employer's work health appeal against a determination of the Work Health Court of 5 September 1996. Mr R Wallace SM determined that the respondent worker suffered an injury on 2 August 1994 and that the injury arose out of and in the course of his employment with the appellant. He further found that the worker suffered a further injury by way of aggravation of the original injury between 2 August and 1 December 1994 which aggravation arose in the course of the worker's employment with the employer and that as a result of the injury and the aggravation thereof the worker was

totally incapacitated for employment from 1 December 1994 to the date of determination. He also determined that the worker was entitled to payment of his normal weekly earnings for the period from 1 December 1994 to the date of determination and continuing.

The grounds of appeal are as follows:

"1. the learned magistrate erred in concluding that the stress suffered by the respondent from his concerns as to the defamatory remarks contained in the Opperman letter did not arise from reasonably administrative action in connection with the respondent's employment;

2. the learned magistrate erred in concluding that the stress suffered by the respondent from his concerns as to the failure of the appellant to make changes in the structure of the staffing of the Darwin office did not arise from reasonable administrative action in connection with the respondent's employment;

3. the learned magistrate erred in determining the respondent's mental illness, being an injury within the meaning of the Work Health Act 1986, arose out of or in the course of his employment with the appellant as a result of stressors which included stressors not corroborated as being causative of the mental illness by any expert evidence;

4. the learned magistrate erred in determining that the events known as the Vulcan incident caused or contributed to the onset of the injuries held by the learned magistrate to have occurred on the 2nd day of August 1994 and between the 2nd day of August 1995 and the 1st day of December 1994;

5. that there was no or no sufficient evidence to establish that the stressors known as the Vulcan incident, the Cavenagh floors incident and the Ansett Flight Deck incident were as of August 1994 were causing any ongoing stress to the respondent either causative of injury suffered by the respondent or at all;

6. the learned magistrate erred in concluding that the stress suffered by the respondent from his concerns over the Ansett Flight Deck incident did not arise from reasonable

administrative action in connection with the respondent's employment;

7. the learned magistrate in concluding that the injuries the respondent sustained on the 1st day of August 1994 and between the 1st day of August 1994 and the 1st day of December 1994 arose out of or in the course of his employment with the appellant erred by taking into account a number of stressors which, given that they arose out of reasonably administrative action by the appellant in connection with the respondent's employment, ought not to have been taken into account;

8. the learned magistrate erred in the circumstances in failing to make findings as to what specifically it was about the Ansett Flight Kitchen incident that caused the respondent stress;".

Injury in relation to a worker is defined by s3(1) of the *Work Health Act* as meaning:

> "a physical or mental injury arising before or after the commencement of the relevant provision of this Act out of or in the course of his employment and includes -
>
> (a) a disease; and
>
> (b) the aggravation, acceleration, exacerbation, recurrence or deterioration of a pre-existing injury or disease,
>
> but does not include an injury or disease suffered by a worker as a result of reasonable disciplinary action taken against the worker or failure by the worker to obtain a promotion, transfer or benefit in connection with the worker's employment or as a result of reasonable administrative action taken in connection with the worker's employment.".

The principle question arising on this appeal is whether the worker's mental breakdown was "as a result of reasonable administrative action taken in connection with the worker's employment". The substantial complaint of the

employer on the appeal was that the learned Magistrate in his reasons failed to discriminate between what was termed "administrative" and "non-administrative" causes of the worker's condition. The learned Magistrate in his lengthy oral reasons that extend over thirty or more pages of transcript concluded his reasons with the following words (pp29-30):

> "I find that the worker was simply unable to cope with the demands of his employment. This is not to say that every aspect of his employment was stressful, but there were various aspects of his employment which were stressful and various incidents which occurred in the course of his employment subjected him to stress and the end result was an anxiety disorder from which he was found to be suffering. His stress and anxiety disorder is not attributed to any single specific incident in the course of his employment. It is not entirely attributable to any specific or identifiable course of conduct by the employer. Nor is it attributable even to any specific aspect of his work.
>
> The finding is that his anxiety disorder resulted from the cumulative effect of a number of aspects of his employment with which he had difficulty in coping. Given what we now know of Mr York's personality, it is perhaps surprising that he broke down in 1994 and not 1993 or 1992, and I also conclude ..... . that the personality factors were no longer applicable or appropriate to the work situation he found himself in 1994, and that it was very substantially and materially that work situation which caused his breakdown on 2 August and which led to him being unfit for work from after 1 December; hence the orders I outlined at the start of today's proceedings.".

The respondent commenced work for the appellant in 1984 as the manager of its Darwin Branch. Initially he was the sole employee at the Branch but during the ten or so years of business before the respondent left work the Branch flourished and during the last few years of the respondent's active employment, the respondent was in charge of seven other permanent

employees, three sales representatives, three storemen/counter salesmen and one office worker. The two principle issues before the learned Magistrate were whether the injury arose out of the course of the employment and/or whether the employment materially attributed to the injury and secondly, if it did, whether the injury was the result of reasonable administrative action taken in connection with the worker's employment. The worker's case before the learned Magistrate was that there was a background of increasing workload or increasingly stressful workload and against that background there were a series of particularly stressful incidents which culminated in the worker's breakdown. The learned Magistrate said in his reasons (at p5) that it was impossible to distinguish between the background on the one hand and the particular incidents on the other. There were five identifiable incidents, the subject of evidence which the learned Magistrate considered worthy of individual consideration. The first concerned a dispute over antifouling paint provided by the appellant and used on the fishing vessel "Vulcan". The second concerned a complaint arising from the supply of floor sealant applied at the Ansett flight kitchen at Darwin airport. The third concerned a question of "storeman upgrade". The fourth matter concerned a letter of complaint by a Mr Les Opperman of Alsra Industries Pty Ltd to the Kemp group of companies, which unless true, (the learned Magistrate considered any truth in the allegation was highly unlikely) was defamatory of Mr York. The fifth matter concerned complaints by a customer, one Cavanagh, concerning a Wattyl product applied to his floor. The defence to the worker's claim was to

dispute the alleged workload, ie, what was said by the worker to be the general background of increased workload contributing to his breakdown, and in relation to the five incidents to dispute their impact upon the worker and to contend that some were the result of reasonable administrative action by the appellant. After carefully considering the evidence, the learned Magistrate concluded (p12) that he was unable to say that the management workload of the worker in 1993/94 was significantly greater or less than, say, in 1991, and that it did not seem to him that there would be any particular reason, apart from the customer complaints, why that should be so.

