

SUPREME COURT OF QUEENSLAND

CITATION: *Cranston v Consolidated Meat Group Pty Ltd & Another*
[2008] QSC 41

PARTIES: **TRUDY ANN CRANSTON**
(Plaintiff)

v

CONSOLIATED MEAT GROUP PTY LTD
(First Defendant)

and

WILLIAM JOHN MOHOMMED
(Second Defendant)

FILE NO: S532/2004 (Rockhampton)

DIVISION: Trial Division

DELIVERED ON: 7 March 2008

DELIVERED AT: Rockhampton

HEARING DATES: 3, 4 March 2008 (Rockhampton)

JUDGE: Dutney J

ORDERS: **The plaintiff's action is dismissed**

CATCHWORDS: PERSONAL INJURIES – PSYCHIATRIC INJURY – EMPLOYER AND EMPLOYEES – where plaintiff and second defendant were work colleagues and employed by first defendant – where plaintiff alleges second defendant verbally abused her and threatened her with a knife in the course of her employment – where plaintiff and second defendant give different version of events – whether plaintiff's version of events should be accepted

PERSONAL INJURIES – PSYCHIATRIC INJURY – REASONABLE FORESEEABILITY OF INJURY – whether second defendant had violent propensity – whether reasonably foreseeable that incident could cause plaintiff to suffer psychiatric injury – whether either first or second defendant could be held liable

TORT – TRESPASS – whether incident constituted trespass to the person

CASES: *Koehler v Cerebos (Australia) Ltd* (2005) 222 CLR 44, followed
Midwest Radio Ltd v Arnold QCA (Appeal 4010/98 – 12 Feb 1999 – unreported), followed
Rixon v Star City Pty Ltd (2001) 53 NSWLR 98, followed

COUNSEL: Mr D Kelly for the plaintiff
 Mr S Williams QC with Mr O’Driscoll for the first defendant
 Mr A Mellick for the second defendant

SOLICITORS: Biggs Fitzgerald Pike for the plaintiff
 Bruce Thomas Lawyers for the first defendant
 Grant Simpson for the second defendant

Liability

- [1] The plaintiff, Ms Trudy Ann Cranston is a 43 year old woman who was born on 31 May, 1964. Ms Cranston claims personal injuries arising from an incident involving the second defendant, William Mohommed (also referred to as “Bill”) which occurred on 13 February 2001. At the time of the incident, the plaintiff and the second defendant were both employed by the first defendant, Consolidated Meat Group Pty Ltd (“CMG”) at the Lakes Creek plant in Rockhampton.
- [2] The plaintiff alleges that the incident from which she suffers personal injuries occurred in the boning room of the Lakes Creek plant. In the boning room, there were three different tables at which to work. These included blade, chuck and fillet and the tables were arranged in this order. On the day of the incident, the plaintiff was rostered to work as a roving slicer in the boning room. This role involved spending six to seven minutes on each of the blade, chuck and fillet tables.
- [3] The three tables were straddled by a chain and a conveyor belt. As one looks down the chain, the tables to the right of the chain appear longer and larger than the tables to the left of the chain. A side of beef passes along the chain about every 18 seconds. The role of the boner is to separate the various cuts and put them on the appropriate table. The role of the slicer is to trim the cuts placed on his/her relevant table.
- [4] The three tables were straddled by the chain and the conveyor belt. As an onlooker faced down the tables the longer part of the table was to the right of the chain and the shorter part to the left. A side of beef passes along the chain about every 18 seconds. The boner separates the various cuts and puts them on the appropriate table. The slicers then trim the cuts.
- [5] On the day of the incident, the second defendant, William Mohommed was rostered on the first table, the blade table.

