QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

CITATION:	*King v Workers' Compensation Regulator* [2020] QIRC 180
PARTIES:	**Deanne Maree King** (Appellant) v **Workers' Compensation Regulator** (Respondent)
CASE NO:	WC/2018/221
PROCEEDING:	Appeal
DELIVERED ON:	21 October 2020
HEARING DATE:	24, 25, 26, 27 February 2020
MEMBER:	Power IC
HEARD AT:	Brisbane
ORDER:	1. **The appeal is allowed.** 2. **The decision of the Regulator dated 26 November 2018 is set aside.** 3. **The respondent is to pay the appellant's costs of and incidental to this appeal to be agreed or failing agreement to be the subject of an application to the Commission.**

CATCHWORDS:	WORKERS' COMPENSATION – APPEAL – Psychiatric or psychological injury – whether injury excluded under s 32(5) of the Workers' Compensation and Rehabilitation Act 2003
LEGISLATION:	*Workers' Compensation and Rehabilitation Act 2003* s 32
CASES:	*Allen v Workers' Compensation Regulator* [2018] QIRC 41
	Allwood v Workers' Compensation Regulator [2017] QIRC 88
	Blackwood v Mahaffey [2016] ICQ 10
	Byrnes v Workers' Compensation Regulator [2018] ICQ 004
	Deanne Maree King v Workers' Compensation Regulator [2019] QIRC 134
	Dickinson v Workers' Compensation Regulator [2019] QIRC 68
	Keunster v Workers' Compensation Regulator [2016[QIRC 83
	Mahaffey v Simon Blackwood (Workers' Compensation Regulator [2015] QIRC 166
	Newberry v Suncorp Metway Insurance Ltd [2006] QCA 48
	Qantas Airways Limited v Q-Comp (2006) 181 QGIG 301

Read v Workers' Compensation Regulator [2017] QIRC 72

Robinson v Workers' Compensation Regulator [2016] ICQ 16

State of Queensland v Coyne [2003] QIC 118

Whipps v Workers' Compensation Regulator [2017] QIRC 29

WorkCover Corp (SA) v Summers (1995) 65 SASR 243

WorkCover Queensland v Kehl (2002) 70 QGIG 93

Workers' Compensation Regulator v Langerak [2020] ICQ 002

Yousif v Workers' Compensation Regulator [2017] ICQ 004

APPEARANCES:

Mr M Horvath of Counsel instructed by Compensation Partners Lawyers for the appellant.

Ms H Blattman of Counsel, instructed directly by the respondent

Reasons for Decision

1. Ms Deanne Maree King ('**the Appellant**') appeals a decision of the Workers' Compensation Regulator dated 26 November 2018, confirming the rejection of her application for compensation in accordance with section 32 of the *Workers' Compensation and Rehabilitation Act 2003* ('the Act'). The appellant claims that she has suffered a psychiatric or psychological injury whilst employed by Coles Group.

2. The appellant claims that she was bullied by her supervisor Ms Sarah Hawker in a series of incidents between 8 December 2017 and March 2018. Four specific stressors alleged in the appellant's amended statement of facts and contentions are described as follows:

Number	Date	Title	Description
4	About 20 November 2017	Hospital Incident	Appellant taken to hospital with symptoms of concussion after bumping her head at work and SH demeaner, and comments to the appellant about missing dinner with her partner.
1	20/11/17 – 10/4/18	Bullying and Harassment by Ms Sarah Hawker (SH)	After the hospital incident, SH conduct towards the appellant including but not limited to excluding the appellant from work discussions, avoiding contact, ignoring the appellant in circumstances where the appellant queried work tasks, says 'good morning', not conversing, just walking away, unfriendly, condescending and rude towards the appellant.
2	02/01/2018	Team Huddle	SH overly critical and belittle and berated the appellant in front of staff members
3	05/01/2018	Meeting	Between SH, appellant and Luke Bligh and Erica Lord feeling of being 'ambushed and intimidated' with no notice of purpose of meeting.

Legislative framework

3. Section 32 of the Act defines the meaning of an "injury" and is in the following terms:

> **"32 Meaning of injury**
>
> 1. An **injury** is personal injury arising out of, or in the course of, employment if—
>
> …
>
> (b) for a psychiatric or psychological disorder—the employment is the major significant contributing factor to the injury.
>
> …
>
> (5) Despite subsection (1)…, **injury** does not include a psychiatric or psychological disorder arising out of, or in the course of, any of the following circumstances—
>
> (a) reasonable management action taken in a reasonable way by the employer in connection with the worker's employment;
>
> (b) the worker's expectation or perception of reasonable management action being taken against the worker;

4. The onus is on the appellant to satisfy the Commission, on the balance of probabilities, that:

- She was a worker;
- She suffered a psychiatric or psychological injury;
- The injury arose out of, or in the course of, her employment;
- Her employment was a significant contributing factor to the injury; and
- The injury did not arise out of, or in the course of, any of the circumstances set out in s 32(5).

5. It is accepted by the respondent that:

- the appellant was a 'worker' within the meaning of the Act;
- the appellant suffered a personal injury.

6. For the reasons that follow, I find that the appellant suffered a personal injury; the injury arose out of, or in the course of the appellant's employment; the appellant's employment was the significant contributing factor to the injury; and, the appellant's injury was not excluded by operation of s 32(5) of the Act.

Witnesses

7. The following witnesses gave evidence at the hearing:

Appellant's witnesses

- Deanne King
- Scott King
- Gary Wade
- Amanda Treloar
- Dr Wasim Shaikh - Psychiatrist
- Lynette Mitchell
- Dr Joseph Mathew - Psychiatrist

Respondent's witnesses

- Sarah Hawker
- Brigitte Baum
- Shae Foxcroft
- Dr Talitha Best - Psychologist
- Megan Taylor
- Jodie Fitness
- Luke Bligh

Evidence of Amanda Treloar

8. An application in existing proceedings was brought by the respondent seeking an order that the appellant not be permitted to lead evidence from Ms Amanda Treloar. The appellant sought to rely on similar fact evidence from Ms Treloar in support of their contention that Ms Hawker had a history of bullying. The respondent sought to exclude the evidence on the basis that it was not relevant and inherently prejudicial. After hearing the matter, O'Connor VP made the following decision:-

> "Having considered the material before me, I have formed the view that the correct approach to adopt in the present circumstances is to permit Ms Treloar to give her evidence and that the relevance and weight to be afforded to that evidence be left to the ultimate trier of fact to determine after having the benefit of hearing the totality of the evidence."[1]

9. At the substantive hearing, Ms Hawker gave evidence that she had a phone conversation with Ms Treloar during the Christmas and New Year period. Ms Hawker stated that Ms Treloar had not shown up for a shift in December the previous year, had called the day before she was due to work to advise that she would not be coming in and that Ms Treloar had said it was her birthday and hung up on her. Ms Hawker stated that Ms Treloar had not been given further shifts because she had not been able to get in contact with her.

10. Ms Treloar's evidence was that she had advised in advance that she would not be available to work during this period as she was on holidays. She then phoned to confirm her unavailability after seeing her name had been placed on the roster. Ms Treloar stated that Ms Hawker then yelled at her during the phone call, stating that other employees could not spend Christmas with their family because Ms Treloar did not want to work over this period. Following that phone call, Ms Treloar stated that she received no further shifts for months.

11. I accept Ms Treloar's evidence as an honest account of what occurred and can see no evidence that Ms Treloar was motivated to exaggerate her evidence. There was no suggestion that Ms Treloar had any relationship with the appellant or any interest in supporting her appeal. Ms Treloar's complaint pre-dates the appellant's application for workers compensation. I note that following an investigation into Ms Treloar's complaint, Coles issued Ms Hawker with a first disciplinary warning.[2]

12. Ms Treloar's evidence was relevant in that it indicated that Ms Hawker was capable of inappropriately aggressive behavior in her capacity as store manager. Whilst Ms Hawker's frustration under the circumstances may be understandable, her behaviour in yelling at an

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[1] *Deanne Maree King v Workers' Compensation Regulator* [2019] QIRC 134, 8.
[2] Exhibit 3, p.71.

employee on the phone was not appropriate for a manager. Whilst this evidence was relevant, I have not attributed significant weight to Ms Treloar's evidence as I am not persuaded that a single episode such as this confirms that Ms Hawker has a consistent tendency to behave in a bullying manner.

The appellant's case

13. The appellant's case is that she was subject to bullying and harassing behaviour by her store manager, Ms Sarah Hawker. The appellant contends that her interactions with Ms Hawker caused her to suffer a psychiatric injury.

