SUPREME COURT OF QUEENSLAND

CITATION:	*Ilosfai v. Excel Technik Pty Ltd* [2003] QSC 275
PARTIES:	**FREDERICK ILOSFAI** (plaintiff) **v** **EXCEL TECHNIK PTY LTD** **ACN 056 219 722** (defendant)
FILE NO:	7317 of 2000
DIVISION:	Trial
PROCEEDING:	Trial
ORIGINATING COURT:	Supreme Court Brisbane
DELIVERED ON:	1 September 2003
DELIVERED AT:	Brisbane
HEARING DATE:	6 August 2003 - 8 August 2003
JUDGE:	Chesterman J
ORDER:	**1. Judgment for the defendant against the plaintiff** **2. Costs to be assessed on the standard basis**
CATCHWORDS:	TORTS - NEGLIGENCE – ESSENTIALS OF ACTION FOR NEGLIGENCE - DUTY OF CARE – REASONABLE FORESEEABILITY OF DAMAGE - WHERE NERVOUS SHOCK OR MENTAL DISORDER - whether employer failed to provide employee with a safe place of work or system of work – whether psychiatric injury sustained by employee was a reasonably foreseeable consequence of employment conditions when installing security systems in a prison watch-house TORTS- NEGLIGENCE- whether breach of statutory duty – s28(1) *Workplace Health and Safety Act 1995* *Workplace Health and Safety Act 1995*, s.28(1) *Chomentowski v. Red Garter Restaurant Pty Ltd* (1970) 92 W.N. (NSW) 1070 (cited) *Modbury Triangle Shopping Centre Pty Ltd v. Anzil* (2000) 205 CLR 254 (cited) *Public Transport Corporation v. Sartori* [1997] 1 VR 168 (cited) *Tame v. New South Wales: Annetts v. Australian Stations Pty Ltd* [2002] HCA 35 (considered)

Wyong Shire Council v. Shirt (1979-1980) 146 CLR 40 (considered)

COUNSEL: J W Lee for the plaintiff

J B Rolls & R M Treston for the defendant

SOLICITORS: Keith Scott & Associates for the plaintiff

Bradley & Co for the defendant

[1] The defendant at all relevant times carried on the business of designing, supplying and installing security alarm systems in a variety of places including hotels, homes, factories and prisons. Between 22 April 1996 and 30 April 1999 it employed the plaintiff as a technician to install, commission and repair closed circuit television systems, alarm systems, access control systems, intercom systems and associated building service systems. The plaintiff was largely self-taught but was competent and skilful in his work which he performed to the complete satisfaction of the defendant until the last quarter of 1998 when a deterioration in the plaintiff's performance and productivity was noticed by Mr Brown, the defendant's managing director.

[2] In fact the plaintiff had begun to develop a psychiatric illness, depression, in the second half of 1998 which progressively diminished his motivation to work and his ability to discharge the obligations of his employment. He has not worked since his dismissal from the defendant's employment on 30 April 1999.

[3] The plaintiff attributes the onset of his depression to his employment. In particular he identifies two episodes which occurred during the course of his employment which were so stressful as to bring on his depressive illness. He alleges also that a lack of solicitation by the defendant for his wellbeing after those episodes caused or contributed to his depression. He claims damages for negligence and for breach of statutory duty against the defendant.

[4] An understanding of the plaintiff's case may be had from his statement of claim:

> '4. Between in or around June 1998 and the 30th April 1999 in the course of his employment, the Plaintiff:
>
> (a) Was working the Maroochydore Watch House where he received "death threats" from the prisoners leading to psychiatric injury; and
> (b) Whilst working at the Edward River Police Station and Watch House an attempt was made on the Plaintiff's life which also led to psychiatric injury.
>
> 5. The psychiatric injury following the events outlined in paragraph 4 above was a result of the Defendant's breach of its duties particularised in paragraph 3 hereof and in particular the Defendant:
>
> (a) Failed to provide the Plaintiff with a safe place of work and/or safe system of work;

