

**QUEENSLAND INDUSTRIAL RELATIONS COMMISSION**

CITATION: *Lockyer Valley Regional Council v Simon Blackwood (Workers' Compensation Regulator)* [2015] QIRC 085

PARTIES: **Lockyer Valley Regional Council**  
(Appellant)

v

**Simon Blackwood (Workers' Compensation Regulator)**  
(Respondent)

CASE NO: WC/2014/341

PROCEEDING: Appeal against decision of Simon Blackwood (Workers' Compensation Regulator)

DELIVERED ON: 15 May 2015

HEARING DATES: 24, 26 and 27 March 2015

MEMBER: Industrial Commissioner Fisher

ORDERS:

- 1. The appeal is allowed.**
- 2. The decision of the Regulator is set aside.**
- 3. A new decision rejecting the application for compensation be substituted in lieu of the Regulator's decision.**
- 4. The Regulator is to pay the Appellant's costs of and incidental to the appeal.**

CATCHWORDS: WORKERS' COMPENSATION - APPEAL AGAINST DECISION - application for compensation - where the appellant bears the onus on the balance of probabilities of proving the decision of the respondent was wrongly made - whether employment the major significant contributing factor - whether reasonable management action taken in a reasonable way - not satisfied employment was the major significant contributing factor to the injury - injury is not excluded by s 32(5) of the Act - appeal allowed.

CASES: *Workers' Compensation and Rehabilitation Act 2003, s 32*

*State of Queensland (Queensland Health) AND Q-Comp AND Beverley Coyne* [2003] 172 QGIG 142  
*Groos v WorkCover Queensland* [2000] 165 QGIG 106

*Federal Broom Co Pty Ltd v Semlitch* (1964) HCA 34; 110 CLR 626

*Newberry v Suncorp Metway Insurance Ltd* [2006] QCA 48

*Croning v Workers' Compensation Board of Queensland* (1997) 156 QGIG 100

*Bowers v WorkCover Queensland* (2002) 170 QGIG 1  
*QANTAS Airways v Q-COMP* (2006) 181 QGIG 301

APPEARANCES:

Mr P.B. Rashleigh, Counsel instructed by Kaden Boriss Brisbane for the Appellant.

Mr P.B. O'Neill, Counsel directly instructed by Simon Blackwood (Workers' Compensation Regulator) for the Respondent.

**Decision**

- [1] The Lockyer Valley Regional Council has appealed against the decision of the Review Unit, Workers' Compensation Regulator which accepted the application for workers' compensation by Paul Reisenleiter. In making this decision the Regulator set aside the decision of Local Government Workcare which had rejected the application. Mr Reisenleiter's application for compensation was for a psychological/psychiatric injury.
- [2] The Council bears the onus on the balance of probabilities of proving the decision of the Regulator was wrongly made.<sup>1</sup> The Council accepts that Mr Reisenleiter was a worker under the *Workers' Compensation and Rehabilitation Act 2003* but has put in issue whether he suffered an injury within the meaning of s 32 of that Act. In particular, the Council contends that employment was not the major significant contributing factor to the injury. In the alternative, if Mr Reisenleiter suffered an injury within the meaning of s 32, then the injury is not compensable because the Council took reasonable management action in a reasonable way.

**Brief Facts**

- [3] Mr Reisenleiter commenced with the Council in June 2005. In 2013 and 2014 when the events relevant to this appeal occurred, he was working in the role of a Jetpatch Operator and performing traffic control duties when the Jetpatcher was in the process of being decommissioned. Mr Reisenleiter worked from the Gatton depot.
- [4] In late 2012, a series of interactions occurred between Mr Reisenleiter's wife, who was also then an employee of the Council and Brett Qualischefski, who was employed by the Council at that time as a Resources Coordinator. Ms Reisenleiter made a complaint

---

<sup>1</sup> *State of Queensland (Queensland Health) AND Q-Comp AND Beverley Coyne* [2003] 172 QGIG 142.

to Council which triggered an investigation. Livingstones, a firm of industrial relations consultants, was engaged by the Council to undertake the investigation of the complaint. Mr Qualischefski was interviewed as part of this process. The result of the investigation was a detrimental finding against Mr Qualischefski in respect of one incident. The Council disciplined Mr Qualischefski but he remained employed with the Council in the same role. Certain safeguards were put in place by the Council to ensure Mr Qualischefski did not have any contact with Ms Reisenleiter.