- [6] Mr Jason Chambers was working on the next table, the chuck table, but on the other side of the chain.
- [7] Close by, Ms Gail Jaspersen was packing spare ribs, but like Mr Chambers, she was also working on the other side of the chain.
- [8] On the day of the incident, rather than move from table to table every six to seven minutes as her role of roving slicer required, Ms Cranston spent 23 minutes on the fillet table. She said that she kept looking up the tables and could see that there was no build up of blades on the blade table.
- [9] Eventually, Ms Cranston made her way to the blade table. By that time, Mr Mohommed was angry that Ms Cranston had not moved between tables as she was required to do. Although Mr Mohommed had managed to attend to the supply of blade pieces that landed on his table, he had had to work faster in order to do so. Because Ms Cranston had not attended to the blade table at the correct interval, Mr Mohommed had not had the opportunity of the short break to recover and sharpen his knife.
- [10] On Ms Cranston's arrival at the blade table, the incident which gives rise to this litigation took place.
- [11] In her evidence-in-chief at trial, Ms Cranston gave this account of the incident:

"I moved down to the blade table to help Bill and he started abusing me and he was very aggressive. He said, "Where the fuck have you been?" He said, "You're supposed to give me 23 minutes of each fucking run. I told your fucking boyfriend the same fucking thing." He was swinging his knife around in my face and flicking fat at me aggressively. I just said - I was having a good day I wanted him to leave me alone. He told me to, "Fuck off back down the other end of the chain and let the old cunts carry me." He didn't want me at the table and he then pointed his knife across my left shoulder and in the direction that I had to leave immediately because he didn't want me at the table.

All right?-- In doing that I was just in so much shock I froze, but I got away as quick as I could.

Okay. Now, when you said that he's got a knife in his hand, can you describe the knife for his Honour? How big is it?-- The knife's about that long.

So you're indicating your fingers apart there, about 25 to 30 centimetres long?-- Mmm-hmm.

All right. And how sharp are these knives?-- Very, very sharp.

All right. So how close was Mr Mohommed to you when he was yelling these things?-- Not even as far as that bench there.

All right, so you're indicating the Associate's bench and can you give an estimate of how far that is away?-- A metre and a bit.

Okay. So how was his arm when he was holding the knife towards you?-- His arm was radical and he was flicking like - and he had the fat also, chucking the fat at me with his knife as well.

So you're just indicating a flicking motion from around your waist or tabletop level, away from your body?-- At me.

Okay. Now, well the flicking of the fat, is the fat soft or hard?-- When it's cold, it's hard, and it can sting you when it's flicked at you.

Did it have any effect on you?-- Yeah.

What effect did it have?-- It hit me in the neck a couple of times.

Mmm-hmm, and what did you feel?-- Just a stinging sensation.

Okay. So can you indicate to the Court how loud he was yelling?-- Very loud. Very, very loud.

Now, where was the-----?-- Screaming.

-----direction for you to leave?-- Pardon?

Where was the direction for you to leave?-- Direction for me to get away was to - to go back that way.

So when he's on the table, can you just explain to his Honour where you were and how you were standing in comparison to him?-- I was standing in front of Bill. And the only way out was to go up the chain. My back was facing the way I was supposed to go, and his knife was pointing at me over me shoulder in the direction to go straight up the chain.

Where was the chain in relation to you?-- It was on my right.

All right. And in relation to Mr Mohammed?-- It was on his left.

Okay. So at that time in that instant, how did you feel?-- Very scared, very frightened, I feared for my life.

And why were you scared?-- Well, if somebody's standing in front of you and swinging a knife around in your face and abusing you, it's pretty scary stuff.

Okay. So what did you do then?-- I tried to get away as soon as I could because I felt threatened that he might do something to me if I didn't.

[12] In his oral evidence, Mr Mohammed's version of the incident was as follows:

Just concentrate on what you were doing and what you saw and when Mrs Cranston came to see you?-- She didn't leave that fillet table for 23 minutes to go to the chuck table. She done her chucks, come down to the blade table. I asked her where she has been. She said, "Why", and I said, "Well, the deal is that you come down here three times a run. You didn't leave the blade table for 23 minutes, it's now about half-past 6, how are you going to fit three times coming down, roving, in an hour?"

And what did she say?-- She said, "Don't baffle me with figures." I said, "Well, if you don't want to do the job, you may as well fuck off."

Now, was that the first time that you swore during that conversation?-- That is true.

Were there any raised voices at that stage?-- Possibly a little bit.