14. I will now consider the stressors with respect to the appellant's injury.

The hospital incident - 7 December 2017

15. On or about 7 December 2017, the appellant hit her head on a freezer door at work. The following day she told Mr Gabe Peelgrane, the duty manager, who directed the appellant to go and see Ms Hawker. Ms Hawker spoke to the nurse over the phone and was advised to take her to hospital. The appellant and Ms Hawker went to the nearby hospital and had a conversation whilst in the waiting room.

16. It is common ground that the issue of Ms Hawker's partner cooking for her was discussed as part of the conversation, and that he had put the meal he had cooked in the bin and he was gone. The appellant's evidence is that she then checked with Ms Hawker whether she meant he had gone out with mates, to which Ms Hawker replied that he had left her inferring he had ended the relationship. Ms Hawker denies the last part of the conversation and gave evidence that the relationship did not break up because of the hospital incident.

17. The appellant gave evidence that the hospital incident in late 2017 marked a change in the relationship between herself and Ms Hawker. Ms Hawker denied this in her evidence, however in the statement she provided to the investigator in June 2018 stated the following -

> "I was mindful from later 2017 from the conversation with the Claimant at the hospital, not to engage in one-on-one conversations with the Claimant so I did try to keep the conversations short or witnessed."[3]

18. The hospital incident was submitted by the appellant as marking a change in the way she was treated by Ms Hawker, with the relationship after this point characterised by bullying behaviour. I accept that the evidence of the appellant and the admission by Ms Hawker to the investigator indicates that the relationship did change following the incident at the hospital.

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[3] Exhibit 3, para 54.

The Huddle - 2 January 2018

19. The 'huddle' was a gathering of staff involved in the role of night fill and managers. Five people were present at the huddle - Ms Hawker, the appellant, Gary Wade, Luke Bligh and another night filler named Ratna Poudel. The huddle involved a conversation between these participants, although primarily the appellant and Ms Hawker. The evidence given by the participants was varied and recollections of the conversation were generally inconsistent.

20. The role of the night fill crew is to stock the shelves after the load has arrived by truck. Following the truck arrival, the pallets are distributed amongst cages and then placed on the store shelves. It appears that on occasions the load would not get completed because of various factors including staff shortage due to absences, the truck arriving late, pallets collapsing or staff not working at full speed.

21. The appellant contends that the huddle was convened because the load on the previous evening was not completed. Mr Luke Bligh (grocery manager) gave evidence confirming that the fact that the load was not completed was mentioned in the huddle.[1] Mr Gary Wade (night filler) gave evidence that the huddle was about the load not being done and it was directed primarily at the appellant.[2]

22. The appellant stated that when the huddle began Ms Hawker asked why the load was not done to which the appellant responded that the load was late and they did not have time. Although Ms Hawker denied that the question had been asked both the appellant and Mr Bligh agreed that this was part of the conversation.[4]

23. The appellant stated that Ms Hawker then said that she was not asking the appellant the question, rather she was talking to Ratna Poudel as the appellant was not there the previous night. The appellant states that she responded that she was there at the time but she had to go to the toilet so left Ratna on the dock with the trucks and when she came back, she took care of the load and sent him to dairy. Mr Wade recalled that the appellant tried to explain that she had to deal with the trucks arriving, however both Mr Bligh and Ms Hawker could not recall.

24. It appears that Ms Hawker stated that she had spoken to Gabe Peelgrane and that he advised that he did the load. The appellant responded that Gabe Peelgrane did not do the load as he had clocked off and didn't have safety gear on and that to do the load in such a state would have been a breach of Occupational Health and Safety. Ms Hawker did not recall however Mr Bligh recalled Gabe Peelgrane already getting changed being mentioned in the conversation.

25. The appellant stated that Ms Hawker has then questioned the appellant as to what she has done about the situation, to which the appellant responded that 'Geeson' and 'Liam', two

night fillers, were not working to their abilities. Ms Hawker agreed there was a reference to two people not working fast enough.[4] The appellant states that she responded that she held individual meetings, team meetings, and mentioned it to the line manager Mr Bligh and the store manager Ms Hawker and that nothing was done. Ms Hawker denies the comment that nothing was done and admits the comment about the line and store manager.[5]

26. The appellant gave evidence that Ms Hawker stated that she paid the appellant to manage the department and this was not good enough. Ms Hawker denied this, however Mr Bligh agreed that something like that was said.[6] Mr Bligh gave evidence that he remembered 'something like' the following words being said in the huddle - "*You get paid to manage a department. That's not good enough*".

27. Mr Wade described the huddle as the appellant being asked why the load was not done when she had the resources, the appellant trying to explain and Ms Hawker cutting her off and saying she did not want to hear excuses.[7] In his statement to Wesfarmers, Mr Wade stated that Ms Hawker 'tore strips' off the appellant and when the appellant tried to speak Ms Hawker would shut her down. Mr Wade considered that Ms Hawker berated the appellant in front of her night crew, describing the incident as 'humiliating.'

28. Ms Hawker stated that the appellant was interrupting Ratna and Mr Bligh agreed that the appellant interrupted Ms Hawker talking to Ratna. Mr Wade stated that it could have looked like the appellant was cutting Ratna off as the appellant was trying to speak to Ms Hawker.

29. Mr Bligh gave evidence that the appellant tried to interrupt whilst Ms Hawker was trying to question Ratna and that Ms Hawker got upset that the appellant was interrupting her.

30. Ms Hawker's evidence of the huddle is that Ratna started to respond before being interrupted by Ms King who started talking loudly about her team members. Ms Hawker stated that she twice asked Ms King to stop, without success, before more forcefully calling for her to stop and asking what she, the appellant, had done to coach those team members to help them be the best they can be at their job.

31. Mr Wade recalled both the appellant and Ms Hawker having raised voices during the huddle.

32. The appellant gave evidence that she was distressed during the huddle and was crying during and after it occurred. Mr Wade gave evidence that Ms Hawker's tone and behaviour during the huddle was aggressive and that he was appalled, astounded and could not believe it was

[4] T1-60 L12; T4-11 L44-47; T3-47 L7-18.
[5] T3-47 L25; T4-38 L1.
[6] T1-60 L27; T4-13 L3; T3-48 L10.
[7] T2-4 L25; T2-4 L44; T2-5 L10.

happening. Mr Wade confirmed that the appellant started to get upset and started to cry. Ms Hawker and Mr Bligh gave evidence that they could not recall whether the appellant was crying by the conclusion of the huddle, but Mr Bligh described her as distressed by the end of it.

33. The appellant's husband Mr King gave evidence that the appellant would phone him upset on occasions. He stated that the one incident that stood out was being belittled in front of others, saying that she called him after it and could hardly speak. Whilst Mr King's account is not accepted as evidence that the huddle occurred in the manner described by the appellant, it does add weight to the evidence that the huddle contributed to her anxiety.

34. I have no reason to doubt the evidence of Mr Wade and Mr Bligh. In oral evidence, both witnesses appeared to give honest evidence to the best of their recollection. Given the differing accounts of the huddle provided by the appellant and Ms Hawker, who both have an interest in this matter, I found the evidence of Mr Bligh and Mr Wade to be the most reliable. As participants who could observe the interaction between the two women, they were best placed to give evidence as to what occurred during the huddle. Where the accounts differ, I have determined that Mr Wade's account is to be preferred on the basis that he appeared to have a clearer memory of the event. Mr Bligh's account was occasionally vague as he did not recall some aspects of the incident.

The Meeting - 5 January 2018

35. A meeting was held in Ms Hawker's office on 5 January 2018 attended by Ms Hawker, the appellant, Mr Bligh (grocery manager) and Ms Lord (service manager). Ms Hawker's evidence was that she called the meeting to allow the appellant to raise her grievances after other staff members had advised Ms Hawker that the appellant had been complaining to them.

36. Although Ms Hawker and the appellant gave differing accounts of how the appellant was brought up to Ms Hawker's office to attend the meeting, both gave evidence that the Appellant asked about having a witness.

37. The appellant stated that she told Ms Hawker that she had not received notice of the meeting and she did not have a witness. The appellant said that Ms Hawker responded by asking whether she wanted a witness and the appellant indicated that she did. She was then asked who and she responded that there was no one at the store at the time that she would want to act as a witness. The appellant said that Ms Hawker indicated that she wanted the meeting to continue however Mr Hawker denied this. Ms Hawker gave evidence that she told the

appellant that she did not need a witness, but she was happy for the appellant to have anyone or to send Mr Bligh and Ms Lord out, or to speak to the appellant at a different time.

38. Ms Hawker gave evidence that she did not want the meeting to be recorded as she had been told not to agree to being recorded. Ms Megan Taylor (Coles HR Manager) gave evidence that the business had a preference that meetings are not recorded and this was conveyed from HR to store manager level. Ms Hawker also indicated that her preference was not to be recorded as it made her uncomfortable, was unnecessary and was concerned the recording could be of poor quality.