- [5] Although Ms Reisenleiter did not give evidence, Mr Reisenleiter said both of them were dissatisfied with the outcome of the investigation. Mr Reisenleiter sought a meeting with the Human Resources section of the Council. The meeting was held in mid-January 2013 with Shane Brown, the Human Resources Manager and Craig Drew, Coordinator, People, Engagement and Culture (herein after referred to as HR). There is some dispute as to whether both Mr and Ms Reisenleiter attended the meeting but nothing turns on this.
- [6] The evidence establishes that at the meeting:
- Mr Reisenleiter was unhappy with the outcome of the investigation and the penalty imposed on Mr Qualischefski;
  - Mr Reisenleiter was frustrated that the Council had not done anything to help his wife or him; and
  - Mr Reisenleiter was very angry with Mr Qualischefski and threatened to punch him.
- [7] Over the ensuing months, Ms Reisenleiter made a further complaint about Mr Qualischefski having his break, with his co-workers, near her workspace. The Council asked him to move to another location, which he did.
- [8] In January 2013, Mr Reisenleiter directed a comment to Mr Qualischefski as he walked through the yard. However, he had no other interaction with Mr Qualischefski at work that year. Most days, primarily when he returned to the depot in his truck on completing his duties, Mr Reisenleiter saw Mr Qualischefski from a distance. Mr Reisenleiter did not make any complaints to Mr Drew in 2013 after the January meeting about Mr Qualischefski, although he raised other workplace issues.
- [9] In late 2013, Mr Qualischefski was disciplined again by Council for another, unrelated incident of a different type. He was demoted. Myles Fairbairn, the Executive Manager Infrastructure, Works and Services had been responsible for making the disciplinary decision and was handed the responsibility of finding another work location for Mr Qualischefski, which was a consequence of the demotion. He delegated that responsibility to others. On or about 20 January 2014, Mr Qualischefski was moved to another office where he was co-located with Tony Moore, Project Officer and Jason Whiting, Ganger, both in Infrastructure, Works and Services.
- [10] Mr Reisenleiter heard around the depot that Mr Qualischefski had engaged in the same type of behaviour as he had engaged in with Ms Reisenleiter. He approached the woman he believed to have been involved and asked her what had happened and whether she wanted to complain. Mr Reisenleiter also approached HR to enquire

whether further complaints had been made about Mr Qualischefski and was advised there had not been.

