IN THE DISTRICT COURT
AT WELLINGTON

I TE KŌTI-Ā-ROHE
KI TE WHANGANUI-A-TARA

[2022] NZACC 100 **ACR 211/21**

UNDER	THE ACCIDENT COMPENSATION ACT 2001
IN THE MATTER OF	AN APPEAL UNDER SECTION 149 OF THE ACT
BETWEEN	YVETTE PHILLIPS Appellant
AND	ACCIDENT COMPENSATION CORPORATION Respondent

Hearing: 28 April 2022
Heard at: Christchurch/ Ōtautahi

Appearances: Appellant in person
Ms F Becroft for the Respondent

Judgment: 25 May 2022

RESERVED JUDGMENT OF JUDGE C J McGUIRE
[Work related mental injury s 21B Accident Compensation Act 2001]

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[1] The issue on this appeal is the decision by Wellnz dated 28 April 2021 declining cover for a work-related mental injury, pursuant to s 21B of the Accident Compensation Act 2001 (the Act).

[2] The appellant submits that the circumstances of her claim met the criteria of s 21B. The Corporation submits that the circumstances do not.

Background

[3] On 29 September 2020, an ACC injury claim was filed for acute stress, post-traumatic stress disorder and reactive depression. The claim form indicated that the

appellant had suffered bullying, harassment, victimisation and abuse during traumatic meeting with manager/HR, i.e. mental injury caused in workplace.

[4] As the appellant was an employee of the respondent and the claim related to her work, the claim was referred to Wellnz for management. Wellnz had been involved previously and had already arranged for a medical case review to be undertaken by Dr Hanlon, Occupational Physician.

[5] Dr Hanlon had reported on 28 August 2020 after seeing the appellant for a medical case review. In that report, Dr Hanlon said:

> You had been referred to me for assessment by your case manager … to provide an independent expert opinion on your condition and the circumstances relating its cause and effect on work.

[6] Dr Hanlon noted that the appellant had been off work due to work-related stress following complex workplace issues.

[7] Dr Hanlon went on to say:

> The background to these issues is that Yvette has worked for ACC for about six years, previously working in Whangārei, as a Child and Youth Specialist Expert in disability. Yvette told me that in 2017, a dream job came up in Christchurch, working still within ACC as the Child and Youth Specialist Expert in the serious injury unit. Yvette was keen to apply for the job, and was successful in her application, and asked her family to leave Whangārei and moved to Christchurch. Yvette was aware that a restructure was due within ACC and she questioned ACC about whether the job will disappear when she moved, but was reassured that it would be there in some form or another, even if it was called something different.
>
> Yvette and her family duly moved to Christchurch, selling up in Whangārei and buying a house down in Christchurch. Her daughters were 14 and 18 years old at the time of the move.
>
> The job was great but in the restructure, things did not turn out as expected, and Yvette's role was no longer on the establishment. Since the job had been disestablished, Yvette has not been appointed to any similar role and she has not been appointed even to a role that was similar to the one she was doing in Whangārei. She has been appointed to a new role that is two levels below what she was doing previously. The roll out of this role was delayed and because of the COVID-19 lockdown, she has not been able to return to work because of her ongoing symptoms.
>
> Yvette has had a difficult time and has sought legal input about the process.

> Yvette described that things got very difficult back in October 2019, when she went to an HR meeting. Yvette had believed that HR were there to help her and support her, but this meeting completely "blindsided" her and she felt that she was interrogated, and she felt they were duplicitous in their actions. She described the meeting where she was met with aggression that she had not expected and she hadn't taken a support person, believing that it was all straight forward and was going to be a normal meeting.
>
> Yvette had most of December off work. She came back to work in December 2019. She told me that she didn't feel ready to come back but because her Christchurch manager had already planned 5 weeks off over the Christmas and New Year period, Yvette returned to work. Yvette told me that in February, she had an interview with her Christchurch manager in which her manager was very hostile, and she was given negative feedback about her performance. The Wellington manger sent her an email informing Yvette that she was going to be in Christchurch and suggested that they meet for lunch and when Yvette got this email, she had a panic attack and her anxiety was so great that she vomited and had to leave work. She went back to see her GP and was given a medical certificate stating that she was fully unfit for 6 weeks and in fact hasn't been back to work since then.
>
> Any further contact with work has caused an acute stress reaction with Yvette now frequently vomiting from anxiety when confronted with any situation to do with work.

[8] Dr Hanlon noted the subsequent event:

> There was a further incident that Yvette described when she had gone into the office to get her laptop so she could submit her medical certificate, and so that she could access the email trail that was on her work email account for her lawyer, but the manager of her new job … for whom she hadn't started working yet, accosted her in the workplace and wouldn't let her leave with the laptop.