39. The appellant stated that after Ms Hawker indicated that she preferred the meeting was not recorded, Ms Hawker made a statement to the effect of 'the appellant's phone could still be recording'. The appellant gave evidence that she responded saying that she was not a liar and to have her integrity challenged was low. Mr Bligh recalled the reference to lying but not to integrity.

40. Ms Hawker gave evidence that she told the appellant that she appeared to have been upset since she had returned from the Toombul store and she invited her to tell her if there was anything she was worried or upset about. Ms Hawker stated that the appellant replied that she was worried about her pay, she felt that she didn't have the support of her team, and accused Ms Hawker of being moody and grunting and rolling her eyes at the appellant. Ms Hawker stated that she didn't recall behaving like that, and if the appellant wrote down her concerns regarding pay Ms Hawker would send it off to be investigated.

41. The appellant stated that Ms Hawker asked what the appellant's problem was and the appellant gave a response referring to Ms Hawker's treatment of her since the hospital incident. The appellant then gave evidence that she referred to the huddle and mentioned that it was humiliating, belittling and bullying, to which Ms Hawker allegedly chuckled before the appellant referred her to the work policy. Ms Hawker could not recall the huddle being mentioned, denied laughing, and could not recall reference to the work policy.

42. The appellant stated that she mentioned Ms Hawker's previous comments that she didn't want excuses, that she had gone to Mr Bligh and Ms Hawker about staff and nothing was done. Ms Hawker denied the excuses comment but admitted a version of the management comment.

43. The appellant stated that she mentioned Ms Hawker's previous comment that she 'paid the appellant to manage the department'. The appellant had checked her payslips and she was only getting paid an 'in charge' allowance. The appellant stated that Ms Hawker then told her that she was receiving a higher rate, not just an allowance. Ms Hawker admitted that there

was a clarification of the issue of the allowance and the pay rate issue. Mr Bligh recalled the reference to the appellant getting paid to manage a department.

44. The appellant said she was extremely upset by the meeting and cried after it as she found it intimidating.

General conduct by Ms Hawker

45. The appellant gave evidence that following the hospital conversation, her relationship with Ms Hawker went from 'really good' to Ms Hawker refusing to talk to the appellant other than to 'grunt or snarl'.[8]

46. Ms Hawker denied that she had ignored the appellant or was cold towards her and denied there were occasions where the appellant was crying in her presence because of her behaviour.[9]

47. Ms Mitchell gave evidence of encounters she had witnessed between the appellant and Ms Hawker.[10]. Ms Mitchell's evidence corroborated significant parts of the appellant's accounts with respect to Ms Hawker's interactions with the appellant. Ms Mitchell gave evidence that she heard Ms Hawker tell the appellant to work faster and regularly saw the appellant being told that there was no excuse for stock not being put away regardless of the reasons provided by the appellant.[11] Ms Mitchell recalled that she observed that in response to questions from the appellant as to where she should put stock Ms Hawker would reply either that she didn't care or stated that she had told the appellant previously.

48. Ms Mitchell gave evidence that she recalled seeing Ms Hawker leaning in toward the appellant in a aggravating manner with the appellant crying[12] and walking past the office hearing Ms Hawker yelling and then seeing the appellant stocking shelves and crying. Ms Hawker either denied these accounts or stated that she had no such recollection of such conversations.[13]

49. Ms Mitchell characterised the situation as 'like a bird pecking away at a honey seed bell' with Ms Hawker always saying something to the appellant in an intimidating or aggressive manner.[14]

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[8] T1-55 L7-10.
[9] T3-35 L15-24; T3-36 L3-6.
[10] T2-27 L20; T2-28 L30.
[11] T2-23.
[12] T2-22.
[13] T3-23 L15-34; T3-35 L36; T3-38 L23.
[14] T2-26 L20.

Pay issue

50. Issues regarding the appellant's pay were noted as a stressor in the appellant's original statement of facts and contentions prior to it being removed following the filing of an amended statement of facts and contentions. The appellant submits that the pay issue was not a stressor however the respondent submits that the evidence confirms that it was a stressor and the appellant should be bound by the original statement of facts and contentions.

51. The pay issue appeared to arise out of ambiguity regarding the appellant's role within the store structure. It is closely tied to the appellant's concerns regarding Ms Hawker's conduct towards her.

52. The appellant worked in a Coles store in Townsville before moving to Brisbane in November 2016. The appellant gave evidence that she was offered a duty manager position by Justin McLoughlin who was the store manager at Rode Road Coles at the time. The appellant stated that a few days before commencing at the store, she was told that the previous duty manager was returning from injury and that she would therefore be night fill in charge full time, plus part time duty manager.[15] The appellant maintains that she was advised that she would still be paid at the management rate.

Toombul Pay

53. The appellant was seconded to the Toombul store for approximately five weeks in September/October 2017.

54. The appellant noticed that she was getting paid less at Toombul than she was paid at the Rode store. Following her enquiry with payroll her pay was adjusted.

55. A pay review was ultimately conducted in March 2018 and the employer concluded that the appellant had been overpaid (the $13.00 per week for the 5 weeks) but did not require her to refund the difference.

Pay issue - HR response

56. With respect to the pay issue, Ms Hawker's evidence was that the appellant initially raised the pay issue with Lara Collins, the officer in charge.[16] Ms Hawker said that she helped Ms Collins work through it and gave her some guidance to work through the enterprise bargaining agreement (EBA). She told Ms Collins to check with another office in charge and

[15] T1-47 L10.
[16] T3-67 L6-16.

the payroll team.[17] Ms Hawker also stated that she sought guidance from Ms Jodie Fitness (Coles HR) prior to the 5 January 2018 meeting with the appellant.

57. The appellant raised her concerns again with Ms Hawker in the meeting of 5 January 2018, during which Ms Hawker indicated that she would refer it to HR for investigation. The appellant's account to Ms Taylor with respect to the 5 January 2018 meeting included Ms Hawker saying that she had spoken with Ms Fitness who told her she was getting paid correctly as a team member.[18]

58. Ms Hawker and Ms Fitness gave evidence that Ms Hawker had at some time prior to 5 January 2018 relayed to Ms Fitness that the appellant considered she was being paid incorrectly.[19] Ms Taylor recorded[20] that "*Deanne believes that because she has raised an issue about her pay, that Sarah is now calling her 'just a team member'.*" On 28 February the appellant raised her concerns about pay, along with other matters, with Ms Mulenga (Coles HR) who then passed them on to Ms Taylor.[21] On 1 March 2018, the appellant contacted Ms Taylor and had a phone conversation. Ms Taylor produced a file note[22] setting out the details of the conversation which included the appellant requesting Ms Hawker's behaviour be investigated, her pay investigated, the doctor's advice for her not to work and Ms Taylor's suggestion of mediation to which the appellant agreed.

59. Ms Taylor met with the appellant on 27 March 2018 and requested further information about the pay issue, which was subsequently provided. At this meeting the appellant raised the issue of her pay rate and gave evidence that she said that she wanted the people in the store to be told about her correct status, and that she was a team leader, not a team member. Ms Taylor agreed that she would talk to the new store manager to ensure this was done.[23]

60. The appellant gave evidence that she was upset in the meeting on 27 March 2018 because Ms Taylor did not believe her when she said she had tried to call Coles HR 'numerous times' and that she offered to get her diary.[24] The appellant's diary was not disclosed or tendered at the hearing. Ms Taylor gave evidence that she was challenged by the assertion by the appellant that she had called five people from People & Culture and that no one had called her back when none of them, including herself had received a message from the appellant.[25] Ms

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[17] T3-61 L25-28.
[18] Megan Taylor file note at TB61.
[19] T4-24 L25-41.
[20] Ibid.
[21] T4-43 L5-9.
[22] T4-43 L5-9; Exhibit 1.
[23] Exhibit 1, p.64.
[24] T1-66 L36-39.
[25] T4-55 L1-11; T4-56 L12-16.

Treloar also gave evidence of her own experience of HR not getting back to her when she attempted to contact them about her concerns about Ms Hawker's conduct.

61. Ms Taylor met with the appellant again on 9 April 2018 to discuss the outcome of the pay investigation and the complaint about Ms Hawker's behaviour.[26] Ms Taylor advised that the pay investigation had concluded and that the appellant had been paid at the correct rate. Ms Taylor's review of the appellant's pay concluded that the appellant was only supervising team members for part of her day[27] and that she was being correctly paid an in-charge rate for those hours. This was consistent with the appellant's evidence that she was the effective duty manager after the duty manager clocked off at 10 or 11pm until the appellant ceased work at midnight or 1am.[28]

62. Ms Taylor advised that mediation was no longer appropriate as Ms Hawker was no longer at the store. The appellant asserts that Ms Taylor said that Ms Hawker had left and 'what more did the appellant want?', however this comment was denied by Ms Taylor.