Now, well, what happened from there? You've said to her, "Well, you might as well fuck off", what happened then?-- I explained to her that I had the same problem with her boyfriend a couple of weeks ago. She - whatever she said, raved on back at me. I said, "Well, you may as well fuck off".

Mmm. Yes, continue?-- I kept slicing, I - I had to - because the table's so wide, the boner there, I've got to - he puts the - under the carrier area, the blade so I've got to pass it to her as well as myself.

Had you passed a blade to her?-- I had one sitting there when she come along, yes.

And during the course of the conversation that you're having, what was she actually doing?-- Slicing her cuts.

Mmm. Did you flick any fat at her?-- No, I never, um, flicked fat at all, intentionally, but who knows. When I was cranky with her.

Now, you've - did the conversation become increasingly more heated, or what?-- It was a little bit heated, yes.

Mmm?-- But overly loud.

Right. Was she arguing with you?-- Yes.

Well, what did you end up telling her to do?-- To fuck off in the end. I just said, "I don't want you here, fuck off."

Right. Well, did you use your knife in any way, apart from the slicing work?-- I motioned down the chain where she come from.

Mmm. Well, where do you mean, "down the chain"? What-----?-- Back down towards where she was working. I did mention to her she's better off down the other end where the older blokes are.

Right. Now, how close was that knife to her, when you were pointing back down the chain?-- Oh, hell, who knows. It's got to be over a couple of feet away, at least.

Mmm. Was it pointed at her?-- Nope.

And how many times did you motion with the knife like that?-- Once.

- [13] Ms Cranston then reported the incident to Glen White who was the line supervisor.
- [14] When she spoke to Mr White, Ms Cranston said she was "...crying. I was pretty shaky and hysterical, pretty much..."
- [15] Mr White directed Ms Cranston to the Workplace Health & Safety Officer, Mr Lorraway.
- [16] Under the CMG bullying policy, the procedure following complaint was that each of the parties would be separately interviewed and the interviews recorded. These interviews took place on the same morning as the incident itself.
- [17] The transcript of Ms Cranston's interview records this version of the event:

"I was rostered on number job 13 which is roving from fillets, down to chuck, and then to blade and you are supposed to just do that all day, and anyway the chain was going slow, it was sort of like going fast or anything and I'd done six fillets but during that time after finishing each fillet I had to wait for another fillet to get to me before I could leave. I had to cut the six there, done that, went down to chuck, done three chuck there and I had to wait for the other other chucks because, you know, they weren't sitting in the bin, so and I was told that I had to do three chucks on that table and when I got down to fillet I done a couple of blade and as I got there actually, he said 'Oh yeah. You come down this way do you?' I said, 'what are you talking about?' O just left the chuck table and he said, 'You know you're supposed to give me 23 minutes down here on the table each run?' ...

... And then he said, umm, 'You know you are supposed to give me 23 minutes each run down here on the blade table?' And I said, 'No I didn't know that, I didn't [know] the technicalities involved, Bill. And he, umm, I said I thought I was only supposed to come down and just cut six blade and go back to the fillet table and start all over again. Work my way back down again, and umm, he said, 'No.' He said, 'I've been working my arse off here.' I said, 'How could you, there is nothing sitting around.' I said, 'The chain is going steady and I am here now and you're doing nothing and I am doing your cuts for you.' And, umm, he said, 'I told your boyfriend the same thing when he was working on the job and he got upset about it.' He said, 'If you can't do your job don't bother coming down here.' And I said, 'Hey, I am down here and I am having a go.' I said, 'I want to have a good day today. I really don't need to hear all this shit.' And, umm, with that he said, 'Why don't you just piss off, back up to the other end where you belong?' He said, 'All them mob up there carry you.

You blend in up there. Why don't you just fuck off and don't even bother coming back?'