[9] Dr Hanlon noted that the appellant was highly anxious with low mood and significant fatigue. Under the heading "Summary", is this:

> Yvette is suffering from acute stress and depression following a difficult situation at work because of the disestablishment of her job through a restructure at ACC. Yvette feels very torn because she moved her family against their wishes to come to Christchurch for her dream job, and things were not easy with both her daughters struggling to adjust. Yvette is still suffering acute anxiety when confronted with thoughts of work, physically manifesting in vomiting. She has features of a post traumatic stress order.

[10] Under the heading "Current Capacity for Work", Dr Hanlon said:

> It is my opinion that Yvette is not fit for work at present. She has an acute stress reaction with post traumatic symptoms when confronted with work, and these must be addressed before she can contemplate returning to work. She may need desensitisation treatment.

[11] Dr Hanlon made diagnosis of acute stress reaction; depression; and post traumatic symptoms.

[12] On 20 October 2020, Welllnz wrote to the appellant and advised that it needed more time to consider cover for the claim. It indicated that it would be obtaining medical records and a mental injury assessment.

[13] On 17 November 2020, Dr Davy, General Practitioner, provided medical notes which covered the period from November 2019 until 17 November 2020. The notes make frequent reference to the appellant's work situation and difficulties, and the effect that those circumstances were having on her in terms of stress and anxiety.

[14] Wellnz arranged a referral on 26 November 2020 to Dr Wood, Psychiatrist. The consultation with Dr Wood did not occur until 11 March 2021. However, on 19 January 2021, due to statutory timeframes, Wellnz issued a decision declining the claim because at that time there was insufficient evidence to support it. However, Wellnz indicated that it would revisit the matter once the psychiatric review had been completed.

[15] Dr Hanlon provided a further report in February 2021 confirming that the appellant had not yet been able to return to work. Dr Hanlon also confirmed that in her view the current symptoms prevented the appellant from carrying out her work tasks. She emphasised that it was imperative that the appellant access appropriate trauma focused treatment.

[16] Dr Wood, Psychiatrist, reported on 12 March 2021. She set out a background to the claim and detailed the appellant's symptoms. She described the appellant as deeply distressed especially when discussing the events that occurred at work. She had low mood and was anxious. Dr Wood diagnosed major depression with anxious stress, panic disorder and unspecified trauma related disorder.

[17] She noted that the appellant had never suffered any mental illness prior to the stressful events at work. In fact, she said that the appellant had shown remarkable resilience going through a difficult divorce and a double mastectomy previously. She

agreed that the appellant was significantly impaired by her symptoms and would not be able to work. She however thought the prognosis, with the appropriate treatment was good.

[18] Dr Wood provided a follow up report to Wellnz on 4 April 2021. She responded to the following question:

> **Has the mental injury been caused by a single traumatic event in the course of her employment?**
>
> In my view, the answer to this is yes. Yvette's difficulties with anxiety, depression and trauma related disorder as outlined in the report really began after the meeting she had with her seniors at ACC in which she felt bullied and ambushed. This was a meeting which was called in response to her emailing her manger asking questions about why others were being appointed into positions ahead of herself and others in her team whose jobs had been disbanded and who were waiting for redeployment within the organisation. She was profoundly distressed by this meeting and this was the point where her mental health difficulties really began. The subsequent episode in which she was confronted by her manager and not allowed to leave the building with her laptop further exacerbated the mental injury as did the fact of having what had been her dream job taken away from under her but neither of these things were the original cause of her mental injury.

[19] Dr Wood was then asked whether this situation would cause mental injury to anyone in the general population. She responded:

> In my view, any person in the general population would be likely to suffer mental injury in these circumstances. We could reasonably expect that any person exposed to a situation in which he or she felt deeply hurt and betrayed (as Yvette did in the wake of the meeting with her managers just outlined in the previous question) would in fact suffer mental injury. It is not the case that only someone with Yvette's particular values and personality traits would be vulnerable to mental injury in this case because in fact anyone would be.

[20] Wellnz issued decision on 28 April 2021 declining the claim.

[21] The decision read:

> As discussed, I regret to advise you on behalf of your employer Accident Compensation Corporation, you claim has been declined for cover as it does not meet the criteria that must be satisfied because:
>
> - The traumatic event is not considered severe;
> - The event is not one that would reasonably be expected to cause mental injury;

[22] The appellant applied to review Wellnz's decision.