- [11] The Jetpatcher that Mr Reisenleiter operated was progressively coming off line and Mr Reisenleiter was required to perform traffic control duties. He reported to Mr Moore when he operated the Jetpatcher and from time to time when he was allocated traffic control duties. Mr Reisenleiter went into the office in the morning to obtain his work allocation for the day possibly for a few minutes when he was on traffic control duties and up to 15 minutes when operating the Jetpatcher. He occasionally returned to the office at the end of the day.
- [12] When Mr Qualischefski was co-located into the office, Mr Reisenleiter said he came face to face with him, albeit they did not interact. Mr Moore confirms that evidence. As a result I reject the evidence of Mr Qualischefski who said he never saw Mr Reisenleiter in the office. Mr Reisenleiter went into the office as usual for about one and a half weeks in late January/early February 2014 and then refused to do so. Mr Moore queried him about his refusal and from their conversation, understood there was an issue between him and Mr Qualischefski, but not the detail of it.
- [13] Following Mr Qualischefski's relocation, Mr Reisenleiter contacted Mr Drew and wanted to have a discussion. Mr Drew said that would only occur with the decision maker present. I prefer the evidence of Mr Reisenleiter that a meeting between him, Mr Drew and Mr Fairbairn occurred within weeks of Mr Qualischefski being placed into Mr Moore's office, *viz.*, February 2014. No notes of the meeting were taken. As a result differences arise both in respect of the date of the meeting as well as the issues raised by Mr Reisenleiter. On Mr Reisenleiter's version, he expressed his dissatisfaction over Mr Qualischefski being moved into the office where he reported and indicated that he could not understand Council's reasoning for doing so. He requested Mr Qualischefski be moved.
- [14] Mr Drew said that Mr Reisenleiter was upset because he understood that Mr Qualischefski had engaged in the same type of behaviour as had affected his wife and the Council had not dealt with the matter appropriately. They had just moved the problem. Mr Drew disabused Mr Reisenleiter that Mr Qualischefski had engaged in the repeat behaviour. He conceded that Mr Reisenleiter had complained about Mr Qualischefski being placed in the office where he reported for work and that this was deliberately done by the Council. Mr Drew said the meeting concluded with advice to Mr Reisenleiter to contact him if any other issues arose and a meeting would be scheduled. He denied that the Council had agreed to a follow up meeting to advise Mr Reisenleiter whether Mr Qualischefski could be moved.
- [15] Mr Fairbairn could not recall Mr Reisenleiter expressing his displeasure over Mr Qualischefski being placed in the office where he was required to attend but conceded this may have occurred. Mr Reisenleiter's primary concern was that he wanted Mr Qualischefski dismissed because of his misapprehension that Mr Qualischefski had engaged in repeat inappropriate behaviour. Mr Reisenleiter also raised a secondary issue about his being redeployed to undertake traffic control duties because the Jetpatcher had been decommissioned. Mr Fairbairn said the meeting concluded on the basis that other opportunities for Mr Reisenleiter would be explored and they would have a further meeting to discuss the outcome.

- [16] Mr Reisenleiter waited for about six weeks and when no response was forthcoming, he contacted Mr Drew and another meeting was arranged.
- [17] That meeting, between Mr Drew, Mr Fairbairn and Mr Reisenleiter, occurred on 2 April 2014. Again no notes of the meeting were taken. Mr Reisenleiter was informed by the Council that no changes were to be made.
- [18] Mr Drew said Mr Reisenleiter was visibly upset and angry and became progressively more so as the meeting progressed. Mr Reisenleiter wanted Mr Qualischefski moved from the depot. The meeting ceased. Later that day Mr Reisenleiter provided a medical certificate to Council for time off work.

**Did Mr Reisenleiter sustain a personal injury?**

- [19] Although the focus of the Council's case is that employment was not the major significant contributing factor, the issue of whether Mr Reisenleiter sustained a personal injury was alluded to. In this respect, the Council relied on the evidence of Nicole Prendergast, Psychologist, to whom Mr Reisenleiter was referred by LGW. In her report to LGW dated 26 May 2014, and confirmed by her oral evidence, Ms Prendergast said:

"It is my clinical opinion that at the time of the assessment (13/05/2014), Mr Reisenleiter presented with sub-clinical levels of mood that has predominantly resolved. ... I note that his GP had a provisional diagnosis of "*anxiety/depression*" on 10/04/2014, however it is apparent that symptoms that were present as reported by the GP have now predominantly resolved. It is not possible to state with certainty as to whether Mr Reisenleiter's symptoms had reached clinical significance at the time of his GP visit on 10 April 2014 and determine the impact of psychotropic medication, which may account for the reduction in negative mood symptoms. It is possible that he met DSM-5 diagnostic criteria for an adjustment disorder with depressed mood initially, however, in my clinical opinion it appears more likely that Mr Reisenleiter's symptoms have been at a subclinical level throughout."

- [20] For its submission that Mr Reisenleiter sustained a personal injury, the Regulator relies on the opinion of Dr Winston Smit, General Practitioner. Mr Reisenleiter consulted Dr Smit on 2 April 2014. Dr Smit recorded in his notes of that consultation that Mr Reisenleiter was depressed and anxious. He issued a workers' compensation medical certificate dated 10 April 2014 with the diagnosis of "*anxiety/depression*". Dr Smit certified that Mr Reisenleiter was totally incapacitated for employment from 2 April 2014 to 2 May 2014 and noted that Mr Reisenleiter was being provided treatment by way of counselling and medication. Subsequent workers' compensation medical certificates repeated the diagnosis.
- [21] Greg Jones was Mr Reisenleiter's treating Psychologist. Mr Reisenleiter had been referred to him by Dr Smit. In his report dated 25 August 2014, Mr Jones stated that Mr Reisenleiter was suffering from an Adjustment Disorder (with depressed mood). In his oral evidence he said that psychological testing that he performed on Mr

Reisenleiter at his first consultation on 7 May 2014, assisted him in arriving at his diagnosis.