63. The appellant became upset and began crying as she left the meeting. Ms Liz Cumberland, the new store manager, and Mr Matt Lakerdis, the grocery manager, were called and the appellant had to be calmed down and went home. The appellant stated before leaving the meeting that she should have left weeks ago.[29]

64. On 11 May 2018, Ms Mulenga, emailed the appellant advising that the pay conclusion was being reviewed, setting out why a mediation was no longer appropriate and outlining the information they held regarding Ms Hawker's behavior on 2 January and 5 January 2018, should the appellant wish to put in a formal complaint.[30]

65. Ms Mulenga's pay review concluded that the appellant had been paid the correct rate because she was not a full time manager and advised that under the new EBA effective 30 April 2018, she would be in a different classification and would be getting a higher hourly base rate.[31]

66. Ms Taylor gave evidence that she had spoken to Justin McLoughlin, the store manager with whom the appellant made the initial agreement, and he said the appellant was to be a duty manager, but after the employee previously in the role returned she became a night fill in charge instead.[32]

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[26] Exhibit 1 p.65-66.
[27] T4-64 L30-37.
[28] T1-73 L12-36.
[29] Exhibit 1 p.66.
[30] Exhibit 1 p.44.
[31] Exhibit 1 p.38.
[32] T4-58 L31-40.

67. The appellant discussed her workers' compensation claim with Ms Brigitte Baum from Wesfarmers on 24 April 2018. Ms Baum took notes during the conversation and in response to questions about the cause of her anxiety and depression identified a number of factors including the pay dispute. The appellant told Ms Baum that her anxiety and depression had been building for a few months but culminated in the meeting of 9 April 2018.

68. On 3 May 2018, the appellant spoke to Ms Shae Foxcroft, the appellant's return-to-work coordinator from Wesfarmers. According to Ms Foxcroft's notes[33] the first substantive thing the appellant told Ms Foxcroft was that this was an issue due to pay.

69. The medical evidence (discussed below) confirms that the problems with the appellant's pay formed part of the stressors suffered by the appellant. The medical record of 10 April 2018 refers to problems with pay along with stress from having been bullied at work for five months.[34] On the basis of evidence provided by Ms Taylor, Ms Baum and Ms Foxcroft, it is clear that the pay issue was a stressor for the appellant.

Medical Evidence

70. The three following medical practitioners gave evidence at the hearing:

- Dr Best
- Dr Saikh
- Dr Mathew

71. The three medical practitioners agreed that the appellant had an adjustment disorder with mixed anxiety and depressed mood.[35]

Dr Best

72. Dr Best is the appellant's treating psychologist who first saw the appellant on 11 April 2018. Dr Best provided a report dated 18 May 2018 to Wesfarmers Group Team Cover and dated 23 April 2019 to the appellant's solicitors. Dr Best provided oral evidence at the hearing.

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[33] TB 31-32.
[34] Exhibit 1, p.83.
[35] Dr Best (exhibit 1, p.137); Dr Shaikh (exhibit 2, p.6); Dr Mathew (exhibit 1, p.116).

73. Dr Best stated that she was aware of a hospital incident and the appellant's view that the relationship between the appellant and Ms Hawker became cold and distant afterwards.[36]

74. Dr Best gave evidence that the appellant reported a huddle in which she felt humiliated[37] and that although there was stress before the huddle there was no psychiatric condition.[38] After the huddle there was definite stress and anxiety.[39]

75. At the time of the consultation, the accumulation of events was consistent with an adjustment disorder with mixed anxiety and depressed mood.[40]

76. Dr Best stated that following the meeting of 5 January 2018, there were panic attacks, the appellant was fearful, shaking, distressed and unable to think clearly.[41] Dr Best confirmed that at that point there were signs of panic and anxiety.[42]

77. With respect to whether the reported work stressors were a significant contributing factor to the development of the condition, Dr Best stated:

> Based on the information and results from psychological intervention, the presence of Mrs King's emotional and behaviour symptoms appeared in response to a perceived series of multiple, recurrent stressors at work. The combination of reported ambiguity about her role, level of pay and job requirements, together with disparate behaviour of staff and management has significantly impacted temporary changes in interpersonal and occupational functioning.

78. Dr Best indicated that there was a conflict between job requirements and pay levels,[43] with the ambiguities around the appellant's role and level of requirements contributing to the distress.[44] There were concerns about communication with management in relation to her role description and performance being aligned with pay level.[45]

79. Dr Best stated the following in oral evidence:

> The level of distress and difficulty, from my understanding, was around the compounding nature of the role expectations and the level of clarity or clear resolution around the expectations of her management role and her role requirements and the commensurate pay level.[46]

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[36] T3-93 L45.
[37] T3-9 L48.
[38] T3-94 L8; T3-94 L33-49.
[39] T3-94 L45.
[40] T3-95 L5.
[41] T3-98 L10-25.
[42] T3-98 L30.
[43] T3-98 L42.
[44] T3-99 L40.
[45] T3-10 L20.
[46] T3-99 L10.

80. Dr Best stated that it was not possible to rank the stressors in linear order and that it was a combination of multiple reported stressors that caused the adjustment disorder.[47] With respect to the issue of whether the pay issue was a stressor, Dr Best gave the following evidence:

> It was a contributing stressor in relation to the perceived mistreatment and the management and the communication of the role description. So in sequence, the aligned level of pay to her role was perceived as a stressor, yes.[48]

Dr Wasim Shaikh

81. As part of the workers' compensation investigation process Dr Shaikh, psychiatrist, saw the appellant on 19 June 2018. Dr Shaikh prepared a report dated 22 June 2018 and a second report for the respondent dated 28 August 2019 and provided oral evidence at the hearing. Dr Shaikh considered that the appellant's symptoms commenced after the hospital incident with significant symptoms developing shortly after the huddle.[49]

82. Dr Shaikh stated the following with respect to the stressors which caused the appellant's condition:

> I believe there is a causal and consequential relationship between her nominated work stressors and her emotional complaints. I believe the primary linkage is to be the perceived ill behaviour from her store manager. There is some reference to underlying constitutional vulnerabilities as well as concerns surrounding her pay but I believe these are secondary in terms of contribution. The major significant contributory factor is her issues with Ms Hawker.

Dr Mathew

83. Dr Mathew, psychiatrist, saw the appellant on 5 February 2019, produced a written report dated 10 March 2018 and provided oral evidence at the hearing.

84. Dr Mathew provided the following evidence with respect to contributing factors to the appellant's injury:

> The most significant one is Ms King's allegation that she was treated poorly by Ms Hawker, and that's over a period of time. Then there were other factors which were still important, and they were the - the meeting or huddle in - on 3rd January 2018. The next one is the meeting in April 2018 and finally the dispute with regard to pay issues.[50]

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[47] T2-101 L40.
[48] T3-102 L12.
[49] T2-34 L1-20.
[50] T2-40 L2.

85. Dr Mathew's evidence was that, if consideration of the pay issue was removed, the other experiences would have been sufficient to cause the psychiatric injury. Dr Mathew gave evidence that the most significant factor was the relationships with Ms Hawker from the hospital all the way through until the appellant took leave.[51]

86. Dr Mathew gave evidence that the appellant was very distressed by Ms Hawker's treatment over a period, with a little bit of distress prior to the huddle but being very distressed after it.[52]

87. In cross-examination, Dr Mathew stated that the appellant was dissatisfied with feeling unfairly treated by the employer regarding the pay and seniority and feeling that co-workers were treating her differently.[53]

88. Dr Mathew gave evidence that Ms Hawker's treatment of the appellant was enough on its own to cause a diagnosis. A combination of the other factors may have been enough to cause a diagnosis.[54]

Consideration of medical evidence

89. Dr Shaike, Dr Mathew and Dr Best confirmed a diagnosis of adjustment disorder with mixed depressed and anxious mood. On the basis of this medical evidence, I accept that the appellant has sustained a personal injury, that being an adjustment disorder with mixed depressed and anxious mood.

90. Dr Best, Dr Mathew and Dr Shaike gave evidence at the hearing that the appellant exhibited symptoms following the huddle.[55] Dr Mathew and Dr Best agreed that this meeting contributed to the appellant's psychiatric injury and produced symptoms.

91. Dr Best considered that the meeting on the 5 January 2018 was the event in which significant signs and symptoms of panic arose. Dr Best did not say that there was a psychological injury at this time, only that there were *"signs and symptoms of the anxiety and panic."* In Dr Best's report, it was the period after 5 January 2018 meeting which gave rise to these symptoms.