[23] Dr Wood provided further comment for the review dated 16 July 2021. She disagreed with Wellnz's decision that the event was not traumatic enough to cause mental injury. She said:

> As outlined in my report, Yvette suffered two distinct episodes, one an adverse meeting with colleagues and the second an occasion where she was prevented from leaving the office with her laptop and felt publicly shamed. On both of these occasions, she felt deeply hurt and humiliated and these incidents contributed significantly to her subsequent mental health problems as described in my initial report. Yvette did not suffer an incident in which she was exposed to the risk of serious assault or death and for that reason we could not diagnose her as suffering from post traumatic stress disorder. This having been said however, it does not mean that the events she did suffer were not traumatic enough to cause mental injury. As I outlined in my report, the events she suffered led to significant mental health difficulties. One does not necessarily have to have the diagnosis of PTSD to have suffered a mental injury.
>
> Either one of the events previously described could reasonably be expected to lead to mental injury in most people.

[24] The appellant was unsuccessful at review and has appealed to this Court.

Appellant's submissions

[25] The appellant's employment with ACC started on 21 July 2014 and in July 2017 accepted the role of Serious Injury and Disability Advisor.

[26] She said that in 2019, ACC underwent a significant restructure of their client service delivery group and her role was restructured out of the organisation and she was required to apply for alternative roles or face redundancy. She said she was identified as being in the redeployment pool which meant that she had priority over others for any applications. She told the Court she applied for multiple different roles and was unsuccessful in obtaining ongoing employment.

[27] On 20 October 2019, she sent an email to her manager regarding ACC's apparent failure in fulfilling its obligations to her while she was in the redeployment pool. She told her manager:

> To know that I did not get an interview for the Performance Advisor position while there is still an FTE that is unfulfilled, is a further humiliation and injury.

> Please consider this occurring on top of the fact that SI Advisors were not part of the EOI process for practice mentors yet a significant amount of our work is building the capability of practice mentors and passing on our knowledge, skills and capability in order for them and the model to succeed.

[28] She told the Court that in response, her manager replied by email advising her a Human Resource Representative would have answers to her questions by the end of the week. Later in the week, she said her manager requested that she attend a face to face meeting with her and the HR Representative.

[29] She says that although the meeting was in response to her personal agreement, she was not offered the opportunity of having a support person with her.

[30] The meeting took place on 31 October 2019. She said she entered the meeting with the reasonable expectations that her manager would be responding to her questions and supporting her need to secure employment within the organisation.

[31] She said that it quickly became clear to her that the purpose of the meeting was not to discuss her aggrievance or to provide answers to her questions. She said the meeting was confrontational and aggressive and that she was not shown any of the support she expected from her manager. Instead, she says she was repeatedly asked why she wanted this information and it was conveyed to her repeatedly that she should not try to "relitigate" the outcomes.

[32] She said she felt ambushed and blindsided and left the meeting in tears, feeling mistreated and tremendously professionally unsafe. She said she was in shock that her manager would so blatantly breach good faith obligations of the Employment Act and ignore the impacts of the events on her mental health. She said she was extremely distressed and alarmed.

[33] Later in the day she texted her manager as follows:

> Hi … I found the meeting this morning very difficult and without the support I expected. To have to rationalise my reasons for wanting to understand the outcomes from my job applications, with the underlying assumptions being made that it was to "relitigate" the outcomes was unexpected, was really unhelpful and I found it to be extremely unsupportive. The impact of this is significant to my health and I need to take time off to look after myself. I have a GP appointment on Monday afternoon and will be in touch after that.

[34] She told the Court she then consulted her doctor who placed her on the immediate stress leave until 18 November 2019. After two weeks of work, she requested another medical certificate of another four weeks from her GP.

[35] She returned to work on 17 December 2019 and worked through December and January taking only statutory days off.

[36] Following the meeting of 31 October, she had also consulted an employment lawyer who raised issues of breach of contract in employment law with ACC.

[37] She said on 13 February 2020 following an arrangement facilitated between ACC's legal team and her lawyer and she was given the opportunity to interview for a performance advisor role.

[38] She found the job interview intimidating, it being conducted by an ACC executive two levels above the assistant manager that interviewed the previous candidates.

[39] On 17 February 2020, she was advised that she was unsuccessful.

[40] On 20 February 2020, she accepted the role of Recovery Partner that the Human Resources Representative had proposed on 31 October 2019, a role two bands below her current position.

[41] The appellant told the Court she met with her doctor on 26 February 2020 and was advised to take stress leave.

[42] She told the Court that on 18 March 2020, she attended her GP to obtain a more detailed medical certificate demanded by her superior. That same day, she decided that she did not want to have communications from her workplace using her personal email. She called a colleague and arranged to have that colleague uplift her work laptop from her desk and "then deliver it to me in a café over coffee in the morning".

