

Employer pays the price for extensive bullying and abusive behaviour towards employee

The Employment Relations Authority has awarded \$100,000 to an employee in the recent case *Parker v Magnum Hire Limited & Field*,¹ illustrating that the Authority is prepared to make significant awards against employers who do not provide their employees with a safe workplace.

Background

Mr Parker alleged that during his 12 years as the General Manager of Magnum Hire Limited (**Magnum**) the director, Mr Liam Field, bullied and psychologically abused him, ultimately leading to his constructive dismissal in 2021.

Mr Parker's claims against Magnum

Mr Parker alleged the following:

- As a result of Mr Field's bullying, Magnum:
 - failed to provide him with a safe workplace, causing an unjustified disadvantage to his employment;
 - forced Mr Parker to resign, and therefore constructively dismissing him;
 - breached its implied contractual duty to take all reasonable care to maintain a safe workplace; and
 - breached the Wages Protection Act 1983 (**WPA**) and the Holidays Act 2003 (**HA**) by failing to pay Mr Parker's bonuses or accompanying holiday pay, or to provide him with his time and wage records.
- Mr Parker sought a global penalty against Magnum

for various breaches of the WPA, HA and Employment Relations Act 2000 (**Act**).

- Mr Parker also claimed that Mr Field is a "person involved in breaches of employment standards" and sought leave to recover money from Mr Field personally to the extent that Magnum would be unable to pay any monies owing.

Bullying and harassment, leading to constructive dismissal

Multiple ex-employees of Magnum provided evidence of the toxic culture at Magnum, and how Mr Field was verbally abusive towards not only Mr Parker, but a number of employees.

Mr Parker provided examples of Mr Field's alleged bullying, including:

- a) excessive and unprovoked personal criticism and verbal abuse;
- b) threatening Mr Parker's job security, overtly and impliedly;
- c) publicly humiliating him and calling him incompetent;
- d) deliberately continuing or escalating abusive behavior when Mr Parker showed signs of vulnerability or asked him to stop; and
- e) engaging in manipulating and psychologically abusive behaviours, such as deploying false flattery and false reassurances.

As an example of the severity of the bullying, on one occasion following a clash with Mr Field, Mr Parker was driven to hospital as he believed he was having a heart attack (that turned out to be a panic attack). Mr Parker described another confrontation with Mr Field that occurred after Mr Parker had undergone urgent surgery, where it was alleged Mr Field verbally attacked Mr Parker, threatening his job security and blaming him for the company's profit losses. Mr Parker gave evidence that he found the call so traumatic it caused him to have a panic attack, which ruptured the surgical incisions in

¹ *David Parker v Magnum Hire Limited & Liam Field* [2024] NZERA 85.

Parker v Magnum Hire Limited & Field
(Continued)

his lower abdomen and required medical attention.

Despite attending mediation, the parties were unable to resolve matters. Magnum's counsel proposed to carry out an investigation into Mr Parker's bullying claims itself (rather than engaging an independent party). In response, Mr Parker resigned, effective immediately, and raised a personal grievance for constructive dismissal.

Bullying claim out of time?

A personal grievance must be raised within 90 days of the instance giving rise to the grievance occurring.² Despite not being raised by Magnum's counsel, the Authority highlighted that Mr Parker's bullying claims may have been bought out of time, and sought the party's views on this.

The Authority ultimately found that Magnum had impliedly consented to Mr Parker's claims being raised out of time. Magnum had substantively responded to Mr Parker's bullying personal grievance in its pleadings and evidence, presented a defence to the bullying claims at the Authority's investigation meeting, and despite raising limitation issues in respect of Mr Parker's other claims, never raised any issue about the bullying grievance being out of time.

The Authority's findings

It is important to note that bullying itself does not always give rise to a personal grievance on its own, but rather it may be the basis for an unjustified action causing disadvantage grievance based on the employer's failure to provide a safe workplace.

While the Authority acknowledged the evidence provided in support of Magnum, it highlighted that many of the witnesses were current employees of Magnum, and their loyalty to both Magnum and Mr Field came through in their evidence. The Authority found that Mr

Field had engaged in bullying behaviours towards Mr Parker. The evidence overwhelmingly supported that Mr Field's actions were unreasonable and harmed Mr Parker. In a workplace where unreasonable behaviour was seen as "normal", there was no formal support for workers, no bullying or harassment policy and no formal or informal process to deal with complaints, the Authority found Mr Field ought to have reasonably foreseen that Mr Parker would experience the behaviour as bullying.

Accordingly, the Authority found that Mr Parker was bullied at work, and Magnum did not do anything to protect Mr Parker from this foreseeable harm. Ultimately, Magnum failed to provide Mr Parker with a safe workplace.

Remedies

The Authority was presented with evidence that as a result of Mr Field's bullying and work-related stress, Mr Parker was depressed and his mental and physical wellbeing had considerably deteriorated. The Authority accepted that Mr Parker had suffered significant harm, and made an award of \$50,000 compensation.

Mr Parker's evidence of the effect of being constructively dismissed on his mental health, self-esteem and self-worth was compelling, leading to the development of depression, anxiety and posttraumatic stress symptoms akin to PTSD. Mr Parker suffers flashbacks to Mr Field's abusive behaviour, and evidence from Mr Parker's clinical psychologist detailed that Mr Parker had recurrent suicidal thoughts. Taking this evidence in account, and that Magnum's defence had further compounded the hurt and humiliation Mr Parker has suffered, a further award of \$50,000 compensation was made.

² For completeness we note that the period for raising a personal grievance in respect of sexual harassment claims is 12 months.

Parker v Magnum Hire Limited & Field
(Continued)

Further awards were made in favour of Mr Parker in respect of an unjustified suspension, lost wages and a penalty for breach of the WPA.

The Authority also considered it appropriate to make recommendations under section 123(1)(ca) of the Employment Relations Act 2000, requiring Magnum to implement a clear Bullying and Harassment Policy and Code of Conduct, and to establish a clear avenue for the resolution of complaints and investigations of bullying and harassment.

Concluding thoughts

The awards made in this case are near the upper end of the revised compensation bands discussed by the Chief Judge in *GF v Comptroller of the New Zealand Customs Service*.³ This is interesting that Mr Parker was only awarded \$50,000 compensation, given that the highest compensation band (reflecting high-level loss or damage) is awards over \$50,000. In light of the significant harm that the Authority found Mr Parker had suffered due to Magnum's conduct, it is unclear what further harm an employee must have suffered before an award would be granted in the highest compensation band.

Also interesting is that the Authority made two compensation awards for matters that arose from the same factual circumstances and, arguably, had the same impact.

This case also serves as a reminder for employees to ensure that a personal grievance claim is brought within the 90 day timeframe, and for employers, to challenge claims immediately where they are brought out of time.

Want to know more?

If you have any questions about employment law, including any claims of bullying or harassment, please

contact our specialist [employment team](#).

³ *GF v Comptroller of the New Zealand Customs Service* [2023] NZEmpC 101