PARTICULARS

(i) **Holidays**. After the events referred to in paragraph 4 above, the Defendant failed to ensure the Plaintiff had adequate breaks from work by way of holidays, thereby failing to minimise the risk of injury to the Plaintiff arising out of work related stress. The Defendant required the Plaintiff to work on 21 separate days being week-ends or public holidays between the 14th June 1998 and the 20th December 1998 inclusive (particulars of which are contained in a separate schedule). The Defendant had agreed to give the Plaintiff three weeks holiday from Christmas 1998 through to January 1999, but subsequently reneged on that offer, and required the Plaintiff to continue working during that period, so as to finish the job at Maroochydore;

(ii) **Training.** After the events referred to in paragraph 4 above, the Defendant gave the Plaintiff no instruction, training or warning in relation to the risk of injuries and in particular stress related injuries, and no training or instruction as to how to deal with the hostile environment the Plaintiff struck at places such as Maroochydore and Edward River;

(iii) **Pace of work.** After the events referred to in paragraph 4 above, the Defendant required the Plaintiff to work at an unreasonably rapid pace, such that the Plaintiff was exposed to risk of injury including stress related injury by virtue of working at such a pace, particularly in that the Defendant failed to recognise the Plaintiff needed more time to carry out his work following the incidents at Maroochydore and Edward River;

(iv) **Supervision.** After the events referred to in paragraph 4 above, the Defendant failed to supervise the way in which the Plaintiff was performing his tasks, in that the Defendant failed to observe the Plaintiff was working at an excessive pace, and failed to observe the Plaintiff was working in a hostile and threatening environment, leading to a risk of stress related injury and the Defendant failed to provide the Plaintiff with counselling in relation to the hostile environment and to train the Plaintiff and require

> him to work in a manner which did not carry with it the same risk of injury;
>
> (v) **Rest Breaks.** After the events referred to in paragraph 4 above, the Defendant failed to recognise the need for the Plaintiff to have rest breaks following the incidents at Edward River and Maroochydore, and failed to provide the Plaintiff with rest breaks sufficient to obviate the risk of injury;
>
> (vi) **Safety Meetings.** After the events referred to in paragraph 4 above, the Defendant failed to organise and hold any meetings of management and personnel to identify safety issues so as to prevent risk of injury;

[5] The plaintiff further alleges that the defendant, by Mr Browne, knew or ought to have known of these episodes and that they had caused him to become depressed and anxious.

[6] The defendant had won a contract to install surveillance cameras and a closed circuit television system into the watch-house at Maroochydore. The complex is large, consisting of about 50 cells and a processing or charge area into which prisoners are admitted prior to being detained in a cell or prior to release from custody. The surveillance system consisted of cameras installed in each cell, the images from which were displayed on monitors in a control console which was installed in an area behind the desk or counter in the charge area.

[7] The plaintiff's description of the first pleaded event was this:

> 'I was working directly at the charge counter … programming .. one of the systems … whilst they were processing some prisoners and whether I just glanced up for a moment and this fellow shouted at me "And what the fuck are you looking at?" and started racing towards me so the police officers had to restrain him … He was processed and taken to a cell. I just went about my work after that.'

[8] The plaintiff said that the event made him extremely nervous each time prisoners were transferred through the charge area and he endeavoured to stay away from the charge counter while the processing occurred. He felt threatened and was 'shocked, … trembling …' He felt afraid for his physical safety. (T.50.1-T.51.10)

[9] In cross-examination (T.91.50-T.93.20) it was established that the plaintiff was working behind the charge counter at the control console. One of the watch-house keepers, a police officer, was near him, also behind the counter, where he attended to the paperwork necessary to admit prisoners. The prisoner in question was brought in from the vehicle bay by two police officers who stood near him. He was not handcuffed. The prisoner was about eight feet from the plaintiff which distance included the physical barrier of the counter. As he moved towards the plaintiff he was restrained by the two police officers.

[10] It is likely the event occurred on or about 15 December 1998. On that day the plaintiff consulted a local general practitioner, Dr John, complaining of feelings of extreme anxiety and distress. The plaintiff maintained a diary in which he recorded events involving his work and some things of a personal nature. There is a note of his attendance upon Dr John but no reference to the incident involving the prisoner. No other employee of the defendant was present at the time and the plaintiff did not inform Mr Browne about it. He did not mention it to Dr John.