[43] She then said:

> On 19 March 2020, my colleague arrived for coffee and advised that my laptop was no longer on my desk and that it appeared to have been locked away. Although I did not intend to, in order to get it I needed to go to the office and get it myself.
>
> On entering the office, I was confronted by ["B"] (who was to be new team leader in the Recovery Partner role) and ["A"], Assistant Branch Manager. They asked me why I wanted my laptop. They also told me about ACC's mobile technology policies and new developments with COVID-19 and potentially needing technology for those that needed to work from home.
>
> I told [them] that I needed the laptop to send the document to ["C"], my superior] that she had requested. ["A"] asked why I couldn't do it over the remote server. ["B"] corroborated my finding that the remote server was no longer working. ["B" and "A"] agreed that I could take the laptop and return it the next day.
>
> She says however that during the discussion, [B's Manager] then approached me in front of everyone in the shared office space and told me that I couldn't take the laptop with me as I was off work sick and had no need for it. I told her that ["C"] has requested that I sent her a document. [B's manager] stated that she had just spoken ["C"] and ["C"] had denied requesting any document from me. I said I couldn't understand this as she had indeed asked me to send her a document. I was denied access to the laptop again and told again that ["C"] denied this. [B's manager] demanded to know what it was that ["C"] had asked of me. On letting her know that ["C"] wanted me to send her a new medical certificate, [B's manager] advised that I could quite adequately send it from my personal email address and I had no need for the laptop. I advised [B's manager] that it was a work request and that I have every intention of returning the laptop immediately on completion of sending the document and had indeed arranged this already with (other staff members). [B's manager] again denied my leaving with the laptop.
>
> I was shocked and distraught by [B's manager's] actions. In essence, [B's manager] publicly and in the most humiliating and demeaning way accuse me of lying in front of my new team leader, new team and about 20 others in the immediate vicinity, and then stripped me of my laptop. After some further discussion, [She] allowed me only to use the laptop in the office under watch, and then hand it back to ["A"].
>
> The experience that day was traumatic; it was extremely disturbing and shocking. Along with feeling humiliated and demeaned, I also felt very strongly that I have been constructively dismissed by the organisation, for what other reason could they force me to hand over my assigned laptop and computer access. I returned to my car shaking and upset and was in tears later in the day as I related it to my family.

[44] The appellant refers to the case of *Murray*[1] where Kos J reiterated that in generous and unniggardly interpretation still had application despite more crystalline legislative drafting that have followed in later versions of the Act.

[45] She refers to the medical opinions she has obtained and the agreement that as a result of the events, clinically significant injuries of major depression with anxious distress; panic disorder and unspecified trauma related disorder resulted.

[46] She says that this is a very uncomfortable claim of severe mental illness caused by two events of traumatic and significant abuse of power in the workplace perpetrated by persons representing the employer.

[47] She says she was traumatised on 31 October 2019 and that the "scab was ripped off and salt rubbed in on 19 March 2020".

Respondent's submissions

[48] Ms Becroft open by saying that we are here to debate s 21B.

[49] She acknowledged that the appellant had given a detailed account of 18 months that included at least nine events that collectively have caused her injuries.

[50] She reminds the Court that the provision was introduced in October 2008 and classically would provide a cover for a person for example a train driver witnessing a fatal level of crossing accident.

[51] She reminds the Court that the provision contains an objective test in that s 21B(2)(b) applies to an event that is an event that could reasonably be expected to cause mental injury to people generally.

[52] Therefore, she submits the injury event must be severe. She notes that the provision came into prominent during the Christchurch earthquake.

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1 *Murray v Accident Compensation Corporation* [2013] NZHC 2967.

[53] She submits that what is required is more than the applicant's view of what occurred and that the questions to be answered are for the Court not doctors.

[54] She refers to the ACC guidelines "Mental Injury Assessments for ACC" which suggest that the event should:

a. Be outside of the range normal experience.

b. Be capable of provoking extreme distress in most people.

c. Involve a real threat of significant harm to self or others.

d. Induce feelings of horror, alarm and shock in most people.

[55] Ms Becroft acknowledges that such guidelines do not have the force of law.

[56] Ms Becroft referred to a number of cases including *MC*[2] which involved a reserve force soldier who had witnessed a number of traumatic events on the tour of duty in Afghanistan. She notes that the Court in that decision placed a great deal of emphasis on the interconnectedness and severity of the particular war time events involved, underscoring the quite exceptional circumstances of the case.

[57] Ms Becroft referred to *Jeffery and Progressive Enterprises Limited*[3]which concerned a claimant on a four month secondment to a supermarket in Greymouth following the Pike River Disaster. The Court was not satisfied that there was a single event causing mental injury, rather the mental injury was caused by incremental and gradual steps of mental stress caused by pressure and isolation at work compounded by the added emotions of the Pike River Disaster.

[58] She referred to *OCS Limited v TW*,[4] an unsuccessful claim following bullying behaviour in a personal relationship.

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2 *MC v Accident Compensation Corporation* [2016] NZACC 264

3 *Jeffery and Progressive Enterprises Limited v Accident Compensation Corporation* [2015] NZACC 4.