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[51] T2-44 L5.
[52] T2-54 L25-40.
[53] T2-56 L5-10.
[54] T2-59 L25-33.
[55] T2-34 L1-20; T2-41 L30-35; T3-94 L45.

92. Dr Shaikh gave oral evidence that the pay issues were significant in causing the appellant's emotional distress, but 'perhaps not the sole contributor'.[56]

93. In his second report, Dr Shaikh stated the following:

> During our assessment of 19.06.2018, Ms King reported that her symptoms were primarily related to ill behaviour by her supervisor, Ms Hawker. From her reports, the pay issues, whilst contributing to mental distress, appeared secondary in contention. Ms King's symptoms which were ongoing at the time, including anxiety, related to her thoughts about Ms Hawker, and I noted therefore that with Ms Hawker no longer being at the particular store, Ms King could continue in nominated working hours.
>
> It remains my opinion that the perceived ill behaviour discussed above was the major significant contributor to the development of the adjustment disorder. I do believe that the pay issues were significant, but not the major significant contributor.

94. Dr Mathew stated the following in response to a request to rank the stressors in order from the most to least significant in causing the diagnosis:

> This is a subjective test, but I will do my best:
>
> 1. Ms King's allegation that she was treated poorly by Ms Hawker, avoiding contact, not conversing, and just walking away.
> 2. The group meeting in January 2018.
> 3. The dispute with regard to pay.
> 4. Ms King feeling undermined by her co-workers.
> 5. Feeling poorly treated by other managers after complaining after about Ms Hawker.
> 6. The meeting on 5 January 2018 when Ms King complained about being bullied.
> 7. Ms Hawker's demeanor towards Ms King when Ms King was taken to hospital.
> 8. Bumping her head at work in November 2017.[57]

95. Dr Mathew stated that the individual stressor which, on its own, would have constituted a significant contributing factor to the development of the mental illness was the following

> Ms King's allegation that she was treated poorly by Ms Hawker, avoiding contact, not conversing, and just walking away.

96. Dr Best gave the following evidence:

> It was evident from Mrs King that she was significantly stressed and anxious by pay rate/allowance concerns that had evolved into a dispute following ongoing conflict regarding job role requirements. In seeking clarification of her role, Mrs King advised that her level of pay indicated that she had been performing higher duties for a period of time commensurate to the level of her responsibility and management. However, from Mrs King's report it would appear that clarity around her role and pay level

[56] T2-35 L10-28.
[57] Exhibit 3, p.127.

had become increasingly difficult to determine, thereby resulting in exacerbating symptoms of anxiety and stress.

97. Dr Best was of the view that the issue of the appellant not receiving a particular allowance alone would not likely have caused psychiatric injury.[58] Dr Best stated that it was the accumulation of the pay dispute together with "*the perceived withdrawal, of, you know, collegial support, the changes in expectations, the perceived hostility in her relationships at work*" that were causative stressors.[59]

98. The medical evidence confirms that the pay issue contributed to the appellant's psychological injury. The use of the term 'pay issue' in the context of the medical reports goes beyond the issue of financial compensation and extends to the lack of clarity around the appellant's role.

99. Based on my assessment of the medical evidence, I am persuaded that the most significant stressor leading to the appellant's injury was Ms Hawker's alleged conduct towards the appellant from the time of the hospital incident until Ms Hawker transferred from the store. The pay issue was a moderate contributing factor in terms of ongoing conflict regarding role requirements.

Date of injury

100. The appellant asserts that the psychiatric injury developed after the meeting of 5 January 2018, however the respondent contends that the date of injury was 9 April 2018.

101. The date of the meeting with Ms Taylor and the last day of work before going on stress leave according to the application for compensation was 9 April 2018.

102. The appellant attended her first consultation with a GP about her psychological injury on 10 April 2018 and submitted her workers' compensation claim on 20 April 2018.

103. Dr Best's view was consistent with a date of onset of injury of April 2018, stating that the cumulative effect of the events throughout the time period up until April were consistent with the adjustment disorder diagnosis.

104. Dr Mathew's view that the perceived mistreatment by Ms Hawker was the most significant contributing factor right up to the time that Ms Hawker left the store in March 2018 indicates that the injury was not complete prior to this time.[60]

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[58] T3-102 L1-17.
[59] T3-1-3 L1-26.
[60] T2-43 L44; T2-44 L9.

Consideration

105. I note from the respondent's submissions that it is conceded that the appellant suffered a personal injury in the form of an adjustment disorder with mixed depression and anxiety. The medical evidence also supports this conclusion.

106. The respondent however contends that the injury occurred on 9 April 2018 whilst the appellant submits that the injury occurred on 5 January 2018. The question of the date of injury is a mixed question of fact and law. As submitted by the respondent, the date of decompensation is often considered to be the signifier of the injury.[61]

107. On 10 April 2018 the appellant went to see her GP and a medical certificate was issued on 11 April 2018. The appellant lodged an application for worker's compensation on 20 April 2018.

108. The evidence given by Dr Best indicates that the appellant's injury was a consequence of the accumulative effect of the events throughout the time period between the hospital incident and April 2018. Dr Mathew's view was that the appellant's perception of Ms Hawker's increasingly antagonistic behaviour up until she left the store in March 2018 was the most significant contributing factor. Both these assessments presuppose that the injury was not complete prior to this time.

109. The appellant's statement of facts and contentions nominates a period of alleged stressors concluding on 10 April 2018. As determined by Martin J in *Yousif v Workers' Compensation Regulator*[62] the appellant should generally be held to the position set out her statement of facts and contentions if leave has not been sought to amend.

110. At the initial interview with Ms Baum at Wesfarmers on 24 April 2018, the appellant stated that her anxiety and depression had been building for a few months because of bullying and on 9 April 2018 following her meeting with Ms Taylor she felt she was no longer able to cope with the different stressors she had been experiencing.[63]

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[61] *Robinson v Workers' Compensation Regulator* [2016] ICQ 16; *Dickinson v Workers' Compensation Regulator* [2019] QIRC 68; *Whipps v Workers' Compensation Regulator* [2017] QIRC 29

[62] [2017] ICQ 004; *Blackwood v Adams* [2015] ICQ 001;

[63] T1-90 L30.

111. The appellant stated that the symptoms had been coming on gradually and progressively got worse. She stated that "*Sarah [Ms Hawker]called me a team leader until I questioned my pay. After that she bullied me and abused me in front of other TMs.*"[64]

112. Based on the evidence of the appellant and medical witnesses, I accept that although symptoms were evident in the weeks leading up the appellant taking leave from work, the date of injury was 9 April 2020.

Evidence of the appellant and Ms Hawker

113. The evidence given by the appellant and Ms Hawker often conflicted when describing what was said in discussions involving the pair. Although the appellant occasionally appeared emotional, I largely found her to be a credible witness in recalling the relevant aspects of the stressors which led to her injury. There were some minor inconsistencies in terms of the chronology of events, but these were not of any consequence.

114. Having had the opportunity to observe Ms Hawker give evidence, I found her to be guarded and often unable to recall many aspects of the relevant events that were corroborated by other witnesses. This is not unusual given the length of time that has elapsed since the events took place. I also note that Ms Hawker was often unwilling to make reasonable concessions.[65] Where Ms Hawker's account has been supported by other evidence or appears logical in the circumstances I have accepted this evidence.

Did the injury arise out of, or in the course of, the appellant's employment?

115. President Martin stated in *Byrnes v Workers' Compensation Regulator*:

> Section 32(1)(a) of the Act makes the primary factor for consideration whether the employment was a significant contributing factor to the injury. The requirement is preceded by another condition, namely, that the injury arise out of, or in the course of, employment. Those words are to be regarded as alternative conditions not cumulative. It was explained in this way by Fullagar J in *Kavanagh v The Commonwealth*
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> [T]he effect of requiring a causal connection between employment and injury is always attributed to the words 'out of' and not to the words 'in the course of'. (The words 'out of' do indeed import causation: the words 'in the course of' do not.) The conclusion seems inevitable that the main object of the changing of the conjunction was to eliminate the necessity of finding such a causal connection. If there was such a causal connection, the injury was to be compensable even though it did not occur while the worker was engaged in his employment or anything incidental to his employment. If, on the other hand, the injury occurred in the course of the employment, it was to be compensable even though no causal connection could be found between it and the employment. And it necessarily follows, I think, that the words 'arising in the course of his employment' ought not to be regarded as meaning 'anything more or less than arising while the worker is engaged in his

[64] Ibid.

employment'. For I can find no tenable half-way house between this view and the view that the words in question have the same meaning as the words 'arising out of his employment.

116. The medical evidence provided by all three medical practitioners confirmed that the stressors contributing to the injury occurred in the context of the appellant's employment.