He said:

> "Indeed, taking all these matters, one with another, it is difficult to conclude that the load in 1994 can have been significantly greater than in 1993 and for various reasons it might be considered more likely that the workload of Mr York, in terms of necessary hours and the pressure of work during those hours, might even have been greater in 1993.".

The learned Magistrate further said (p13):

> "Overall then, on the evidence, it's difficult for me to conclude that his workload, expressed simply as necessary hours of work, had increased in the relevant part of 1994 from what it had been in 1993, and if there had been any appreciable change it seems to me more likely that there would have been something of a slight decrease rather than a slight increase and that in any event the evidence is unable to satisfy me that any change would have been other than slight.".

In so concluding the learned Magistrate noted that after the respondent's departure in December 1994, the appellant continued its Darwin operations without replacing the respondent after sharing his duties out amongst existing staff. He found that the Branch office "appears to have worked by and large for the following eighteen months or so after Mr York ceased working".

Thereafter the learned Magistrate discussed the five incidents or matters referred to above. In view of the learned Magistrate's ultimate findings I find it unnecessary to discuss these matters in detail. The so called "Vulcan" matter, the Ansett flight kitchen matter and the Cavanagh floor matter all involved resolving customers' complaints concerning the performance of Wattyl products and the necessary rectification of work done with Wattyl products. The respondent broke down in the course of a telephone conversation with a Mr Hill of the appellant's Adelaide office whilst discussing what the respondent said was the need for extra staff in the Darwin Branch office. The appellant argued that the decision whether to comply with the respondent's request for an extra storeman or not was an administrative decision and a reasonable one at that and that as such the respondent was precluded by the exemption in the definition of injury from relying upon it as a basis for compensation. As it turned out a Mr Friend, a fellow employee of the appellant, was upgraded in October 1994. It was a matter originally proposed by the respondent to an Adelaide representative of the appellant. The matter was described by the learned Magistrate as a "long running saga"

which ran from at least March or April 1993 through to ultimately October 1994. The so called Opperman letter was a letter sent by Opperman's company Alsra to a debt collecting agency contracted by Wattyl, which was chasing Opperman's company for money. In the letter Opperman had made allegations concerning an unsatisfactory sub-contractor of his company, and specific allegations were made against the respondent that he was a receiver of stolen goods, in that Opperman's sub-contractor had stolen paint from Alsra and supplied it to Mr York at Wattyl. As the learned Magistrate pointed out there were two aspects to this, the first being, the effect on the respondent upon first becoming aware of the contents of the letter when he received a copy of the letter sent to him on a confidential basis from Wattyl in South Australia. The respondent suffered an immediate collapse of a sort that Dr Beaumont, who knew him well and was treating him, had never seen the like of before. The second aspect to this matter was the respondent's perception of a lack of support from Wattyl in refuting the allegations. Wattyl had written off the Alsra debt for commercial reasons and Alsra never expressly withdrew the allegations. As to this the appellant's case was that what the respondent was really complaining about was reasonable administrative action by the appellant - which had strongly refuted the allegation on Mr York's behalf and had assisted Mr York with advice as to proceedings for libel - and that the respondent was precluded from relying on this for compensation.

In the course of submissions I was referred to the recent decision of the South Australian Full Court in *Work Cover Corporation of SA v Summers* (1995) 65 SASR 243 and submissions were put as to the scope of the confinement of stress claims for compensation brought about by the reasonable administrative action exemption in the amended definition of injury. I do not consider it is necessary for me to express any concluded views on this matter in this case for the simple reason that the learned Magistrate has found that the respondent's whole employment situation caused the respondent's break down. It is not, as has been pointed out in the authorities, necessary to establish fault on the part of the employer or any unusual stress or factor or special circumstances in the employment itself. See eg *West Coast v ATC* (1987) 17 FCR 235 at 240. In the present case the respondent had satisfied the learned Magistrate more than simply that the employment was the background in which the development of the respondent's depression took place, ie, more than employment was simply an inert factor. The learned Magistrate, as I think he was entitled on the evidence to do, found that the employment positively caused the respondent's depression. He was not bound, as was submitted before me, to isolate causes when on the evidence, as the learned Magistrate said, no single factor was causative. As a matter of evidence it could not be said that the respondent's breakdown was caused by a discrete reasonable administrative action of the appellant independently of other non administrative causes. This being the case I am of the view that the learned Magistrate was correct in the conclusion to which he came. Considered in

isolation the question of the storeman upgrade and the Opperman letter might be considered incidents or events or circumstances constituting factors which contributed to the respondent's breakdown but I agree with the learned Magistrate that as the evidence discloses it was the respondent's whole work situation which caused the breakdown on 2 August and which lead to him being unfit for work on 1 December 1994. Even if the storeman upgrade and the Opperman letter can be isolated as separate causes and separately considered as reasonable administrative actions on the part of the appellant other aspects of the respondent's employment were at least equally causative.

The appellant has not demonstrated any error in law made by the learned Magistrate in so concluding.

The appeal is dismissed.