4 *OCS Limited v TW and Accident Compensation Corporation* [2013] NZACC 177.

[59] Ms Becroft refers to the case of *SMM w*here the Court said:[5]

> However, since what occurred on 27 October 2014 did not match the criteria for PTSD, s 21B(2)(B) does not apply. The reality is that the young man jumped over a fence to avoid hospitalisation for an assessment. As noted, and agreed to by the appellant, this is a reasonably regular event, and it would be unlikely the observation of such an event would cause mental injury in people generally.

[60] Ms Becroft also refers to *Taylor v Roper,*[6] where the Court of Appeal said:

> [47] We agree with the Attorney-General's submission that Mr Roper was the sole author and cause of the traumatic and distressing events experienced by Ms Taylor at Whenuapai and that, taken together, the incidents comprise a predatory and sexualised course of conduct by him. However, we consider it quite unrealistic to view the incidents of false imprisonment during 1986 and 1987 as comprising a single incident or occasion. The tyre cage incidents and the driving incidents occurred at different places and in different circumstances. They involved different conduct, albeit all comprising detention or confinement of some kind. The nature of Ms Taylor's case is in our view similar to that in *KB* where the appellant had experienced multiple significant traumatic incidents. …
>
> We do not consider that s 21B applies to those incidents for two reasons:
>
> (a) They were not "sudden" incidents; and
>
> (b) They did not together comprise a single incident or occasion.

[61] Ms Becroft does submit that in the present case the process started for the appellant with the shift to Christchurch and the workplace stress that followed.

[62] She submits that Dr Wood's comments are ambiguous, and that Dr Wood did not address the specific legal question posed by s 21B.

[63] She submits that for the statutory criteria to be met, we are not just looking at a measure of distress. She submits that distress is not the same as mental injury and the question to be asked is whether people would generally suffer that level of distress.

[64] She submits that an 18 month deterioration of a employer-employee relationship is outside of the realm of s 21B. She submits that the appellant's own

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5 *SMM v The Waitamata District Health Board and Accident Compensation Corporation* [2020] NZACC 32 at [129].

6 *Taylor v Roper* [2021] NZCA 691 at [47].

account is that of a gradual process over a course of month. She says that the two meetings in focus caused distress, but they were not a sudden event causing mental injury.

[65] Likewise, she says that the fact that there was an employment dispute ultimately resolved in favour of the appellant does not prove s 21B is satisfied.

Appellant's reply

[66] Ms Phillips said that before 31 October 2019, she had no symptoms. She says that each of the two events could reasonably be expected to cause mental injury and that the average person in this treat would have been left distressed.

[67] She says she was traumatised on 31 October 2019 and because she did not get a chance to heal, the "scab was ripped off and salt rubbed in" at the meeting of 19 March 2020.

[68] She says "ACC set out with the intent to break me" and that is what is so psychologically disturbing.

Decision

[69] The issue in this case is whether the appellant suffered a work-related mental injury pursuant to s 21B of the Accident Compensation Act 2001.

[70] The appellant was an employee of the respondent and commenced on 21 July 2014. In July 2017, she accepted the role of Serious Injury and Disability Advisor. In 2019, ACC underwent a significant restructure of their client service delivery group with her own role being restructured out of the organisation. Her evidence is that she was required to apply for alternative roles or face redundancy.

[71] Her initial employment with ACC was in Whangārei where she lived. However, in 2017 she relocated her family to Christchurch for a role in ACC's Serious Injury Unit as a Serious Injury and Disability Advisor.

[72] It is apparent from her evidence before the Court that this role with ACC was something akin to her "dream job". For this, she, her husband and her teenage daughters shifted from Whangārei to Christchurch, a city with which they had no previous connection. The financial and personal investment that the appellant and her family made for this role has been described as significant. It plainly was.

[73] Then in little more than two years later, this job was disestablished with a restructure by ACC in 2019 of their client service delivery group.

[74] On 2 October 2019, the appellant emailed her manager regarding ACC's failure to fulfil their obligations to her while she was in the "redeployment pool".

[75] In response, her manager replied by email advising her that a Human Resource Representative will have answers to her questions by the end of the week.

[76] She says that later in the week, her manager requested HR team a face to face meeting with her and the HR Representative. She asked why such a meeting was necessary and was told that face to face meetings can help build understanding.

[77] She says that although the meeting was in response to her personal aggrievance, she was not offered the opportunity of having a support person with her.

[78] The meeting took place on 31 October 2019, and according to the appellant was confrontational and aggressive. She says she was not shown any support that she expected from her manager, instead, her manager made it clear that she was not to continue following the line of personal aggrievance. She says that due to the unexpected events of the meeting, she felt "ambushed and blindsided".