I said, 'That's not a very nice attitude, Bill.' He said, 'I mean it. Why don't you just fuck off? You're no good to me.' He said, 'I've been working my ring off and you're up there standing around doing fucking nothing.' I said, 'I'm not doing nothing. I've been working mine off since I got here.' I said, 'The chains going steady. There's no meat sitting around.' And I said, 'And you're standing there doing nothing right now. So what's your problem?' And then he started. He got a blade and he was really rough with it and he worried me because he was hoeing into it with aggression and that concerned me a bit so I decided to do just one more blade before.. Whilst I was doing it, he said, 'Go on. Fuck off. Get back up the other end and don't fucking come back!' And that's when I went and seen Whitey straight away and Whitey said, yeah, I said, 'No Whitey. I want to report it now.' 'Cause I was pretty stressed out and shaking and I think what made me feel that way was his aggression with his knife when he was cutting the blade and just the abuse. It was verbal abuse. It was really loud so there were people there that heard it, but I was under that much stress as soon as I got to the table because of him that I didn't bother looking around to see what boners were listening or what slicers were on the other side of me..."

- [18] This version was given within an hour of the event.
- [19] Later in the interview, Ms Cranston said that she had been embarrassed by being yelled at in front of everyone.
- [20] After inquiring whether Mr Mohammed would get a demerit point Ms Cranston indicated she would accept an apology. She went on to say:
- "I suppose I am just feeling really angry with him at the moment. I suppose I wouldn't like to see him sacked, but you know, you can't just go upsetting people like that..."
- [21] Important details of the version of events originally given by Ms Cranston have subsequently changed. Her initial version was very similar to that given in evidence by Mr Mohammed. Subsequently, emphasis has been placed on Mr Mohammed waving his knife around in an aggressive and threatening fashion and pointing the knife at her. His aggressive trimming of the blade included attacking it so hard that deliberately or otherwise pieces of fat flew off in her direction. By trial, Mr Mohammed was deliberately flicking pieces of fat at her with his knife and screaming at her.
- [22] In her evidence at trial, Ms Cranston made it plain that she had wanted Mr Mohammed sacked.
- [23] Two other employees of CMG gave evidence.
- [24] Ms Jasperson was the leading hand. She was packing spare ribs near the blade table and during the incident was about a metre from the participants on the other side of the chain. She had a clear line of sight.

- [25] Ms Jasperson heard raised voices. With the high levels of ambient noise in the boning room, Ms Jasperson was unable to overhear much of what was said. She recalled Mr Mohommed telling Ms Cranston to get a life at one stage. She heard colourful language but not such as was uncommon in that environment. She did not hear any “screaming”. When she looked, she saw Ms Cranston and Mr Mohommed standing opposite each other at the table arguing. At the time Ms Jasperson looked both had stopped working. The incident was not sufficiently remarkable to hold Ms Jasperson’s attention. She went on with her other duties and took no further interest.
- [26] Mr Chambers was positioned in the space between the same two tables as Ms Cranston but on the other side of the chain. He did not see Ms Cranston arrive at the table but shortly afterwards he heard a lot of swearing. He looked across and heard Mr Mohommed say to Ms Cranston, “Fuck off! I don’t want you here. Fuck off!” As he said this, Mr Mohommed pointed down to the space between the tables in a gesture Mr Chambers interpreted as indicating in which direction Ms Cranston should go. As he did so, Mr Mohommed was holding the knife with which he had been working. Mr Chambers did not regard the gesture as threatening. He did not see the knife pointed at Ms Cranston but only to the right down the walkway from the direction Mr Chambers was facing. Mr Chambers could see that Mr Mohommed appeared to be angry.
- [27] The evidence of the two independent witnesses is consistent with the version of the incident given by Mr Mohommed and with the version given by Ms Cranston in the recorded interview. It is inconsistent with the version given at trial by Ms Cranston. I reject the version given by Ms Cranston at trial.
- [28] I find that the incident arose because Mr Mohommed perceived that Ms Cranston was not providing the assistance to which he was entitled. When Ms Cranston arrived at the blade table, he challenged her with this perception and accused her of not pulling her weight. Ms Cranston rejected this accusation and an argument ensued during some of which both Ms Cranston and Mr Mohommed continued to work and during some of which they stopped work and abused each other. I accept that when Mr Mohommed was working some of his anger was directed to the piece of meat he was trimming. After a short period, Mr Mohommed told Ms Cranston to “Fuck off!” As he did so, Mr Mohommed gestured back in the direction from which Ms Cranston had come with his knife. That was behind Ms Cranston and to her left. He did not point the knife at Ms Cranston. He did not wave the knife at her in a threatening manner. I find that the knife was never dangerously close to Ms Cranston. While the direction indicated by Mr Mohommed was behind and to the left of Ms Cranston, if the reference to the knife being pointed over her shoulder is intended to imply that it was above her shoulder, I am not satisfied that it took place.
- [29] I accept that Mr Mohommed’s demeanour was angry and aggressive and could have caused Ms Cranston alarm at the unexpected nature of the abuse and embarrassment at his chastisement of her in front of co-workers.
- [30] One of Ms Cranston’s consistent complaints to the psychiatrists who have seen her over the years was that CMG did not treat her complaint sufficiently seriously. I am satisfied that CMG dealt with the matter appropriately having regard to Ms Cranston’s expressed wishes at the time. Mr Mohommed was required to apologise