117. There was no evidence presented indicating that the appellant's injury arose out of or in the course of circumstances unrelated to the appellant's employment.

118. The respondent acknowledges in their submissions that the appellant's injury arose out of or in the course of her employment and that her employment was the major significant contributing factor.

Was the appellant's employment the major significant contributing factor to her injury?

119. For employment to be the major significant contributing factor to the injury, there should a clear linkage between the injury and the employment.

120. The appellant's injury was sustained at a time when the Act required the employment to be the major significant contributing factor to the injury. As noted by Neat C in *Keunster v Workers' Compensation Regulator*[66], a number of factors could contribute to a worker's psychiatric or psychological disorder, however the worker's claim will only be accepted if their employment was the 'major' significant contributing factor to their disorder.

121. The medical evidence from all three practitioners confirmed that the appellant's employment was the major significant contributing factor to the injury. Dr Mathew stated clearly in his report

"*There were no non-work related contributions to her psychiatric conditions*."[67]

122. I accept that the appellant's employment was the major significant contributing factor to her injury.

Did the injury arise out of management action taken in a reasonable way by the employer in connection with the appellant's employment?

123. A personal injury is excluded from the definition of 'injury' under s 32(5) of the Act if it arises out of or in the course of reasonable management action taken in a reasonable way by the employer in connection with the appellant's employment.

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[66] [2016] QIRC 83
[67] Exhibit 1, p. 117.

124. The respondent contends the appellant's injury is excluded by s 32(5) of the Act because it arose out of or in the course of reasonable management action taken in a reasonable way.

125. The management action submitted to enliven s 32(5) of the Act included the conduct of the huddle, the meeting of 5 January 2018, and the investigation of the appellant's complaints regarding the pay issue and bullying by Ms Hawker.

126. Management action is directed at a worker's employment itself as opposed to action about everyday duties or tasks of the worker.[68] In *Read v Workers' Compensation Regulator*[69], Deputy President O'Connor (as he then was) stated:

> Management action does not embrace every instruction of and action by an employer. Rather, the expression contemplates a particular type of action by an employer, and something other than a mere instruction or requirement that the worker perform his or her duties. Management action must be something different to the normal duties and incidents of her employment as a Town Planner. In other words, it must be something more than what was part and parcel of her employment.

127. In *Allwood v Workers' Compensation Regulator*[70], Deputy President O'Connor (as he then was) described 'management action' in the following terms;

> The concept of management action in the context of a worker's employment, and for the purposes of the Act, is not so broad that it encompasses anything and everything that a manager does or says in the particular workplace, rather the expression 'management action' relates to those actions undertaken when managing the worker's employment.
>
> …
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> The exclusory action in s32(5) of the Act was, in my view, intended by Parliament to relate to specific management action directed to the appellant's employment itself, as opposed to action forming part of the everyday duties or tasks that the worker performed in their employment.

128. In *Allen v Workers' Compensation Regulator*[71], Deputy President O'Connor determined that a meeting held to discuss the appellant's position description, remuneration and hours of work constituted management action for the purposes of s32(5) of the Act.

129. After examining the stressors identified in the appellant's evidence and canvassed in the medical evidence, I am of the view that the following stressors fall into the category of management action – the huddle, meeting of 5 January, and the investigation into the appellant's bullying and pay dispute.

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[68] *Allwood v Workers' Compensation Regulator* [2017] QIRC 088 per O'Connor DP (as he then was) at [68].
[69] [2017] QIRC 72.
[70] [2017] QIRC 088 at [68].
[71] [2018] QIRC 41.

The huddle

130. It appears to me that the conduct of the huddle was an exercise of management action rather than operational action. In *Mahaffey v Simon Blackwood (Workers' Compensation Regulator*)[72] Deputy President Kaufman determined that a manager's interaction with staff, at least to the extent of giving directions and making requests of them fit within the concept of management action. Ms Hawker's conduct of the huddle was in the context of managing her staff and as such can be considered management action.

131. Having determined that the huddle constituted management action, the next consideration is whether that management action was reasonable and carried out in a reasonable way. In consideration of the evidence with respect to the conduct of Ms Hawker at the huddle, I am persuaded that Ms Hawker acted in a manner that was unreasonable in the circumstances, particularly for someone in her role as store manager. Whilst there was nothing unreasonable in Ms Hawker convening the huddle, it appears that the matter escalated and she challenged the appellant on how she had sought to manage and coach those co-workers in front of her co-workers. This was not a meeting conducted in a reasonable manner. The huddle escalated to a point that the manager was speaking loudly in a confronting manner at an employee who was similarly speaking loudly in response. Whilst Ms Hawker did not agree that she had behaved inappropriately, I note Mr Wade described the event as involving Ms Hawker 'berating' the appellant and tearing strips of her in front of her night crew.

132. I note in Dr Mathew's report of 5 February 2019, he states that the appellant stated that following this incident "*I was totally humiliated. I felt so belittled and humiliated. I felt I was totally worthless*". Dr Mathew' notes *"it was difficult for Ms King that the meeting was held with co-workers present."*

133. As noted by Deputy President Kaufman in *Mahaffey v Simon Blackwood (Workers' Compensation Regulator*)[73], a manager's language, tone of voice and demeanour are relevant to determining whether management action was taken in a reasonable way. Deputy President Kaufman determined that yelling at and belittling staff in that context could never be said to be reasonable management action.[74]

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[72] [2015] QIRC 116; decision upheld in *Blackwood v Mahaffey* [2016] ICQ 10.
[73] [2015] QIRC 116; decision upheld in Blackwood v Mahaffey [2016] ICQ 10.
[74] *Mahaffey v Simon Blackwood (Workers' Compensation Regulator [2015] QIRC 166*

134. Whilst Ms Hawker's decision to conduct the huddle was reasonable management action, it was not conducted in a reasonable way.

The meeting of 5 January 2018

135. It appears to me that the meeting of 5 January 2019 ('the meeting) constituted management action on the basis that it was held to discuss the appellant's particular employment issues, including grievances, rather than day to day operational matters.

136. Ms Fitness gave evidence that the correct processes for the meeting had been followed and Ms Hawker's conduct was "*as we would have expected it to be for that type of meeting*". The respondent submits that as it was not a disciplinary meeting, it was not necessary to have given the appellant advance notice and Ms Hawker had told the appellant she could have someone in the meeting if she wanted.

137. I accept that a meeting to discuss an employee's grievances does not necessarily require advance notice.[75] Managers are able to discuss grievances with employees, depending on the nature of the grievance, at times which are convenient to the parties in the context of workplace operations. These conversations may often occur unplanned as time allows, depending on the circumstances.

138. This meeting however was more significant than a simple discussion with an employee. In my view the nature of the grievances, the recent history of tension between the appellant and Ms Hawker, and the involvement of other managers gave this meeting a more significant tone.

139. The grievance was not a low-level complaint. It related to the relationship between the two women which had deteriorated significantly in the period leading up to the meeting. This is evidenced by the hostility between the women in the huddle, Ms Hawker's awareness that the appellant had been complaining about her to other staff, and Ms Hawker's admitted change in attitude to the appellant following the hospital incident.

140. The structure of the meeting also suggested that this was not an informal meeting. It is unclear to me why two other managers were in the room when the appellant was brought in to discuss her grievances. The appellant understandably raised concerns about not having a witness in the room upon seeing that Ms Hawker appeared to have two of her own witnesses present. The evidence provided by Ms Hawker and supported to some extent by the appellant was that the appellant was afforded the opportunity to bring someone in from the

[75] *Qantas Airways Limited v Q-Comp (2006)* 181 QGIG 301.

store or delay the meeting after she raised her concerns about not having a witness. Whilst this mitigates Ms Hawker's actions to some degree, I do not accept that it was reasonable to put an employee in such a position in the first instance. When the appellant indicated that there was no one in the store at that time that she would like as a witness, it would have been appropriate for Ms Hawker to reschedule the meeting for another time.

141. The issue with respect to the witness request reflects a broader problem with the manner in which this meeting was conducted. Ms Hawker gave evidence that the meeting was called to address a number of matters relating to the appellant's employment. This was not a spontaneous discussion between a manager and employee on the shop floor. It was a meeting in the store manager's office with the grocery manager and service manager also in attendance. Whilst it was entirely reasonable to arrange a meeting to discuss the appellant's issues, it was not reasonable to do so in a forum in which the appellant was invited to explain her grievances to the store manager in front of two other managers with no forewarning. In the context of a high level of tension between the parties, reasonable management action in these circumstances would have involved a more structured approach to resolving the issues.

142. The circumstances in which an employee is brought to a meeting without warning, placed in an office in which three managers are present and told that they do not need a witness would put unreasonable pressure on the appellant to simply go along with the meeting. The power imbalance in this situation should have been clear to Ms Hawker at the time. Given that the content of the meeting was to go beyond simple operational matters, the meeting should have been arranged for a time in advance to allow for the appellant to prepare and bring an appropriate witness or support person.