[79] She says she left the meeting in tears feeling mistreated and tremendously professionally unsafe. She said:

> I was in shock that my manager would so blatantly breach good faith obligations of the Employment Act and ignored the impact of the events on my mental health. Unsurprisingly, I was extremely distressed and alarmed.

[80] After this, she consulted her doctor who placed her on immediate stress leave until 18 November 2019.

[81] She told the Court that on 20 February 2020, she accepted the role of Recovery Partner that the Human Resource Representative had proposed on 31 October 2019, a role two bands below her current position. She moved into the position at 110% of the remuneration banding and was told that that was the maximum pay allowable as per ACC policy. Shortly thereafter she found a colleague who had also been moved to a lower band and was offered 119% of the salary band to align her old and new pay.

[82] She asked to be treated similarly but her request was declined. She consulted her doctor on 26 February 2020 and was advised to take stress leave.

[83] On 27 February 2020, she emailed her superior with the medical certificate and advised her that she was certified to be unfit for work until mid April.

[84] On 12 March, her superior texted her on her personal phone that she wanted to talk.

[85] The appellant responded to the effect that she was not up for a telephone call. She also said in her text:

> my recovery will go best if I can draw a line under my SI Advisor role, focus on looking after myself, and being my best when I return on 29 April in my new role. Thank you in advance for leaving anything non-urgent until then.

[86] Her boss persisted as saying:

> I will give you a ring on this number tomorrow morning at 10 am. Thank you.

[87] The appellant's response was:

> …I have said that I am not up to a phone call. Please let me know by text what you want.

[88] Following this, the appellant texted her email address to her superior.

[89] Next, a letter received by the appellant included some pages of her contract, stating her contractual obligation and requiring her to send through a more descriptive medical certificate and again demanding to speak to her.

[90] On 18 March, the appellant attended her GP and obtained more detailed medical certificate as required by her boss.

[91] That same day the appellant says she did not want her boss having use of her personal email as it made her feel "violated and unsafe". She therefore decided to pick up her work laptop and send her boss the medical certificate she demanded via work email. She made arrangements with a colleague to uplift her laptop and to deliver it to the appellant in a café over coffee the following morning.

[92] On that morning, 19 March 2020, her colleague arrived for coffee and advised that her laptop was no longer on her desk and that it appeared to have been locked away. The appellant says that although she did not intend to, in order to get it she needed to go to the office and get it herself.

[93] She says on entering the office she was confronted by the person who was to be her new team leader and by the Assistant Branch Manager. She says they asked why she wanted her laptop and they also told her about ACC's mobile technology policies and new developments with COVID-19 and potentially needing technology for those who needed to work from home.

[94] The appellant told these two persons that she needed the laptop to send the document that her boss had requested. The two persons that she met with that morning eventually agreed that the appellant could take the laptop and return it the next day. During this discussion, another manager telephoned the appellant's boss and then approached the appellant in front of everyone in the shared office space and told the appellant that she could not take the laptop with her as she was off work sick and had no need for it. The appellant then responded saying that her boss had requested she send her a document. This was denied by the person confronting the appellant.

[95] The appellant says she was denied access to the laptop again and told again of her own boss' denial that the appellant needed to send her a document.

[96] On letting her interrogator know that her boss wanted her to send her a new medical certificate, she was told by this person that the appellant could quite adequately send it from her personal email address and that she had no need for the laptop.

[97] The appellant then advised her interrogator that the appellant's boss wished her to send her a new medical certificate and that was a work request. She said she was again denied the ability to leave with the laptop.

[98] She was shocked and distraught by her interrogator's actions. She said that this person publicly and in the most humiliating and demeaning way accused her of lying in front of her new team leader, new team and about 20 others in the immediate vicinity and then stripped her of her laptop.

[99] The appellant says after some further discussion her interrogator allowed her only the use of the laptop in the office under watch, and then it was handed back to another employee.

[100] The appellant says the experience of that day was traumatic. She says it was extremely disturbing and shocking and that along with feeling humiliated and demeaned, she also felt very strongly that she had been constructively dismissed by the organisation, for what other reason could they force her to hand over her assigned laptop and computer access. She says she returned to her car shaking and upset and was in tears later in the day as related it to her family.

[101] In relating these events in Court and in presenting her case, the appellant was frequently tearful and had to stop on several occasions to compose herself. She was supported in Court by her husband, two daughters and a friend. The way in which the events unfolded in particular on 31 October 2019 and 19 March 2020 was not challenged in any way by the respondent. I accept that in respect of these critical events, and indeed generally, the appellant was a witness of truth.

[102] She presented as a very intelligent and very focused witness.