- [22] The Regulator relies on the decision in *Groos v WorkCover Queensland*,<sup>2</sup> where Hall P held that the Act does not confine an injury to cases where there has been a DSM-IV diagnosis. Further, that, "where there is no evidence to the contrary, the existence of the injury may be inferred from the existence of the impairment."<sup>3</sup>
- [23] I am satisfied that Mr Reisenleiter sustained a personal injury on the basis of the diagnosis made by Dr Smit. He saw Mr Reisenleiter on the day of his last meeting with the Council and recorded anxiety and depression. He prescribed medication for Mr Reisenleiter's condition. The following day he completed a Mental Health Care Plan and referred Mr Reisenleiter for counselling by Mr Jones. On 10 April 2014, Dr Smit certified Mr Reisenleiter's incapacity for work from 2 April 2014. Mr Reisenleiter's symptoms may not have given rise to a DSM-5 diagnosis but it is clear that he was incapacitated for work. There is no evidence to the contrary from Ms Prendergast or the Council. Further, the opinion of Ms Prendergast is that Mr Reisenleiter might have had an injury not that he did not have an injury.

**Was employment the major significant contributing factor to the injury?**

- [24] The Council disputes employment was the real and effective cause of the injury and argues it was the setting. The basis of this submission is that the issues giving rise to any injury had nothing to do with the employment of Mr Reisenleiter, rather, they concerned the employment of Ms Reisenleiter. Further, the evidence of Mr Jones was that the movement of Mr Qualischefski into the office which Mr Reisenleiter attended was the "straw that broke the camel's back". A "straw" cannot be the major significant contributing factor.
- [25] The Regulator relies on the report of Mr Jones in which he expressed his opinion that employment was the major significant contributing factor. In addition, the Regulator submits the evidence of Mr Reisenleiter is that in 2013 he had not complained about Mr Qualischefski to HR and had regularly attended for work, performing his duties as usual. It was only when Mr Qualischefski was moved into the office where he reported that he became stressed.

- [26] Dr Smit stated in his report to LGW on 5 May 2014 that Mr Reisenleiter:

"...stated that a fellow worker who has made inappropriate advances towards his wife had been transferred to the section in which he works and that this was causing him to become depressed and anxious."

- [27] Mr Jones, in his report to LGW on 25 August 2014, stated:

"While, I believe that Mr Reisenleiter sustained a work related injury over a period of time in that the first incident involved his wife being sexually harassed in the workplace; moving the perpetrator into Mr Reisenleiter's work area without

---

<sup>2</sup> *Groos v WorkCover Queensland* [2000] 165 QGIG 106.

<sup>3</sup> *Ibid.*

due regard to Mr Reisenleiter ['s] welfare seems to be the critical incident which caused him to spiral into depression."

[28] Ms Prendergast stated in her report:

"Mr Reisenleiter was not exposed to any workplace incidents rather it was his wife, who also works with Council. It also appears that Mr Reisenleiter is concerned and angry that the staff member responsible for the sexual harassment against his wife has not been terminated from Council, leading to feelings and thoughts of retribution against the staff member, and subsequently impacting Mr Reisenleiter's mood and relationships (i.e., with his wife)."

