

6-1-2002

The case of the injured clerk

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Recommended Citation

Cini, Chas (2002) "The case of the injured clerk," *ADR Bulletin*: Vol. 5: No. 3, Article 5.
Available at: <http://epublications.bond.edu.au/adr/vol5/iss3/5>

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The case of the injured clerk

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The background

The employee was a stock clerk and injured a shoulder after falling off a ladder.

He is 25 years old and married with two children.

The injury required surgery. For a period of several months following surgery, the employee was restricted to performing alternative duties.

The employee was cleared for work 12 months after the injury. During that time his position was declared redundant. The employer advised the employee that two months after returning to work he would be redeployed to a sales clerk position.

The employee reluctantly returned to work but was harassed by colleagues. Unable to continue working because of the harassment, the employee remained off work for 12 months. The employer counselled the offending employees. WorkCover accepted both 12 month periods of absence by the employee as compensable.

The mediation

Mediation was arranged to facilitate the employee's return to work. The mediator contacted the parties and was advised that a case conference had been arranged to identify a new job role for the employee as a sales clerk and to assess the capacity of the employee to perform those duties.

Mediation was scheduled to take place prior to the case conference. At the mediation the employee's concerns were identified as a lack of knowledge and training and feeling too shy for the sales role. The employer acknowledged those issues at the mediation and agreed to provide training, relevant policies, procedures and a staff manual. Arrangements were made for a three-month trial period in the sales role, during which time the employee was to

receive assistance if required.

The mediation took three hours.

Both parties signed the agreement. The employee agreed to resume work after the employer confirmed that training and other terms of the agreement had been organised. The employer confirmed two days after the mediation that manuals were ready for the employee and that the training would commence as soon as the employee returned to work.

The employee was referred by 'the system', not the mediator, to an occupational therapist two weeks later.

Outcome

The employee reneged on the agreement. Weekly payments ceased and the employee appealed to the Tribunal for re-instatement of entitlements. This process takes months, involves considerable legal expense, a medical examination and accompanying reports in addition to having an impact on the employee's health.

One of the benefits of any method of dispute resolution is the durability of the outcome. Mediation achieved a continuance of the working relationship in this instance but durability was destroyed by delays and further appointments.

If the employee had returned to work having fulfilled his agreement, there would have been a three month monitoring period. Engaging an external party (occupational therapist) to play a significant role in the employee's return to work two weeks after the mediation undid the mediated agreement and destroyed the prospect of a durable outcome.

Analysis

There is an argument for using mediation at the outset of an employee's compensation claim,

immediately on it becoming apparent that the employee's absence is likely to exceed a period of approximately one month. Legal fees are estimated to be at least \$200 per hour. A trial in a Tribunal is likely to cost each party a minimum of \$3000 over three days. Medical reports for a trial are likely to cost \$500-\$2000 per report. The employer is likely to experience disruption to the business. The employee and his/her family are likely to experience secondary injuries such as stress, trauma and loss of self-esteem. Collectively, the anxiety may well extend to the employee's colleagues.

Using mediation as part of an early intervention strategy is likely to reduce costs both in dollar terms and in a reduction in quality of human life.

One of the most valued aspects of quality of life for employees is feeling wanted in the workplace. Injured employees feel vulnerable and consequently the employer's business may be damaged. The traditional delays for an employee returning to work when mediation is not used as an early intervention strategy have seen absences being extended due to the 'system'. The employee's routine of going to work is broken and the subsequent delay makes it more difficult for the employee to return to work. Changes that take place in the workplace during these absences increase the anxiety for the employee. These range from changes in policies and procedures to a change or restructure of an employee's job description and position. At worst,

the position may have been dissolved and the worker made redundant.

Mediation is a less hostile form of dispute resolution that is more likely to assist the parties to mutually agree and own an outcome to expedite a return to work and to encourage the continuation of the employment relationship. Studies show that employees who have used mediation to resolve workplace disputation are likely to recommend that form of dispute resolution over others. These conclusions are quite different to those who embark on the more adversarial legal system to resolve disputes. ●

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