and a demerit point was entered against his record. Accumulation of demerit points ultimately would lead to suspension from work.

- [31] Ms Cranston conceded that she thought often about the event and her sense of victimhood arising out of the whole incident.
- [32] Ms Cranston's complaints of not being taken sufficiently seriously and feelings of injustice are inconsistent with the position she adopted in the immediate aftermath of the incident but are consistent with Dr Mulholland's diagnosis of a major depressive disorder.
- [33] I accept that Ms Cranston suffers from a major depressive disorder and that its current manifestation was triggered by the incident involving Mr Mohommed.
- [34] The issue is whether it was foreseeable that the incident which took place could cause Ms Cranston to suffer a psychiatric illness as a consequence¹ and, if so, whether either CMG or Mr Mohommed is liable for it.
- [35] There is no doubt that Ms Cranston was a peculiarly vulnerable personality. She had a history of psychiatric disturbance dating back to her teen years. She was diagnosed with a mild childhood affective disorder by the Mental Health Unit at Rockhampton base hospital as early as January 1982. Between May 1994 and 22 October 1997, Ms Cranston was regularly reviewed by the Mental Health Unit and diagnosed with depressive disorders of varying degrees of severity. On the last occasion she was assessed as having a suspected benzodiazepine dependence.
- [36] Ms Cranston has a history of binge drinking both before and after the 2001 incident and had developed peritonitis prior to 2001. Subsequently, and at least in part as a consequence of the peritonitis, Ms Cranston has developed diabetes.
- [37] When initially seen by Dr Flanagan, Dr Keen and Dr Rowe a diagnosis of post traumatic stress disorder was made. This was, however, made in circumstances where Ms Cranston had denied any previous psychiatric history and exhibited clinical signs arising suddenly and otherwise inexplicably from the incident. The diagnosis was also made following a description of the event which involved explicit threats of physical harm with the knife which I have found did not occur.
- [38] In view of the information on which it was made, I am not satisfied that the diagnosis of post traumatic stress disorder was accurate.
- [39] While it is not disputed that the incident did trigger Ms Cranston's major depressive disorder, the only evidence which touches upon whether the defendants should have foreseen that outcome from such an incident is in the evidence of Dr Leong. In cross-examination he was asked this question:

Yes. If you accept, Doctor, that an incident occurred on the 13th of February 2001-----?-- Mmm, that's right.

-----in which Missus - well, in which a person was standing opposite another person, holding a knife in their hand. They were about 1.3 metres

¹ See *Koehler v Cerebos (Australia) Ltd* (2005) 222 CLR 44 at [35].

apart. That the person with the knife in their hand was yelling in a very loud voice, yelling up to screaming?-- Mmm.

That that person was using abusive language?-- Yeah.

Including saying to the person they were facing, "Why don't you just fuck off"?-- Yes.

That in using the term "fuck off", they pointed the knife over the left shoulder of the person who was facing them across the table?-- Yes.

Doctor, if you accept those matters, is it likely or even possible, that a person could suffer a psychiatric condition as a result of experiencing that event?-- Well, yeah, it's possible a person can react, ah, obviously emotionally and suffer some psychiatric reaction to such an event, yep.