[11] The second pleaded incident, that at Edward River, probably occurred earlier in time than the other. The plaintiff was certain that it happened on his second last visit to Edward River and that can be dated by his diaries as being in June 1998. Edward River is a settlement on the west coast of Cape York about 300 kilometres south of Weipa. The white population did not exceed about 50 people, the composition of which changed frequently. It comprised mostly tradesmen or public servants attending in the course of their work. They mostly stayed at a boarding house. The aboriginal population was about 300. The defendant was awarded a contract to install a surveillance system in the police station and watch-house which is located about 200 metres from the boarding house.

[12] The plaintiff gave this evidence:

> 'I'd finished work at the watch-house … for the afternoon and I was walking back to my … accommodation … I heard someone yell "Hey you f- c-" and I didn't think at all for a moment it was directed towards me so I continued to walk back to my accommodation. That's when this person yelled … "Hey, you f- white c-". I then realised that perhaps it was directed towards me. So I turned back and there was a large aboriginal woman walking towards me and she said "I'm going to f- kill you." … I went into shock. I just froze and she kept on coming towards me. … As she got near me, she had something behind her back. … I can't say what it was. And when she was close enough to me she lunged for me and I stepped out of the way and she fell to the ground. …" '

[13] The plaintiff said he was 'in shock … in fear of (his) life … petrified.'

[14] The women was quite drunk which no doubt explains her fall. The plaintiff went to the police station where he spoke to an aboriginal police officer, or community liaison officer, who drove him the short distance back to the boarding house. On the way they passed the woman. The plaintiff was told that she had a criminal history and had been convicted of attempted murder. (T.52.15-.50)

[15] The episode is not recorded in the plaintiff's diary. There is a dispute about whether he told Mr Browne about it. They spoke regularly by telephone while the plaintiff was working at Edward River but Mr Browne is confident that the plaintiff did not mention this event to him. The plaintiff believes he did, though his evidence in chief on the point is less than clear. He said that he and Mr Browne spoke mostly about the progress of the work being undertaken at the watch-house. In addition, the plaintiff said that on one occasion he told Mr Browne that he was 'having difficulty because there was a lot of violence at times between the aboriginals. Most weekends … it would be almost impossible to sleep because there was …

yelling and screaming …'. He told Mr Brown that he 'couldn't wait to get out of there.'

[16] It does not appear from this that the plaintiff told Mr Browne in terms about the drunken aboriginal woman lunging at him and falling over. In cross-examination he admitted he could not remember what he told Mr Brown but, when pressed, he said that he had informed him that he had had 'a bit of a drama' and that he then told Mr Brown 'about this event'.

[17] There is no record of the incident in any crime report, occurrence sheet or police notebook kept at the Edward River police station. The plaintiff himself did not report it to an officer of the Queensland Police Service ('QPS'). The lack of any written record suggests that the police liaison officer did not pass it on to an officer of the QPS. In the ordinary course of events if a police liaison officer was informed of the commission of a crime he would notify its occurrence to a QPS officer, who would make a written record of it.

[18] The plaintiff's depression was manifesting itself in the second half of 1998. On 7 October of that year (the date is fixed by the plaintiff's diary) the plaintiff felt unable to cope with work when he woke that morning. It took him about half an hour to summon up the energy to telephone Mr Browne and tell him that he 'felt basically burnt out and needed some time off.' Mr Browne replied:

> '… You'll be right mate. Once you get to the job and become occupied you should be ok.'

The plaintiff did as suggested and went to work but felt no better. Mr Browne can remember the telephone call. His recollection was that the plaintiff did not say he felt unwell but accepted that the thrust of the plaintiff's complaint was that he was tired and run down.

[19] Soon after his dismissal the plaintiff appears to have made a claim for compensation to WorkCover Queensland. He was referred to Dr Jones, psychiatrist, who interviewed him on 26 May 1999. Dr Jones' report of the same date sets out the plaintiff's account of his symptoms and their onset. Relevantly it reads:

> 'Mr Ilosfai was put off work by his employer … The letter from his employer … indicated a level of dissatisfaction with Mr Ilosfai's work with the lack of output as the reason. However Mr Ilosfai had been attending his own doctor since Christmas 1998 and had symptoms of depression since 7 October 1998 or earlier. … He telephoned, his boss was supportive and it was suggested he take a few days off, but in fact he returned to work that day. There were, however, prevailing feelings of unhappiness which continued. … Further time off work was not taken, nor did he consult his own doctor until Christmas 1998 after an episode at work in Maroochydore prison where he had been working since August, but he had felt uncomfortable throughout that time. The episode was difficulty in breathing. He felt he would collapse. There were associated palpitations and sweating. This was probably a panic attack.'