[103] Following these regrettable events, the appellant had a consultation with Dr Hanlon, who reported on 28 August 2020. Under the heading "Summary", Dr Hanlon said:

> Yvette suffering from acute stress and depression following a difficult situation at work because of the disestablishment of her job through a restructure at ACC. Yvette feels very torn because she moved her family against their wishes to come to Christchurch for her dream job, and things were not easy with both her daughters struggling to adjust. Yvette is still suffering acute anxiety when confronted with thoughts of work, physically manifesting in vomiting. She has features of a post traumatic stress disorder.

[104] Dr Hanlon then diagnosed acute stress reaction; depression and post traumatic symptoms.

[105] In the report of Dr Wood dated 14 March 2021, after documenting the lead up events. Dr Wood said:

> …There were at least two incidents (one the meeting in which she felt ambushed and one the incident in which she was not allowed to take her computer away from the office) which were deeply traumatic for her.

[106] Dr Wood's diagnosis was major depression with anxious distress; panic disorder; unspecified trauma related disorder.

[107] In a second report dated 16 July 2021, Dr Wood elaborated as follows:

> As outlined in my report, Yvette suffered two distinct episodes, one an adverse meeting with colleagues and the second in an occasion where she was prevented from leaving the office with her laptop and felt publicly shamed. On both of these occasions, she felt deeply hurt and humiliated and these incidents contributed significantly to her subsequent mental health problems as described in my initial report. Yvette did not suffer an incident in which she was exposed to the risk of serious assault or death and for that reason we could not diagnose as suffering from post traumatic stress disorder. This having been said, however, it does not mean that what Yvette did suffer were not traumatic enough to cause mental injury. As I outlined in my report, the event she suffered led to significant mental health difficulties. One does not necessarily have to have the diagnosis of PTSD to have suffered mental injury.
>
> Either of the events previously described could reasonably be expected to lead to mental injury in most people.

> Wellnz also seemed to be making the point that Yvette's problems all arose simply from a stressful work situation. I don't think this is the case. Yes, the work restructure was certainly stressful but that was not the only factor involved here. The two specific incidents that I have described earlier played a significant role in causing her subsequent mental health difficulties.

[108] So far as it is relevant, s 21B reads:

> (1) A person has cover for a personal injury that is a work-related mental injury if-
>
> (a) He or she suffers the mental injury inside or outside New Zealand on or after 1 October 2008; and
>
> (b) The mental injury is caused by a single event of a kind described in subsection (2).
>
> (2) Subsection (1)(b) applies to an event that-
>
> (a) The person experiences, sees, or hears directly in the circumstances described in section 28(1); and
>
> (b) Is an event that could reasonably be expected to cause mental injury to people generally; and
>
> (c) Occurs-
>
> (i) In New Zealand; or
>
> …
>
> (3) In subsection (2)(a), a person experiences, sees, or hears an event directly if that person-
>
> (a) is involved in a or witnesses the event himself or herself; and
>
> (b) is in close physical proximity to the event at the time it occurs.
>
> …
>
> (7) In this section, **event**-
>
> (a) means-
>
> (i) an event that is sudden; or
>
> (ii) a direct outcome of a sudden event; and
>
> (b) includes a series of events that-
>
> (i) arise from the same cause of circumstance; and
>
> (ii) together comprise a single incident or occasion

[109] As Ms Becroft rightly submits, in order to establish cover for a work-related mental injury, the appellant must establish:

- An identifiable mental injury;

- That the injury was caused by a single event or series of events;
- That the event(s) were experienced by the appellant directly;
- That the event(s) could reasonably be expected to cause mental injury to people generally (s 21B(2)(b)).

[110] Ms Becroft also refers to the explanatory note to the Injury Prevention Rehabilitation and Compensation Amendment Bill 2007 which says:

> … No cover is currently available for mental injury caused by exposure to a sudden traumatic event in the course of employment (for example, witnessing a colleague shot in a bank robbery, or train driver heading someone on the track). Experiencing an extreme traumatic event affects people in different ways. Most will deal with the event in their own way and with no longer term consequences. However, some people develop severe, long term mental/psychological problems that impact on their ability to function in everyday life. The bill aims to ensure that these people are covered by the scheme in the same way that others physically harmed in workplace are covered.

[111] Ms Becroft notes that the provision was subsequently amended to include the words "to people generally" as enacted. The explanation for this change, contained in the commentary for the Transport and Industrial Relations Committee reads:

> The intent behind the requirement that the event be one that could "reasonably be expected to cause mental injury" is to ensure that cover for work-related mental injury does not extend to injuries caused by minor events or by gradual process.
>
> …
>
> The cause of the injury must be clearly identifiable, and that it must not be the result of work-related stress, or an event that is the "final straw" in a series of events (work and non-work related) that would not, in itself, usually cause a mental injury. The intent is that the event must be one that could reasonably be expected to cause mental injury in the general population.