- [40] Listening to Dr Leong give his answer, the impression I gained was that although conceding the possibility of a person decompensating in the circumstances described, he regarded it as only a not very likely possibility.
- [41] The explanation for Dr Leong's reluctance to find that the version put to him was likely to cause an illness in an ordinary person might stem from the same question having been addressed in his report dated 3 February 2004. There Dr Leong accepted that based on the version given to him by Ms Cranston, an ordinary person might suffer emotional distress or upset and even possibly a psychological or psychiatric disorder of mild to moderate extent.
- [42] The version given to Dr Leong on that occasion and on which that opinion was based included Mr Mohommed flicking fat at her with the blade of his knife and waving his knife across Ms Cranston's shoulder and in front of her face resulting in Ms Cranston being paralysed with fear.
- [43] The suggestion Ms Cranston was paralysed with fear is entirely inconsistent with the evidence of both the independent witnesses and with her own initial account. I have already found that the swinging of the knife at her and across her shoulder did not occur.
- [44] The version of the incident given by Mr Mohommed and which I have accepted was never put to Dr Leong. When the issue was raised, counsel for Ms Cranston made it clear he did not intend to ask the doctor whether such a version was capable of causing a normal person to decompensate. The risk of not putting all versions is apparent from the decision in *Midwest Radio Ltd v Arnold*.²
- [45] In view of my findings, the answer to the question asked of Dr Leong is of little assistance in determining whether, in the absence of any indication of Ms Cranston's particular vulnerability, it was foreseeable that the incident, or one like it could cause Ms Cranston any more than normal emotions of embarrassment, anger or upset.

² QCA (Appeal 4010/98 – 12 Feb 1999 – unreported)

- [46] In the light of this finding, I am not satisfied that Ms Cranston has discharged the onus of showing on the balance of probabilities that the development of a psychiatric illness was foreseeable.
- [47] As against CMG, I have already found that its response to the incident was appropriate and in accordance with the wishes of Ms Cranston.
- [48] The case pleaded against CMG was that, knowing of Mr Mohammed's violent propensity, it failed to take appropriate precautions to protect Ms Cranston.
- [49] The only evidence led in support of the allegation either that Mr Mohammed had a propensity towards violence or that CMG knew or ought to have known about it came from Mr McConachy.
- [50] Mr McConachy's evidence did not support either allegation.
- [51] Mr McConachy's evidence was that he was performing the roving slicer duties. Arriving late at the table where Mr Mohammed was working, Mr Mohammed said to Mr McConachy, "Fuck off you bludger, you might as well stay down there."
- [52] Down there was a reference to the chuck table.
- [53] As he said that Mr McConachy might as well stay down at the chuck table Mr Mohammed pointed to the chuck table with his right hand in which he held his knife.
- [54] Mr McConachy's response was to say, "Sweet mate," and walk off. As he did so, Mr McConachy told Mr White, the line supervisor, that Mr Mohammed did not want him at the blade table and that was why he was not working there on his rotation. No complaint was made. Mr White acknowledged the reason Mr McConachy was not visiting the blade table and the incident was closed.
- [55] I am not satisfied that this evidence discloses any violent propensity on the part of Mr Mohammed or that, even if it did, it was sufficient to alert CMG of the need to take precautions to protect Ms Cranston.
- [56] In any event, in addresses, counsel for Ms Cranston conceded that the evidence was insufficient to establish any basis for knowledge of Mr Mohammed's propensity on the part of CMG.
- [57] Absent any knowledge of any violent propensity on the part of Mr Mohammed, counsel for the plaintiff relied on paragraphs 8.4 and 8.5 of the statement of claim.
- [58] Paragraph 8.4 of the statement of claim alleged that CMG was negligent in "failing to provide any, or any safe or proper system of work particularly with respect to proper management and control of its employees".
- [59] Paragraph 8.5 alleged that CMG was negligent in requiring the plaintiff "to work in circumstances and in a manner which was likely to cause a risk of injury to the plaintiff".
- [60] To support these allegations, the plaintiff relied on the evidence contained in Mr Mohammed's record of interview dated 13 February 2001 that he did not know

there was a workplace bullying policy in place. However, Mr Mohammed contradicted this statement in his oral evidence at trial.