It is to be noted that the plaintiff did not mention the event at Edward River to Dr Jones.

[20] The doctor thought the plaintiff had developed major depression in which motor retardation (i.e. slowing of all movements) was a central and the most prominent feature. The symptoms had been developing since at least October 1998 and had progressed in their severity despite being treated with anti-depressants since the beginning of 1999.

[21] His opinion as to the cause of the plaintiff's depression was:

> 'While major depression may arise without external cause, most commonly there is an interaction between external causes and internal process. It seems that Mr Ilosfai has been under substantial pressure of work … for some years and he has not taken annual leave. … Further he was working in Maroochydore prison, a work site that he found uncomfortable because of undue and unwanted pressure from the prisoners. It would be reasonable therefore to regard his work as the major stressor in precipitating this illness and probably in leading to its continuation, at least for the first few months after he ceased work. Beyond that time it is likely that the … illness itself … would become a more relevant factor …'

[22] The plaintiff was also seen by Dr Larder, psychiatrist, at the request of WorkCover on 17 January 2000 and 11 September 2000. It does not appear from his reports of 24 February and 19 September respectively that the plaintiff mentioned the occurrence at Edward River. The consultations with Dr Larder were apparently directed at obtaining his opinion about the most appropriate way of treating the plaintiff. Dr Larder does not express an opinion as to the cause of the plaintiff's depression though he diagnosed the depression and thought it was so severe as to preclude the plaintiff's working.

[23] The plaintiff was also referred to Professor Yellowlees, by WorkCover Queensland, for another psychiatric assessment. The professor saw the plaintiff on 5 December 2000 and took this history:

> '… He has recurring dreams of being shot or seeing various criminals in the jails where he worked putting in security systems. He said he still feels very much under threat, living in Logan, because he believes quite a number of the criminals he would have met in jail must live in his area and must know that he is or had been involved in their incarceration. He said that, whilst he never worked as a prison guard, he was threatened on some occasions by men in prisons, and described one event when he was threatened by an aboriginal person who was later charged with murder.'

There is some similarity in this last description to what the plaintiff said happened to him at Edward River. It is by no means the same account.

[24] The last account, in point of time, given to a psychiatrist was provided to Dr Reddan in June 2002. Dr Reddan examined the plaintiff at the request of the defendant's

solicitors for the purposes of the litigation. According to Dr Reddan's lengthy report the plaintiff told her:

> 'He stated that there were a number of incidents and conditions at his work that he regards as relevant. … While working … in the Edward River area, he was walking down a street when a large aboriginal women attempted to stab him … He stated that whilst he was installing a security system for Patrick's Corporation on the waterfront … management … instructed him that he was not to inform the workers of the nature of his work … When the waterside workers realised what he was doing … the workers would run their machines to within inches of cherry pickers on which he was working. … These incidents where the waterside workers threatened him went on for … three months … He worked in watch-houses in several locations over a two year period. He stated that on a daily basis he was threatened by prisoners … but the worst was at Maroochydore … He stated that usually prisoners would be locked up and the police would warn him when (they) were coming out … There was nothing the police could do about these threats … One of the major difficulties was that because he was the only employee he worked very long hours … For months on end he worked 16 hours per day seven days per week and was on call 24 hours per day. He stated that at one stage he was away from home for five months working at the Townsville watch-house. … He informed his employer of the problem but … Mr Browne informed him that he could not afford to employ an electrician … He stated that he then suffered "a breakdown". He thought this was in late 1998 …'

[25] This narrative given to Dr Reddan three years after his dismissal includes for the first time a description of the incident at Edward River, and a complaint of threats made at the Maroochydore watch-house which does not quite match the description of the incident pleaded and described by the plaintiff in evidence. Significantly, however, it includes two other causative factors which the plaintiff identified as bringing on his depression which are not pleaded and were not mentioned by the plaintiff to the psychiatrists he saw earlier. I did not form the impression that the plaintiff was dishonest. Nor did I think that he sought to exaggerate or embellish his recital of fact. He seemed to me a man quite depressed, and, indeed, overborne by life's experience. He was almost reluctant to give any account of his case. He did not avoid responding to questions but answered so shortly as to be taciturn. I attribute his demeanour to his depression.