143. In my view, calling the meeting to resolve the appellant's issues was reasonable management action, however it was not conducted in a reasonable way.

Conduct by Ms Hawker

144. The conduct throughout the period following the hospital incident by Ms Hawker toward the appellant does not constitute management action. The description of the conduct by the appellant, Mr Wade and Ms Mitchell suggests exchanges were characterised by regular bursts of aggression aimed at the appellant. Although Ms Mitchell's evidence suggests these incidents appear to have been in the context of Ms Hawker giving the appellant directions with respect to work, these were of a daily operational nature rather than management. These actions are therefore not subject to the exclusion in s 32(5).

145. Ms Lynette Mitchell was an employee in the Coles Rode Rd store and gave evidence at the hearing. Having had the opportunity to observe Ms Mitchell give evidence, I found her to be a reliable historian who appeared to have no difficulty in recalling the events she had witnessed between the appellant and Ms Hawker. Ms Mitchell gave spontaneous answers when questioned in a forthright manner and readily conceded when she could not recall particular details.

146. The respondent submits that Ms Mitchell could not identify specific dates and other details of the examples she gave in oral evidence. This is accurate, however I do not accept that Ms Hawker could not respond to this evidence due to a lack of specific details.

147. It is clear from Ms Hawker's evidence that her attitude to the appellant changed following the hospital incident. The evidence of Ms Mitchell and Ms Wade confirms that Ms Hawker's conduct towards the appellant subsequently became aggressive and unreasonable.

148. I accept the evidence of the appellant, which was consistent with that given to medical practitioners, and the evidence of Mr Wade and Ms Mitchell that Ms Hawker engaged in episodes involving unreasonable behaviour toward the appellant from the time following the hospital incident up until Ms Hawker transferred from the store.

149. The medical evidence indicates that the appellant's perception of these behaviours by Ms Hawker contributed significantly to the appellant's injury.

Employer's response to appellant's bullying complaint

150. The employer's handling of the appellant's bullying complaint against Ms Hawker and the pay issue constitutes management action. The act of investigating a complaint or report would ordinarily come within the definition of management action, as determined by O'Connor DP in *Allwood v Workers' Compensation Regulator*.[76]

151. The appellant made a complaint to Coles HR regarding her pay issue and alleged bullying by Ms Hawker. Megan Taylor (Coles HR) initially discussed potential mediation between Ms Hawker and the appellant. Following Ms Hawker's transfer to another store on 16 March 2018, the employer determined that mediation would no longer be necessary. Mediation had originally been agreed upon as a mechanism to address the conflict between the parties and to allow them to work more effectively together.

152. The appellant confirmed that upon hearing that there was not going to be a mediation, she said words to the effect "*Well, I guess now that she's left, I'm not going to get my*

[76] [2017] QIRC 88.

apology."[77] In cross-examination she confirmed that she was expecting an apology from Ms Hawker and she was upset that Ms Hawker had been moved because she perceived that as a reward for supposed bad behaviour and because the appellant would not get an apology.

153. On the basis that the two women would no longer be working together, the decision by the employer to determine that mediation would not be facilitated between Ms Hawker and the appellant was reasonable in the circumstances.

The pay issue

154. The manner in which the pay issue was handled constitutes management action as it was not routine or operational action. The question of whether the management process was reasonable in addressing the pay issue can be separated into two aspects - the Coles HR response and the response at the store level by Ms Hawker.

155. In my view the employer's investigation into the pay complaint was reasonable. I am persuaded that the evidence provided by Ms Taylor indicated that an appropriate investigation was undertaken:

> I gathered a whole lot of information which took a bit of time, so that - tat was information relating to her earnings histories, her rosters, the team members that she was supervising - when and how long and how many - her task analysis, linked that up with the - the EBA that applied at the time - which has since changed, but at the time - and reviewed all of that information together, which I then presented my outcome back to Deanne on the 9th of April.[78]

156. The appellant's submissions suggest that the employer's investigation was not reasonable as Ms Taylor did not document the conversation with the previous manager Justin McLoughlin or present the findings regarding what was agreed to the appellant. Whilst that course of action may have been more thorough, I am not convinced it would have altered the outcome based on Ms Taylor's evidence. It is also worth noting that investigations of this nature must be fair and reasonable, however they do not have to be perfect.

157. At the meeting between the appellant and Ms Taylor on 9 April 2018, Ms Taylor conveyed the results of the investigation into the pay issue to the appellant. Although the appellant was upset at this meeting, Ms Taylor's actions in investigating the issue and reporting the conclusions to the appellant were reasonable management action taken in a reasonable way.

158. The appellant has also submitted that the increase to the appellant's pay under the new enterprise bargaining agreement (EBA) without changes to her hours or duties reflects the

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[77] T1-87 L16-17.
[78] T4-43 L23-38.

unfairness of the interpretation the employer was placing on the previous EBA and in determining the outcome of the pay complaint.

159. The previous EBA provided for staff who were required to supervise other staff to be paid an 'in charge' allowance calculated hourly based on the number of people supervised for that hour. The 'in charge' allowance was calculated according to three bands - up to three people being supervised; three to ten people being supervised; and more than ten people being supervised.

160. This process was changed following certification of the new EBA, effective as of 30 April 2018, where an "in charge" allowance was paid for the whole of the shift.

161. I accept that the changes indicate that the prior arrangement was no longer supported by the parties to industrial agreement, however the employer was bound by the previous EBA and hence it was not unreasonable to apply the clauses as stated.

162. In *Workers' Compensation Regulator v Langerak* Martin J stated "*... the question of whether s 32(5) is enlivened turns on the weight attributed to each factor under consideration*".[79] In my view s 32(5) is not enlivened in this matter as the investigation into the appellant's pay and role was not a factor of significant weight in terms of contribution to the injury. Other aspects of the pay issue, such as the treatment by Ms Hawker, the role ambiguity and the change in status when others found out that the appellant was only a team member, played a more significant role in the development of the injury.

Ms Hawker's response to the 'pay issue'

163. The appellant gave evidence that a person present at the meeting of 5 January 2018 told other staff that the appellant was just a team member and not a team leader. The appellant's evidence was that the team members' began treating her differently from that time based on knowledge of her lower status. She stated that managers stopped asking her for help and team members were not respecting her orders. These concerns are reflected in the file notes of Ms Taylor[80], Ms Baum[81] and Ms Foxcroft.[82]

164. The appellant told Ms Taylor in their conversation on 27 March 2018 that her team had lost respect for her after Ms Hawker called her just a team member.[83] The appellant had spoken to Ms Cumberland, the new store manager, who agreed to rectify that in the team huddle.

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[79] [2020] ICQ 002 [80].
[80] Exhibit 1 p.61, 62 and 64.
[81] Exhibit 1 p.64.
[82] Exhibit 1 p.31-33.
[83] T4.54 L18.

Ms Taylor also indicated that she would speak to Ms Cumberland, to assure the team that the appellant was night fill in charge.[84] The appellant submits that the pay issue was about status, which in turn conferred authority in the team, more than the pay itself.

165. The appellant gave evidence that the pay issue was not a stressor and the statement of facts and contentions was amended to remove this issue as a stressor. The appellant submits that the pay dispute, whether over the allowance or the rate, was not a significant contributing factor to the injury because of the small amounts involved and the appellant's experience working in the union with similar disputes. The medical evidence however clearly indicates that the pay dispute featured as a stressor to the appellant's injury This evidence suggests that it was not the financial aspect of the pay issue that was a significant stressor, rather the consequence for her status and authority in the workplace. The appellant submits that the status issue only arose because of Ms Hawker's behaviour towards and comments about the appellant.

166. It appears to me that the appellant was not impacted by the pay issue insofar as it related to the amount she was being paid, rather she was impacted by the consequence of the pay determination - that is, she was a team member rather than a team leader. The conclusion that the appellant was not on the same level as other managers or team leaders, with the exception of being paid an 'in charge' allowance for some of her hours, had a significant impact on her psychological health. The realisation that she had been working hard as a 'manager', had been treated as a colleague by the other managers and was now designated as simply another team member clearly impacted the appellant's health.

167. The appellant's husband Mr King gave evidence that he knew that his wife was not paid properly but she wasn't worried about it because managers had said that to go further in the company you have to do tasks and not get paid for them[85] and that it was part of being a duty manager.[86] The understanding that additional work was expected from someone who was a manager and was necessary to go further in the company was completely at odds with the conclusion that the appellant was simply a team member.