- [61] There is no doubt there was a policy in place and that it was regularly reviewed.
- [62] Mr Black, CMG's acting manager at the time of the incident, gave evidence that the policy was contained in the induction booklet that was provided to each employee. The employee was required to sign for the booklet. The bullying policy current as at February 2001 was put in place in September 2000. Mr Mohammed signed for his induction booklet in January 2001. He had also signed for the then current booklet in January 2000. There was no criticism of the content of the policy.
- [63] There was also a policy that knives should be either in hand while working or sheathed. They could not be put on tables or waived around in a dangerous manner. To suggest that any policy could prevent occasional hand gestures while holding a knife or even gestures indicating direction could be prevented is fanciful. If a worker has a knife in hand and is working continuously to keep up with the chain, it is normal human reaction when talking to use the hands for emphasis and by default gesture with knife in hand. There is no evidence that the policy adopted by CMG was inadequate or unpoliced.
- [64] There is no reason to think that greater knowledge of the content of the bullying policy by Mr Mohammed would have prevented him losing his temper and abusing Ms Cranston. On the evidence I cannot see that any default alleged on the part of CMG is likely to have made any material difference. Nor can I conceive of anything on the evidence that is capable of preventing workers occasionally losing their temper in the performance of a job described by Mr Chambers as repetitive, continuous and often hard. This is particularly so in the case of a worker who believes he is doing more than his fair share.
- [65] As against the first defendant, CMG, I am not satisfied that the risk of the plaintiff suffering a psychiatric injury as a result of the incident was reasonably foreseeable. Nor am I satisfied that CMG failed to take reasonable steps to prevent such injury had it been foreseeable.
- [66] As against the second defendant, Mr Mohammed, the plaintiff claims not only for negligence but also for trespass to the person.
- [67] The trespass alleged is the assault on Ms Cranston constituted by the threatening gestures with the knife.
- [68] Counsel for the plaintiff accepted as a correct statement of the law the passage from *Rixon v Star City Pty Ltd*:³

“Proof of assault requires proof of an intention to create in another person an apprehension of imminent harmful or offensive contact ... If the assault lies in creating an apprehension of impending contact, proof of the assault does not require proof of an intention to follow it up or carry it through.”

- [69] Insofar as any use was made of the knife, I am not satisfied that there was any intention on the part of Mr Mohammed to create any apprehension of imminent or

³ (2001) 53 NSWLR 98 at 114

harmful contact. I am satisfied that use of the knife was unconscious and resulted solely from the fact that Mr Mohammed was holding the knife in the course of his work when he indicated where he wanted Ms Cranston to go.

[70] It follows that I am not satisfied that the plaintiff has established a claim for trespass to her person.

[71] The negligence claim must fail for want of foreseeability.

Quantum

[72] Ms Cranston has suffered from the major depressive disorder to which I have earlier referred.

[73] It is generally agreed that whatever, diagnosis is attributed to it, Ms Cranston's condition was triggered by the incident.

[74] However, it is by no means clear whether Ms Cranston's present disability is still referable to the incident or is now wholly or largely attributable to the general progression of her psychiatric illness.

[75] It is apparent from the reports of all of the psychiatrists that Ms Cranston has brooded continuously on the perceived injustice of her position and CMG's response to her complaint since very soon after the event.

[76] The extent to which this has a bearing on Ms Cranston's current illness is complicated by the fact that she is an unreliable historian.

[77] Based upon the version of the incident on which Ms Cranston has ultimately settled, her sense of grievance is well justified. Unfortunately, that is not what I have found occurred. The incident Ms Cranston initially described was much less serious and CMG's response to it was precisely that which Ms Cranston had sought.

[78] The best informed of the psychiatrists were Dr Mulholland and Dr Leong who essentially agree. Both doctors had the advantage of Ms Cranston's full history. Dr Mulholland is puzzled by Ms Cranston's lack of response to treatment and attributes that to the severity of the underlying condition, that is, Ms Cranston's pre-incident mental vulnerability.

[79] Dr Mulholland considers that Ms Cranston currently has a moderate psychiatric impairment and would have a significant but lower impairment even if the incident had not occurred.