[26] The doctors all agreed that the nature of a depressive illness is that the sufferer will endeavour to find a cause for it. The illness , however, distorts normal thought processes and the patient's depiction of cause is likely to be unreliable. Dr Reddan said:

> 'If in fact the person … has developed a major depressive disorder … they are the sort of things you might ruminate on, and they get these ruminations, they get blown out of proportion and assume a greater significance than perhaps they objectively warranted. But that's a symptom of the illness …'

Dr Larder said:

> 'It is true when people are depressed that they may in error attribute causality to some issue or personal thing that may not be correct. I have seen that from time to time.'

Dr Yellowlees expressed the opinion that the plaintiff's depression made it likely that he would look for 'something or someone to blame' for his condition and his attribution of blame, i.e. his description of the cause of the onset of his depression may be questionable.

[27] I am prepared to find that in June 1998 while working at Edward River the plaintiff was abused by a drunken woman who fell over as she tried to approach him. I am not prepared to find that she attacked him with a weapon or that he reasonably thought she was attempting to harm him. I accept Mr Browne's evidence that the plaintiff did not report the incident to him. I also find that the plaintiff did not report it to the relevant police authorities in Edward River. I am not prepared to accept that the plaintiff was informed that the woman had a conviction for attempted murder. In my opinion the plaintiff's undoubted depression has caused him to reflect upon the incident and to exaggerate both its incidents and its importance.

[28] I am also prepared to find that the incident described by the plaintiff in the Maroochydore watch-house did, in fact, occur. The prisoner, who made no threat but who did move towards him in a threatening manner, was quickly restrained by two police officers. He was separated from the plaintiff by the physical barrier of the charge counter. The plaintiff did not at the time regard it as important. He did not mention it to Mr Browne nor to the doctor whom he saw for treatment for his anxiety.

[29] The plaintiff's case is that because of the events, the one at Edward River and the other at the Maroochydore watch-house, he developed a psychiatric illness, namely depression and/or because the defendant did not ensure the plaintiff took an adequate holiday break at the end of 1998, or take steps to reduce the normal occupational demands on the plaintiff of his work following those incidents the plaintiff developed depression or his depression deepened. In essence the case is that the defendant failed to take reasonable care to prevent the psychiatric injury which the plaintiff has suffered by reason of his exposure to the two events, or to prevent the occurrence of those events which foreseeably would cause psychiatric injury. Alternatively it is claimed that those failures constitute a breach of s 28(1) of the *Workplace Health and Safety Act*.

[30] The first question to be addressed is whether the defendant should reasonably have foreseen that the plaintiff might suffer injury, whether psychiatric or 'physical' as a result of an assault at Edward River. The defendant accepts, correctly, that in certain circumstances it would owe a duty to take reasonable care to protect the plaintiff from the criminal behaviour of third parties despite the unpredictable and unlawful nature of that conduct. The proposition is established by cases such as *Public Transport Corporation v. Sartori* [1997] 1 VR 168 and *Chomentowski v. Red Garter Restaurant Pty Ltd* (1970) 92 WN (NSW) 1070 approved by Gleeson CJ in *Modbury Triangle Shopping Centre Pty Ltd v. Anzil* (2000) 205 CLR 254 at 265.

[31] The existence of the duty depends upon the reasonable foreseeability of injury from criminal activity by third parties. As to this the only evidence is that Edward River was a safe place for its white population, including journeymen tradesmen such as the plaintiff. The plaintiff himself accepted that the confrontation was something unexpected and 'out of the blue'. The particular woman was unknown to the plaintiff, his co-workers and his employer. There was no basis for thinking that she might constitute any threat to any of the defendant's employees.