[29] In *Federal Broom Company Pty Limited v Semlitch*, Windeyer J held:

"When the Act speaks of 'the employment' as a contributing factor it refers not to the fact of being employed, but to what the worker in fact does in his employment. The contributing factor must in my opinion be either some event or occurrence in the course of the employment or some characteristic of the work performed or the conditions in which it was performed."<sup>4</sup>

[30] In *Newberry v Suncorp Metway Insurance Limited*,<sup>5</sup> de Jersey CJ and Muir J agreed with Keane JA when he said:

"[27] It cannot be disputed that, when s 32 of the WCRA speaks of 'employment' contributing to the worker's injury, it is referring to employment as a set of circumstances, that is to the exigencies of the employment of the worker by the employer. The legislation is referring to 'what the worker in fact does during the course of employment'. The requirement of s 32 of the WCRA that the employment significantly contribute to the injury is apt to require that the exigencies of the employment must contribute in some significant way to the occurrence of the injury which the claimant asserts was caused by the breach of duty of the person (not the employer) against whom the claim is made."

and

"[42] ... It is clear, as a matter of language, that the words 'if the employment is a significant contributing factor to the injury' are intended to be a requirement of connection between employment and injury additional to each of the requirements that the injury occur in the course of employment or arising out of the employment. It cannot, in my respectful opinion, sensibly be read as lessening the stringency of the latter or increasing the stringency of the former."

[31] As de Jersey P held in *Croning v Workers' Compensation Board of Queensland*, for employment to be a significant contributing factor, it must be the real, effective cause.<sup>6</sup>

---

<sup>4</sup> *Federal Broom Company Pty Limited v Semlitch* (1964) HCA 34; 110 CLR. 626, 641.

<sup>5</sup> *Newberry v Suncorp Metway Insurance Limited* [2006] QCA 48.

<sup>6</sup> *Croning v Workers' Compensation Board of Queensland* (1997) 156 QGIG 100, 101.

- [32] Although *Newberry* and *Croning* were decided under legislation which required employment to be "a significant contributing factor" rather than the current legislative test of "the major significant contributing factor", the principle concerning the stringency of the connection between employment and injury is not diminished, arguably it is heightened under the legislation which governs this appeal.
- [33] Whether employment is the major significant contributing factor to the injury is a mixed issue of fact and law.<sup>7</sup> In determining this question, "medical evidence is often helpful but not necessarily decisive."<sup>8</sup>
- [34] The evidence of Mr Reisenleiter is that he was angry about and dissatisfied with the outcome of the investigation of Ms Reisenleiter's complaint and the penalty imposed on Mr Qualischefski. His upset was communicated to Mr Drew at the meeting in January 2013. Mr Reisenleiter threatened to punch Mr Qualischefski, although Mr Drew did not consider this was a credible threat. It is clear from this evidence that Mr Reisenleiter was angry and upset about Mr Qualischefski's punishment not being commensurate with his actions as he believed them to be.
- [35] In January 2013, Mr Reisenleiter directed his dissatisfaction to Mr Qualischefski by making a comment towards him. Other than this incident, Mr Reisenleiter's evidence is that during 2013 he came to the realisation that management were not going to do anything about Mr Qualischefski and he tried to move on. He did not complain to Mr Drew about Mr Qualischefski and regularly attended work. He did not show any of the usual symptoms of anxiety or depression. Mr Reisenleiter saw Mr Qualischefski in the yard frequently on his return to the depot but did not react. The Regulator submits this behaviour shows that Mr Reisenleiter was not suffering or beginning to suffer an injury in 2013. No other, personal factors were involved in the development of Mr Reisenleiter's injury.
- [36] However, I do not accept that Mr Reisenleiter "realised that there was nothing getting done, so I just left it". He might not have pressed the issue any further with HR but it is clear that he had not "left it". Had that been the case he would not have approached another woman when he heard about alleged repeat behaviour on the part of Mr Qualischefski. He encouraged her to complain. To actively seek out another employee and to encourage her to complain might in some circumstances be the actions of a concerned co-worker. Here, the motivation was to endeavour to have another complaint raised about Mr Qualischefski so that he would be punished to the standard Mr Reisenleiter considered appropriate, *viz.*, dismissal. This is not the behaviour of a person who has moved on or let go of the issues of the past. It shows that Mr Reisenleiter had continued to ruminate on the perceived injustice of his wife's treatment, particularly that Mr Qualischefski had not been sufficiently punished.
- [37] This view is supported by the issues Mr Reisenleiter raised about Mr Qualischefski at the meeting with Mr Drew and Mr Fairbairn in February 2014. He expressed his discontent over the insufficiency of the punishment meted out to Mr Qualischefski. Mr Reisenleiter said he told them that if they had done "the right thing" by punishing Mr Qualischefski appropriately following his wife's complaint then he would not have been

---

<sup>7</sup> *Newberry v Suncorp Metway Insurance Limited* [2006] QCA 48 [40], noting the changed legislative test.