[80] Some of Ms Cranston's claimed symptoms appear inconsistent with evidence of her attendances at the Lion Lea and Swan Hotels, her driving history and her attendances at medical appointments in Brisbane. Nonetheless, with reservations about their severity, I accept Ms Cranston suffers the symptoms referred to by Dr Mulholland and Dr Leong.

[81] In relation to her loss of earnings both past and present, the following facts seem to be of significance.

- [82] Ms Cranston had worked at the Lakes Creek meatworks continuously from 1 April 1999 until the time of the incident.
- [83] Her future employment at the Lakes Creek meatworks was limited by the fact that its workforce was off work through industrial action for many months from the beginning of 2002 following which the meatworks was closed until some time in 2003. The meatworks was reopened under new ownership so that there was no continuity of employment by the previous workforce.
- [84] Prior to her period at the meatworks, Ms Cranston had a number of jobs with varying degrees of success.
- [85] In her mid 20's, Ms Cranston was employed as a police liaison officer. Her employment in this capacity was terminated after about 6 months when she was told her contract would not be renewed and someone else had been given the job.
- [86] For a period, Ms Cranston worked as a tour guide at the Dreamtime Centre in Rockhampton. That employment ended with Ms Cranston abusing the second senior employee.
- [87] Ms Cranston had two short periods at the Lakes Creek meatworks before 1999. She also spent 2 weeks as an office worker with the Department of Corrective Services. Ms Cranston spent periods between jobs on Social Security benefits.
- [88] Had the incident not taken place and having regard to the history at the meatworks, I consider that it is appropriate to estimate that Ms Cranston would have been employed for about two thirds of the time at a rate averaging around \$400 a week net.
- [89] Assessing Ms Cranston's future employability is more difficult. She was unpopular with many workers at the meatworks. Mr Mohammed regarded her as lazy and aggressive and Ms Jaspersen had been afraid of her. The circumstances in which Ms Cranston left the Dreamtime Centre suggest that she was prone to arguments although the actual circumstances were not explored. The termination of the police liaison position was also not explored. On top of this is the evidence that Ms Cranston is a binge drinker and that her psychiatric condition, even without the incident would have resulted in some impairment.
- [90] Ms Cranston is of average intelligence and, but for her current disability, capable of clerical as well as labouring type work.
- [91] In view of the severity and duration of her illness together with the problems with alcohol and possible drug dependence to which reference has been made I consider Ms Cranston's prospects of future paid employment to be minimal.
- [92] The types of work about which evidence was given were at a rate of around \$570 net per week.
- [93] Taking all matters into account it is not unreasonable to assume that Ms Cranston might have been employed at about the same rate as before trial, that is about two thirds of the time.

- [94] The evidence does not permit calculations of interest. Evidence of money actually received by Ms Cranston was not led.
- [95] Other claims made by Ms Cranston were not disputed.
- [96] No schedules of damages were provided.
- [97] The evidence discloses that Ms Cranston received approximately \$33,215.50 refundable to the self insured fund.
- [98] Since the accident Ms Cranston said she has received approximately \$180 per week from Social Security. That must only be an approximation because otherwise the rate would be unchanged for more than 7 years. Nonetheless the claims made are not disputed.

[99] I assess quantum as follows:

| | |
|--|-------------------------|
| Pain & Suffering | \$60,000 |
| Interest at 2% on \$30,000 | \$8,400 |
| Past Earnings | \$98,133 |
| Interest on \$20,757 at 5% | \$7,266 |
| Past superannuation @9% | \$8,832 |
| Lost Earning potential ⁴ | \$221,578 |
| Future superannuation @ 9% | \$19,942 |
| Out of Pocket Expenses | \$13,856 |
| Medical Expenses – past | \$1,040 |
| Future Pharmaceuticals | \$7,600 |
| Travelling and Future Medical Expenses | <u>\$11,200</u> |
| Sub Total | \$457,847 |
| Less refund | (\$33,215) |
| TOTAL | <u>\$424,632</u> |

Judgment

- [100] Having regard to my findings on liability, the plaintiff's action is dismissed.

⁴ 2/3 of \$570 per week for 21 years (multiplier 686) discounted 15% for normal contingencies