[32] According to Mr Browne who had himself gone to Edward River with the plaintiff on the first occasion when the defendant commenced work at the police station it was not a hostile social environment. Mr Browne was not aware of any attack or of any violence done to any of the white population on any of the occasions he was at Edward River. He had never heard of such an attack or incident. He had spoken to police officers in the course of preparing for the work his company was to do and had not been told of 'any particular problems'. It was not suggested that there were such incidents or that he should have been concerned that the plaintiff (or another employee) may be subjected to a criminal assault. Constable Laycock who had been stationed at Edward River for two years from 2001 was called to prove that there was no police record of the incident. There was no cross-examination to elicit the existence of any danger to persons such as the plaintiff while working in the settlement.

[33] The incident occurred in daylight hours on the main thoroughfare between the police station and the boarding house. Given the evidence I have just rehearsed I am not satisfied that a criminal assault upon the plaintiff while working at Edward River was reasonably foreseeable. Even if it were foreseeable that the plaintiff might be abused (and I am not satisfied there was more than that) it was not such an occurrence as to give rise to a foreseeable risk that it would cause injury. This was the opinion of Dr Reddan who was the only psychiatrist questioned on the point. I accept her opinion which accords with common experience.

[34] Dr Reddan's evidence was directed to the reaction of a person of 'normal fortitude'. A person of particular psychological vulnerability may react excessively to one of the ordinary vicissitudes of life and develop a psychiatric illness, as did Mrs Tame, the plaintiff in *Tame v. New South Wales: Annetts v. Australian Stations Pty Ltd* [2002] HCA 35. That case decided that a person of heightened sensibility such that he is unduly susceptible to the frights of life may recover damages from a foreseeable and reasonably avoidable event, at least if the person charged with the duty of taking reasonable care to prevent injury knows or ought to know of the susceptibility.

[35] There is in this case no evidence that the defendant, that is Mr Browne, had, or should have had, that knowledge.

[36] Apart from the telephone conversation in October 1998 when the plaintiff told Mr Brown that he was tired and could not cope with going to work, the plaintiff concealed his growing depression from his employer, and no doubt, others. The psychiatrists who have reported for the litigation all note Mr Ilosfai's reticence and a marked reluctance to discuss his thoughts and feelings. It is one of the factors which has made treatment of his condition difficult and prolonged his depression beyond its expected duration. Mr Browne, who noticed the plaintiff's declining efficiency at work, spoke to him about it on quite a number of occasions,

particularly towards the end of 1998 and into 1999. Mr Browne noted that the plaintiff was 'a very quiet person (who) doesn't really volunteer a lot of information.' He described him also as 'very quiet and almost introverted …' (T.196.55-T.197.8) Mr Browne noticed the plaintiff's lack of application to his work, late starts, early departures and lack of progress. He asked several times what was the problem but was given no satisfactory answer. The plaintiff would say only 'I'm just not making any progress …' (T.198.42).

[37] It follows that the defendant was not in breach of any duty it owed the plaintiff with respect to the event at Edward River. An attack of a kind giving rise to injury, physical or psychiatric, to a person or normal fortitude was not reasonably foreseeable. The defendant did not know and could not reasonably have known that the plaintiff was excessively susceptible to psychiatric injury from an occurrence which could occur almost anywhere at any time and which would be regarded by the ordinary person as no more than annoying and perhaps amusing.

[38] The event at the watch-house is in a slightly different category. It was, I think, foreseeable that some actual or threatened violence might be directed towards the defendant's employees by prisoners held there. The watch-house was described, not unfairly, as a 'hostile' place in which to work.

[39] The question then becomes:

> '… what a reasonable man would do by way of response to the risk. The perception of the reasonable man's response calls for a consideration of the magnitude of the risk and the degree of the probability of its occurrence, along with the expense, difficulty and inconvenience of taking alleviating action …'

Per Mason J in *Wyong Shire Council v. Shirt* (1979-1980) 146 CLR 40 at 47.

[40] The plaintiff gave particulars of what he alleged the defendant should have done by way of response to the risk that he might suffer harm while working in the watch-house. It was said that the watch-house should have been cleared of prisoners and that an extra person should have been provided by the defendant to work with the plaintiff.

[41] The practicability of the first measure was not the subject of any evidence. From what little the evidence revealed about the watch-house complex the suggestion would not seem to be feasible. The incident occurred in the charge area where prisoners were processed prior to incarceration or release. If that area were kept clear of prisoners the watch-house could not function. It seems to have been a large facility with over 50 cells providing accommodation for a substantial number or prisoners. It is not self-evident that it could be cleared of prisoners for the days or weeks necessary for the defendant to install the security system. As I say the plaintiff produced no evidence at all that that was a practicable or even possible response to the risk.