168. Mr Wade gave evidence that the appellant felt belittled; that she wasn't valued for running a crew; was doing more than other night fill captains and was not respected. Mr Wade also gave evidence that the appellant was required to do more than others in her role.[87]

169. In my view Ms Hawker's management of the pay issue was not reasonable. It was clear that Ms Hawker had management expectations of the appellant as evidenced by the statement in

[84] T4.54 L24
[85] T1-99 L15.
[86] T1-10 L01.
[87] T2-6 L1.

the huddle "*I pay you to manage this Department*". Although the appellant was aware that she was not the duty manager, the circumstances of her initial employment and ongoing treatment led her to believe that her role was more senior to that of a team member and had been treated accordingly by other department managers and Ms Hawker. As provided as an example, each departmental manager was given promotional merchandise such as T-shirts, etc for campaigns and the appellant had always received a shirt alongside the other managers.

170. At the meeting of 5 January 2018, the appellant stated that she mentioned Ms Hawker's previous comment that she paid the appellant to manage the department. The appellant had checked her payslips and she was only getting paid an 'in charge' allowance. The appellant stated that Ms Hawker then told her that she was receiving a higher rate, not just an allowance. Mr Bligh recalled the reference to the appellant getting paid to manage a department and that Ms Hawker responded with something along those lines. This again indicates that Ms Hawker had an expectation that the appellant exercise management responsibilities and the appellant believed that she was required to do so as part of her role. It appears that only after the appellant had stated that her pay-slip indicated that she was only paid an 'in charge allowance' for some hours that Ms Hawker began referring to her as a team member rather than team leader.

171. The ambiguity surrounding the appellant's position appears to have come from the expectations placed upon appellant in her role as night fill in charge. The appellant understood that she was not going to be the duty manager following the return of Gabe Peelgrane from extended leave following a serious accident.[88] However the appellant had responsibilities beyond that of a team member who was in charge for only a few hours of each night fill shift. Ms Hawker treated her as through she was expected to exercise managerial responsibilities, underscoring the frustration ultimately felt by the appellant upon discovering that she was not in fact part of management.

172. The appellant provided the following oral evidence -

> I had explained to Megan [Ms Taylor] that - again what the meeting - how I told her that Sarah had said I get paid an in-charge rate, but once I've looked into it, I don't. I actually only get an allowance. And that when I was employed, I believed that I was hired in that full-time management role, as explained by Justin. And she said she'll have to look into that. …

173. The appellant gave evidence confirming that she told Ms Taylor that she managed a team on a full time basis and should be getting a team leader rate of pay.[89] She confirmed that she

[88] T4-37 L29-41.
[89] T1-83 L31-33.

told Ms Taylor that she felt she was not being respected because other team members thought the appellant was just a team member.[90]

174. Ms Taylor's file note of the meeting of 9 April 2018 shows that it was upon being informed that the investigation had determined that the appellant had been correctly paid as a team member (and indeed overpaid), that the appellant became deeply upset and got up to leave the room.

175. The appellant described the outcome as "*like a demotion overnight*"[91] and agreed that she felt she had been "*used*" and "*worthless*" in that she had been performing higher duties without being paid at a higher level.[92]

176. I accept the appellant's submission that it is not surprising that there was confusion about the appellant's role given that she was offered a position of duty manager, accepted a position described as 'night fill in charge' and ultimately discovered she was simply a team member.

177. Whilst the investigation into this pay issue by Coles HR was reasonable, the management of the issue at a store level was not. As store manager, it was incumbent upon Ms Hawker to know the role of her employees and to ensure that her expectations of their performance was commensurate with their role. The appellant worked as though she was a manager and was told that she was paid to manage despite not being employed at that level. I note the evidence that Ms Hawker invited the appellant to attend line manager meetings ostensibly to support her career progression.[93] This was despite the appellant not actually occupying the role of manager or being paid as a manager.

178. In *WorkCover Queensland v Kehl* President Hall stated that 'reasonable' should be treated as meaning "*reasonable in all the circumstances of the case*".[94] In determining the weight to be attributed to each of the stressors in this case, I turn to the medical evidence. The medical evidence identified the stressors which led to the appellant's injury as the accumulation of factors over a period of time from the hospital incident to the appellant's meeting with Ms Taylor on 9 April 2018. In his report dated 22 June 2018, Dr Shaikh stated that he believed there was a causal and consequential relationship between the appellant's nominated work stressors and her emotional complaints. Dr Shaikh stated that although pay issues were significant, the major significant contributor was the perceived ill behaviour from Ms

[90] T1-83 L39-40.
[91] T1-71 L32-37.
[92] T1-88 L5-6.
[93] T3-62 L40.
[94] (2002) 70 QGIG 93, 94.

Hawker. Dr Best stated that it was a combination of multiple stressors that caused the adjustment disorder.

179. The respondent submits that the appellant experienced symptoms of stress and anxiety because of a misperception of management's actions and motivations for them, pursuant to s 32(5)(b). I do not accept that the appellant had a misperception, as the appellant's accounts of unreasonable treatment in both the huddle, the meeting and more generally are supported by the evidence of other participants.

180. The medical evidence confirms that Ms Hawker's treatment of the appellant was the major significant contributing factor to her injury and as such s 32(1) is satisfied. Although I have found that the employer's investigation into both the pay issue and the bullying issue constituted reasonable management action taken in a reasonable way, this finding does not operate to exclude the appeal as these stressors were not significant contributing factors to the development of the injury.

181. As noted by Martin J in *Blackwood v Mahaffey* –

> The question which arises in this case, and which has been set out above, could, if answered in the way proposed by the appellant, lead to circumstances where a worker who nominated two stressors would be denied compensation if one of those stressors was reasonable management action etc, even if the unchallenged expert evidence was that its contribution to the disorder was minimal. Similarly, the appellant's answer would also deny a worker compensation if a disorder was a result of ten stressors, each of equal importance, but where one fell within s 32(5). [95]

182. His Honour continued –

> If, after considering all the relevant evidence and weighing up the factors which were accepted as having given rise to the personal injury, the Commission forms a conclusion that any of the conduct referred to in s 32(5) does not, on balance, displace the evidence in favour of the worker then a finding in the workers favour must follow.[96]

183. Applying the test in *Mahaffey*, I determine that the appellant's injury is not excluded from being compensable due to the operation of s.32(5).

Conclusion

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[95] *Blackwood v Mahaffey* [2016] ICQ 10 [40].
[96] Ibid [57].

184. The onus of proof is on the appellant to convince the Commission both that the injury meets the criteria in s 32(1) of the Act, and, if it does, that the injury is not excluded pursuant to s 32(5) of the Act.[97]

185. The evidence confirmed that the appellant sustained an adjustment disorder with mixed anxiety and depressed mood, with symptoms developing over a period of time. The date of injury, which arose out of or in the course of the appellant's employment, was 10 April 2018.

186. The major significant contributing factor to the appellant's injury was her employment. As outlined above, I am of the view that the specific incidents involving the huddle, the meeting of 5 January 2018 and the investigation by the employer into the appellant's complaint constituted management action. Whilst the decisions to conduct the huddle and hold the meeting were reasonable management actions, these actions were not carried out in a reasonable manner. The exclusion in s 32(5) therefore does not operate with respect to these stressors to exclude the injury from being compensable.

187. The investigation by Coles HR into the appellant's complaint constituted reasonable management taken in a reasonable way. In consideration of all of the factors outlined in the medical evidence, this investigation was not a significant stressor and consequently this determination does not result in the injury being excluded via the operation of s32(5).

188. I am persuaded by the medical evidence which supports the conclusion that the appellant's perception of Ms Hawker's unreasonable conduct toward her was the major significant contributing factor to her injury. This unreasonable conduct, which was borne out by the evidence, included the conduct in the huddle, the meeting of 5 January 2018, Ms Hawker's general conduct towards the appellant and the treatment of the appellant by Ms Hawker in the context of 'pay issue'. With respect to the huddle and meeting of 5 January 2018, I have determined that these were reasonable management actions, however they were not taken in a reasonable way.

189. For the reasons outlined above, I have concluded that -

- the appellant suffered a personal injury, that being a psychiatric or psychological disorder;
- the appellant's personal injury arose out of, or in the course of her employment;
- the appellant's employment was the major significant contributing factor to her injury; and

[97] *State of Qld v Coyne* [2003] QIC 118.

- the injury is not excluded from being compensable because the injury was not the consequence of reasonable management action taken in a reasonable way by the employer in connection with her employment.

Orders

190. I make the following orders:

1. **The appeal is allowed.**

2. **The decision of the Regulator dated 26 November 2018 is set aside.**

3. **The respondent is to pay the appellant's costs of and incidental to this appeal to be agreed or failing agreement to be the subject of an application to the Commission.**

21 October 2020

J.M. POWER
Industrial Commissioner