

## NO COMPENSATION FOR STERN BUT NOT AGGRESSIVE TONE

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The Administrative Appeals Tribunal (AAT) has ruled that a postman was not entitled to compensation for a psychological injury which had been caused by the treatment he received at the hands of his supervisor because the supervisor was engaging in reasonable management action.

The postman had been an employee of the Australian Postal Corporation (Australia Post) for 20 years before he began suffering from a condition described as "major depressive disorder". Australia Post conceded that his employment with it had contributed to a significant degree with the onset of the condition. However, it argued that it was not liable to pay compensation because the condition was the result of reasonable administrative action taken in a reasonable manner. Accordingly, the worker's condition was not an "injury" for the purposes of s 5A(1) of the *Safety, Rehabilitation and Compensation Act 1988*.

The worker had been based at the Thuringowa Delivery Centre in Townsville, Queensland. His duties there involved performing two rounds, both of which should have taken around 3 hours and 40 minutes to complete. In June 2009, the worker's supervisor observed that it was taking up to 90 minutes longer than this for the worker to complete each round and that he was claiming overtime for this extra work. He also observed the worker on his round as part of a formal management process. While doing this, he noticed that the worker left his mail unattended for 10 minutes while conducting personal business in a shopping centre.

These issues were raised with the worker in a formal interview during which he claimed that he left his mail unattended only because he needed to visit the toilet and that any personal purchase he made while there was coincidental. The worker was told that further observation of him would be conducted on a regular basis and that, if necessary, a performance review program would be undertaken. Following the formal interview, the worker had an informal talk with his supervisor during which he claimed he was told that if he couldn't keep up with others he should seek other employment.

The next dealing between the worker and his supervisor was in August 2009, when the worker claimed they met in the bike shed and the supervisor informed him in an aggressive tone "I have plenty on you dating back to 1993" and "I am going to supervise you like nothing before". From that time onwards, the supervisor implemented a new work arrangement where the worker's mail was sorted by others so that he could start his round earlier and finish on time. This had the effect of meaning that the worker also had to take his meal breaks separate from others and led to him feeling "isolated". In October 2009, he was again observed on his round and this time the supervisor noted the worker "went missing" for an hour during the course of his round. The worker claimed the supervisor screamed at him when he confronted him over this and that he had simply undertaken his route in a different way.

Later in October 2009, the supervisor undertook further observations of the worker's route and was generally satisfied with his performance but critical of him taking a toilet break. In a subsequent interview, the worker told the supervisor that "all I get is a negative response". The following day when stopped attending work and brought a claim for "work related stress/bullying". The claim was rejected in December 2009 and that decision was affirmed in February 2010. Shortly afterwards, the worker brought the current proceedings in the AAT.

The worker argued that the supervisor had repeatedly spoken to him in a "menacing" and "threatening" tone and in an "inappropriate manner". His evidence was supported by a colleague who claimed that in his 20 years at Australia Post, he had "never witnessed another employee treated in this manner". However, the AAT did not accept this, even though it conceded that the supervisor had spoken in a "firm, even stern tone, on various occasions". The AAT did accept that

the worker had a genuine belief the supervisor was “out to get” him but that this belief had coloured his perception of events.

Instead, the AAT ruled that the supervisor had merely engaged in an appropriate course of action after finding that the worker had engaged in two separate breaches of the Australia Post Code of Ethics. These discoveries were made in the context of the worker’s history of unexplained underperformance. It was quite reasonable in these circumstances that a manager inform an employee they would be observed and constructive comments on performance would be provided. Moreover, the supervisor’s actions in initiating formal counselling were in accordance with Australia Post policy and the supervisor had raised the possibility of other employment only as a real alternative for an underperforming employee.

The AAT ruled that the supervisor had not isolated the worker in the manner he had claimed. It was not unreasonable to adjust the worker’s work load and his altered meal times were a corollary of this. It also ruled that the supervisor had not humiliated the worker in public by screaming at him because it did not accept the worker’s evidence of this event.

The AAT concluded that this was not a systemic case of bullying over a prolonged period of time even though the worker perceived it to be. With the exception of the supervisor’s raising of the worker’s history dating back to 1993, the AAT found that the steps he had taken amounted to reasonable management action taken in a reasonable manner. Accordingly, the worker was not entitled to compensation.

*Hill and Australian Postal Corporation*[2011] AATA 186