[42] The second suggested response may have been practicable but would surely have been ineffectual. A co-worker adjacent to the plaintiff would not have prevented the prisoner shouting at the plaintiff or moving towards him. It will be remembered that there was, in effect, someone working alongside the plaintiff at the relevant time. The duty sergeant was behind the counter processing prisoners as they came

in. It is difficult to see that anyone supplied by the defendant would have been a more effective guardian of the plaintiff's safety. Moreover the prisoner was accompanied and effectively restrained by the two arresting police officers.

[43] The defendant, no doubt, relied upon the police service to provide security for its employees while they were working in the watch-house. That reliance appears to have been well placed. Not only was the threat to the plaintiff quickly and effectively dealt with on this occasion there is evidence that when the defendant's employees were required to work in or adjacent to the cells those areas were cleared of prisoners who were transferred to another cell or the exercise yard.

[44] If the plaintiff had a case it would seem to have been that he should not have been sent to work at the watch-house at all. Such a case would necessarily depend upon the employer having noticed that he was particularly vulnerable to the insults he might suffer there. The evidence which I have rehearsed shows that the defendant did not have that knowledge.

[45] It follows that the defendant has not made out a case of negligence against the defendant with respect to the episode at the watch-house.

[46] In addition to these findings it should be pointed out that the evidence would not allow a conclusion that either episode, or both of them, in fact was the cause of the plaintiff's depression. Dr Jones thought that the plaintiff's work was the major factor in precipitating his depressive illness but it must be remembered that Dr Jones was not told about the episode at Edward River and cannot therefore have attributed any causative effect to it. Moreover it is clear that when Dr Jones spoke of work being the major precipitating factor he had in mind not a single stressful incident but the cumulative effect of the 'substantial pressure of work … for some years (during which) he has not taken annual leave.' This is not the case the plaintiff brought to trial. Dr Jones did not express an opinion about whether the case the plaintiff did present to the court had brought about his depression.

[47] In oral testimony Dr Jones said (T.105.20-.50):

> '… My thinking was as follows: there was … on the evidence I had then no previous … episodes. No family history … of previous depression. So there was no evidence of a particular disposition to depression. Put that against the stresses, the pressure of work and possibly the prison experience, there was evidence of external stressors and so I would have to conclude … that there was evidence of a precipitation of depression by external events … the information you have given me now does alter that balance … because … he has a susceptibility that I didn't know about.'

[48] The evidence referred to was that in 1996 the plaintiff had consulted a general practitioner with symptoms suggestive of anxiety and depression.

[49] As I mentioned Dr Larder did not himself express an opinion as to the cause of the plaintiff's depression. He accepted Dr Jones' assessment. In his oral testimony Dr Larder explained that he believed the plaintiff had recently experienced a breakdown of a long-standing domestic relationship. He had lived with a woman for a number of years and they had produced a child. They had separated, resumed cohabitation after a while but then separated irrevocably. The plaintiff was most

reluctant to discuss this aspect of his life with the psychiatrists and, indeed, gave them conflicting accounts of it. Dr Larder thought that the cessation of his relationship may well have been a significant factor in the onset of his depression. As well there was evidence that the plaintiff was drinking to excess in 1998 and 1999. This was noticed by Mr Wyatt who worked with the plaintiff at Maroochydore. It was also commented upon by Dr Larder and Dr Reddan. It is of course, notorious, that the breakdown of domestic relationships can be accompanied by an increased consumption of alcohol. The doctors pointed out that alcohol itself can bring about or exacerbate depression.

[50] Dr Yellowlees expressed the opinion that the plaintiff's illness was 'work related' and that his work was the most significant factor in the onset of the depression. The work history relied upon by Dr Yellowlees was that given to Dr Jones, i.e. a history of sustained pressure over time without adequate holidays. It did not include a reference to the incident at Edward River and did not give prominence to the episode in the watch-house.