<sup>8</sup> *Groos v WorkCover Queensland* [2000] 165 QGIG 106.

relocated to the office where he reported. In my view, the relocation of Mr Qualischefski to where Mr Reisenleiter reported, revived his lingering resentment and dissatisfaction with Mr Qualischefski. This view accords with that of Ms Prendergast. Mr Jones also attributed Mr Reisenleiter's condition as being causally traceable to Mr Qualischefski's interactions with Ms Reisenleiter.

- [38] Although the relocation of Mr Qualischefski into the office where Mr Reisenleiter was required to report was an occurrence or event that impacted on Mr Reisenleiter, it was as Mr Jones described, the proverbial "straw". The major significant contributing factor was the harassment of Ms Reisenleiter, the outcome of the investigation into her complaint and the insufficient penalty imposed on Mr Qualischefski. Mr Reisenleiter's issues with Mr Qualischefski were unrelated to the exigencies of his employment as defined by Keane JA in *Newberry*. They were not an incident of his employment but of his wife's. In the circumstances I am not satisfied that Mr Reisenleiter's employment was the major significant contributing factor to his injury.
- [39] In light of these findings it is unnecessary to consider whether Mr Reisenleiter's injury is excluded because it arose out of or in the course of reasonable management action taken in a reasonable way. However, I will consider the exclusionary provision in the event I am wrong about the findings on injury.

**Did LVRC take reasonable management action in a reasonable way?**

- [40] In relation to the management actions taken by the Council, Mr Reisenleiter's initial concerns were with the findings of the investigation and the disciplinary decision of the Council in respect of Mr Qualischefski. The Council acted on the findings of the Consultant. Given that only one allegation was substantiated and this was found to be at the lower end, the Council decided to not dismiss Mr Qualischefski but to impose another, lesser disciplinary penalty. Mr Reisenleiter "was frustrated how lightly [Qualischefski] got off ... with a slap on the wrist."
- [41] Mr Reisenleiter was also upset that the Council had done nothing to help him and his wife. However, the evidence of Mr Drew establishes that the Council offered employee assistance and, when that was rejected, arranged for both Mr and Ms Reisenleiter to attend psychological counselling. Relevantly, in the case of Mr Reisenleiter, Mr Drew arranged for him to have time off work to attend.
- [42] The process of the investigation and its findings were not part of this appeal. Nor were the actions taken by the Council either in respect of the disciplinary action taken against Mr Qualischefski and the support provided to Mr Reisenleiter. The case focussed on the events occurring in 2014. Accordingly, I am not required to consider whether the Council's actions taken regarding the matters identified in this paragraph were reasonable and reasonably taken.
- [43] On the Regulator's case, it was unreasonable management action taken in an unreasonable way both in respect of moving Mr Qualischefski into the room where Mr Reisenleiter reported to his supervisor and in not addressing that error when it was raised by Mr Reisenleiter. In contrast, the Council notes that Mr Reisenleiter had not raised any issues about Mr Qualischefski with the Council since January 2013. The Council also disputes that the main issue raised by Mr Reisenleiter in the meetings with

Mr Drew and Mr Fairbairn was Mr Qualishefski being placed in the office where Mr Reisenleiter reported but rather, it was his being taken off the Jetpatcher. At best, it was the second meeting where Mr Reisenleiter said that he wanted Mr Qualishefski "gone".

