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Employment, Workplace Relations & Safety

Landmark High Court Decision Expands Employer Liability for Breach of Contract to Psychiatric Injury

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On 11 December 2024, the High Court overturned 115 years of legal precedent in finding that workers who have their employment terminated in breach of their contract of employment can now claim compensation for a psychiatric injury (*Elisha v Vision Australia Ltd* [2024] HCA 50).

In reaching this verdict, the High Court ordered the employer, Vision Australia, to pay \$1.4 million to Adam Elisha who had his employment terminated after a misconduct allegation was upheld as part of an internal disciplinary process.

Until the High Court's decision, the longstanding position at law has been that a psychiatric injury caused by the breach of an employment contract cannot be compensated (*Addis v Gramophone Company Ltd* [1909] AC 488).

Addis was dismissed by the Gramophone Company without cause or notice, prompting him to sue the company for the loss of his salary and the damages he incurred due to the humiliating manner of his dismissal.

In its judgment, the House of Lords ruled that damages for wrongful dismissal are primarily confined to the financial loss resulting from the breach of contract, specifically the wages or salary that would have been earned had the contract been properly fulfilled.

The case of *Addis* set a precedent that claims for emotional distress, such as mental anguish or humiliation caused by the manner of dismissal, cannot be compensated unless explicitly stipulated in the contract.

In overturning this longstanding precedent, the High Court noted that for over 30 years, psychiatric injury caused by a breach of contract could be compensated, and there was no carve-out for particular classes of contracts, including employment contracts. Times have changed, and there is a more sophisticated understanding of the difference between mental distress and actual psychiatric illness.

Background: Path to the High Court

The worker, Mr Elisha was employed by Vision Australia in September 2006.

In March 2015, Mr Elisha was involved in an incident while staying at a hotel during travel for his work duties. The circumstances of the incident were disputed. The incident was reported to Mr Elisha's manager, who, in email correspondence with Vision Australia's human resources staff, stated that she was unsurprised by the allegation given previous reports of allegations of aggressive behaviour.

Mr Elisha was subsequently stood down and asked to attend a meeting two days later by his employer to discuss the allegations.

Mr Elisha's employment was terminated on 29 May 2015, following his employer's decision to accept the hotel proprietors version of events over that which had been provided by Mr Elisha.

After having his employment terminated, Mr Elisha was diagnosed with a major depressive disorder.

In June of 2015, Mr Elisha lodged an unfair dismissal application with the Fair Work Commission (FWC).

Mr Elisha's unfair dismissal application before the FWC was settled by way of a deed of settlement.

A term of the deed of settlement was that Mr Elisha was to be paid a net amount of \$27,248.68.

In August of 2020, Mr Elisha commenced proceedings against Vision Australia in the Supreme Court of Victoria claiming that he had suffered psychiatric injury as a result of Vision's conduct. He alleged that his employment contract, by virtue of Vision's policies included a term requiring Vision to follow "due process" when investigating wrongdoing (Policies), and they had failed to do so. He also pursued an alternative claim in tort, alleging Vision owed and breached a duty of care to him, in respect of the process by which his employment came to be terminated.

At first instance, the primary judge characterised the disciplinary process as "a sham and a disgrace" and held that Vision Australia breached the 2015 Disciplinary Procedure, which was incorporated into Mr Elisha's contract of employment, by failing to provide Mr Elisha with a letter containing the allegations upon which Vision Australia ultimately acted in terminating his employment. The primary judge awarded damages for breach of contract, concluding that the risk of psychiatric illness was not too remote. The primary judge rejected Mr Elisha's alternative claim for damages for breach by Vision Australia of a duty of care to provide a safe system of investigation and decision making with respect to discipline and termination of employment, concluding that the claim rested upon a duty of care that was not presently recognised by the common law.

Following the decision of the VSC, Vision Australia was granted leave to appeal to the Supreme Court of Victoria Court of Appeal on the following grounds:

1. Justice O'Meara erred in finding that Vision's policies formed part of Mr Elisha's contract of employment; and
2. Justice O'Meara erred in finding that Vision breached Mr Elisha's contract of employment; and
3. Justice O'Meara erred in awarding damages.

The Court of Appeal allowed Vision Australia's appeal and found that damages for psychiatric injury were unavailable for a breach of contract other than where the psychiatric injury was consequent upon physical injury caused by the breach or where the object of the contract was to provide enjoyment or relaxation; and that Mr Elisha's psychiatric injury was too remote from Vision Australia's breach.

Mr Elisha was then granted leave to appeal to the High Court of Australia on 7 March 2024.

The High Court's Decision

The High Court was tasked with answering the following questions:

1. Whether the Court of Appeal erred in concluding damages for psychiatric injury suffered by Mr Elisha was not recoverable for breach of contract; and
2. Whether the Court of Appeal erred in concluding Vision did not owe a duty to take reasonable care to avoid injury to Mr Elisha in its implementation of processes leading to and resulting in termination of his employment.

In reaching its decision, the High Court rejected Vision Australia's argument that its disciplinary procedure was not incorporated into Mr Elisha's employment agreement and found that psychiatric injuries are a part of a species of injury for which damages are recoverable for breach of contract. The High Court went on to find that Mr Elisha's loss was not too remote because the kind of damage suffered (psychiatric injury) and the general manner of its occurrence was within the reasonable contemplation of the parties, at the time of the contract, as a serious possibility.

Key Takeaways for Employers

In reaching this decision the High Court has made it clear that workers can now recover damages for psychiatric injuries which are connected to a breach of their contract of employment.

The decision reflects societal and legislative changes since the Addis decision with the High Court emphasising that "a great deal of water has passed under the bridge of Addis in the United Kingdom", suggesting that the principle of this case had been "overtaken" by other legislation and case law that subsequently could not be "transplanted to Australia".

In response to the High Court's decision, employer's may wish to review their contracts of employment and workplace policies in 2025 to:

1. Ensure contracts of employment and workplace policies are consistent with each other; and
2. Consider whether workplace policies are incorporated into contracts of employment and, if so, is it appropriate to seek to change or modify this approach to manage this new risk; and
3. Ensure compliance with any workplace policies, in particular disciplinary procedures, that remain a contractual obligation, during procedures particularly where these result in dismissal.

If you wish to discuss any aspect of this recent decision from the High Court or require specialist assistance in relation to your business's disciplinary procedures, please contact one of our employment law experts.



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