[51] In evidence Dr Yellowlees said (T.127.15-128.50):

> '… The breakdown of a relationship can be quite a stressful event? – Sure.
>
> And can … give rise to a depressive illness? – It can in some people, yes …
>
> Is it … possible … that Mr Ilosfai might want to … not focus on any relationship? – Absolutely. … You are obviously indicating that Mr Ilosfai had a previous depressive illness back in 1996. Now he specifically told me he hadn't had any previous psychiatric treatment … That's … of great importance and if … he had a previous illness … that makes him more vulnerable to having another illness … Mr Ilosfai is a fairly vulnerable individual with marked obsessional and dependant traits and … I'm not in the least bit surprised that he had another illness previously …
>
> It's possible, isn't it, that people suffer from depressive conditions and there are no identifiable external stressors? – That can certainly be the case … The point about Mr Ilosfai is he had a major depressive illness … with … biological symptoms. He didn't have what is called adjustment disorder which is essentially a relatively minor disorder caused … by stress … and which generally gets better fairly quickly. Mr Ilosfai had a series of physical symptoms … and so that major depressive type of illness doesn't usually come on overnight, it usually comes on over a matter of a few weeks.
>
> You say it's a biological depression? – Yes.
>
> … Does that render it more likely to be an endogenous depression? – That's correct.
>
> That's what you consider … Mr Ilosfai to have? – That's correct.

> People who have such a – often feel it necessary … to attribute a cause …? – That's right … they often search for a cause.
>
> So they look for something … to blame for their condition? – Sure.
>
> In this case Mr Ilosfai blamed his work? – Yes, he did two things, he blamed his work and he also specifically denied there were any other major stressors. If you know of other stressors that were affecting him around that time … that would be significant …'

[52] The plaintiff did tell Dr Reddan of the event at Edward River and of being threatened when working at the Maroochydore watch-house, though he does not appear to have emphasised the particular incident described in the statement of claim. He referred rather to daily threats by prisoners in a number of watch-houses over a period of two years. He also complained of intimidation and threats from waterside workers which he did not relate to any other psychiatrist and which is not mentioned in the pleading. He complained as well of the pressure of hard work and long hours over an extended time.

[53] Dr Reddan found it unable to attribute a definitive cause to the plaintiff's depression. She wrote:

> 'The difficulty in attribution of causation revolves around the significant dispute of the facts between Mr Ilosfai, his former employer and former co-workers. The latter would suggest that Mr Ilosfai has a most unusual personality, significant other stressors and a tendency to abuse alcohol. The account by Mr Ilosfai's former employer … would suggest that Mr Ilosfai was gradually developing depression over the latter part of 1998 and in the early part of 1999 … His former employer and co-workers' accounts would suggest that the major depression developed as a result of a complex interplay between his personality, other domestic stressors and alcohol abuse.'

[54] In evidence Dr Reddan said that the two events identified by the plaintiff in his statement of claim would not be sufficient to cause a major depressive episode. Dr Reddan thought that if those episodes did cause major depression the plaintiff must have been 'a very vulnerable person with other problems … because – nothing actually ended up happening – and they're not particularly … unusual events …' (T.182.15-.20)

[55] Given the evidence of the psychiatrists I would not be prepared to find that the two episodes did cause the plaintiff's depression, even accepting that his personality type was such as to make him vulnerable to such an illness. I think it likely that his selection of those two events as the cause of his debility was a product of the illness itself. It is significant that the plaintiff has not given a consistent history to the psychiatrists or been consistent in his identification of the factors responsible for the onset of his depression. Given the relatively trivial nature of the events I do not consider they were the cause.

[56] There was another aspect to the plaintiff's case. It was that the defendant should have insisted that the plaintiff be given holidays to recover from the effect of the

episodes, training to enable him to deal with the stress caused by them, supervision to prevent his overwork while feeling stressed and insistence that he took regular rest breaks. As the defendant points out the plaintiff did not adduce any evidence at all that any one or any combination of the matters particularised in paragraph 5 of the amended statement of claim would have prevented or alleviated the plaintiff's depression. Of the five psychiatrists who gave evidence not one was asked any question about this aspect of the case. There is simply no basis for finding any causal nexus between the complaints alleged in paragraph 5 of the statement of claim and the plaintiff's illness.

[57] There must be judgment for the defendant with costs to be assessed on the standard basis.