- [44] It was Mr Reisenleiter's evidence that he did not report any issues he might have had with Mr Qualishefski to Mr Drew over the course of 2013. This is despite him seeing Mr Qualishefski regularly. Given that no concern had been articulated to HR by Mr Reisenleiter about Mr Qualishefski for about 12 months, it was not unreasonable for HR to act on the basis that no residual issues remained. It might have been prudent for HR to inform Mr Fairbairn of the background involving Mr Reisenleiter and Mr Qualishefski when he was giving or delegating consideration to where to locate Mr Qualishefski but in the circumstances this omission cannot be construed as unreasonable management action taken in an unreasonable way.
- [45] It is also true that no thought was given by the Council to the effect on Mr Reisenleiter by placing Mr Qualishefski into the office where he reported or to warn him this might occur. Perhaps as a matter of courtesy this could have been done. However, this submission also assumes that Council remained alive to the residual concerns on the part of Mr Reisenleiter, when his own evidence was that he was not so affected. In my view, knowledge that Mr Reisenleiter remained dissatisfied, angry and upset about Mr Qualishefski cannot be imputed to the Council when Mr Reisenleiter had not expressed any concern to HR for 12 months. That the Council neglected to consult or give advance notice to Mr Reisenleiter of Mr Qualishefski's new placement was at worst a blemish.
- [46] It is surprising that Mr Drew did not take notes of any meeting or make a contemporaneous file note. In respect of the first meeting in 2014, had either of those actions been undertaken then it is unlikely the differences would have emerged between the respective views over its date, purpose and outcomes. However, I have reached the view that at this meeting Mr Reisenleiter expressed his displeasure over the location of Mr Qualishefski, in light of the issues which had occurred between his wife and Mr Qualishefski, and to seek Mr Qualishefski's removal elsewhere. The issue of the Jetpatcher was not his primary concern.
- [47] I am satisfied on the evidence of Mr Reisenleiter and Mr Fairbairn that another meeting was to be arranged by HR. It was incumbent on HR to arrange that meeting and not leave Mr Reisenleiter waiting for any length of time particularly given he had again expressed his anger about Mr Qualishefski. However, the evidence does not show that the Council gave any meaningful consideration to the removal of Mr Qualishefski from the office. It was not an option in light of the evidence of Mr Fairbairn and Mr Moore that there was nowhere else to place him.
- [48] At the meeting of 2 April 2014, Mr Reisenleiter was informed that no changes were being made. The Council offered mediation between Mr Reisenleiter and Mr Qualishefski but this was roundly rejected by Mr Reisenleiter.
- [49] The actions by the Council after the first meeting are open to criticism. The Council could have responded more expeditiously and not awaited further contact from Mr Reisenleiter. Better consideration could also have been given to how to manage the

situation where Mr Reisenleiter was required to report to an office where Mr Qualischefski was located. However, the reasonableness of these actions do not need to be considered in determining whether the injury is excluded.

- [50] Mr Jones said the critical incident in Mr Reisenleiter's decompensation was moving Mr Qualischefski into the office without regard to Mr Reisenleiter's welfare. Dr Smit also opined that Mr Reisenleiter's stress was caused by the movement of Mr Qualischefski into the office. Mr Reisenleiter had persevered for a short period with attending the office until he reached a point where he could not continue to encounter in close quarters the perpetrator of the inappropriate behaviour towards his wife and who he considered had been treated leniently by the Council. His refusal to attend the office where Mr Qualischefski was located indicates his coping mechanisms had been reduced. However, I have found that in locating Mr Qualischefski in the office and not providing Mr Reisenleiter with advance notice of that placement the Council did not act unreasonably. In my view the only conclusion to be reached is that the injury arose out of or in the course of reasonable management action taken in a reasonable way.
- [51] The Council's actions were not perfect, but management action is not required to be so.<sup>9</sup> However, that they were not perfect or best practice does not mean they fail the test in s 32(5)(a).
- [52] The injury is withdrawn from s 32(1) by the operation of s 32(5)(a) of the Act.

### **Orders**

- [53] The appeal is allowed.
- [54] The decision of the Regulator is set aside and a new decision rejecting the application for compensation made by Paul Reisenleiter is substituted.
- [55] The Regulator is to pay the Appellant's costs of and incidental to the appeal.
- [56] Order accordingly.

---

<sup>9</sup> *Bowers v WorkCover Queensland* (2002) 170 QGIG 1; *QANTAS Airways v Q-COMP* (2006) 181 QGIG 301.