[112] Ms Becroft also notes the ACC guidelines "Mental Injury Assessments for ACC". The guidelines suggest that the event should:

a. Be outside of the range of normal experience;

b. Be capable of provoking extreme distress in those people;

c. Involve a real threat of significant harm to self or others;

d. Induce feelings of horror, alarm and shock in most people.

[113] While none of the above mentioned explanations or guidelines have the force of law, they are helpful in identifying just what Parliament was intending with the 2007 Bill.

[114] The cases to which Ms Becroft refers provide helpful examples of where the Courts have found the dividing line is between injuries that satisfies the criteria of s 21B and those that do not. Ultimately, each alleged qualifying work-related mental injury needs to be assessed on its merits to see whether the statutory criteria is satisfied.

[115] In this case, I find that the appellant suffered an identifiable mental injury. Dr Hanlon diagnosed acute stress reaction, depression and post traumatic symptoms. Psychiatrist Dr Wood diagnosed major depression with anxious distress; panic disorder and unspecified trauma related disorder. Accordingly, I find that an identifiable mental injury has been established.

[116] Likewise I find that the injuries were caused by a series of events, most notably the meeting that occurred on 31 October 2019 where the appellant sought at very least understanding of the redeployment process following the disestablishment of the appellant's work role and some explanation of the way forward given that in spite of having applied for multiple different roles, she had been unsuccessful.

[117] The appellant says she entered the meeting of 31 October 2019 with the reasonable expectation that her manager would be responding to her questions and supporting her need to secure employment within the organisation.

[118] The appellant said:

> The meeting was confrontational and aggressive. I was not shown any of the support she expected from my manager. Instead, I was repeatedly asked why I wanted this information and it was conveyed to me repeatedly that I should not try to "relitigate" the outcomes. My manager made it clear that I was not to continue following this line of personal aggrievance. Due to the unexpected events of the meeting, I felt ambushed and blindsided.
>
> I left the meeting in tears, feeling mistreated and tremendously professionally unsafe. I was in shock that my manager would so blatantly breach good faith obligations of the Employment Act and ignore the impacts of the events on my mental health.

[119] The second significant event was on 19 March 2020 when the appellant went to collect her laptop. On that occasion, a manger approached her in front of about 20 others in shared office space and told she was denied access to her laptop in spite of it being needed for a work-related request. That incident ended with the manager allowing the appellant the use of the laptop in the office under watch before it was handed back. The appellant says:

> I was shocked and distraught by Ms F's actions. In essence, Ms F publicly and in the most humiliating and demeaning way accuse me of lying in front of my new team leader, new team and about 20 others in the immediate vicinity, and then stripped me of my laptop.

[120] It needs to be borne in mind that all of this played out against the backdrop of the appellant uprooting her family from Whangārei to pursue her "dream job" in Christchurch with ACC following reorganisation within the Corporation. It is plain from the evidence adduced by the appellant that the move to Christchurch had understandably placed strains on family relationships and with the further reorganisation within ACC requiring the appellant to apply for new positions, what had commenced as the opportunity of a dream work role became a nightmare.

[121] For the purposes of s 21B(2)(b), the appellant must prove that the events could reasonably be expected to cause mental injury to people generally.

[122] Applying that statutory requirement to this case, the test is whether or not people generally in the appellant's position would suffer mental injury in the way that the appellant has.

[123] This means that the question is: would people generally who had uprooted family from Whangārei to pursue a dream job in Christchurch suffer mental injury from the events that the appellant went through. I find the answer to that question is yes.

[124] The sacrifices that the appellant and her family made by shifting from Whangārei were significant. It is fair to say that they added to the appellant's vulnerability once in Christchurch. Anyone in her position against that background would likewise have been rendered more vulnerable.

[125] The meeting on 31 October 2019 did not address the matters that the appellant reasonably expected to be addressed. Rather the focus on the part of the other ACC person attending was that the appellant should not try to relitigate the outcome of her unsuccessful attempts to obtain alternative roles within ACC following its restructure. I agree that for a person in the appellant's position the meeting was confrontational and aggressive. I accept the appellant's description that she felt ambushed and blindsided.

[126] Likewise, I find that the incident on 19 March 2020 involved the appellant being humiliated and demeaned in the presence of about 20 other ACC employees and that anyone in her position would feel the same. I accept the appellant's description of that day:

> The experience that day was traumatic; it was extremely disturbing and shocking. Along with feeling humiliated and demeaned, I also felt very strongly that I have been constructively dismissed by the organisation, for what other reason could they force me to hand over my assigned laptop and computer access. I returned to my car shaking and upset and was in tears later in the day as I related it to my family.

[127] The appellant's account of these two incidents in particular are detailed and meticulous. I accept them. The respondent has offered no counter evidence.

[128] I am indebted to Ms Becroft for her analysis of similar cases. Ultimately each of these cases turns on its own particular facts, however, our case may be contrasted with that of *Jeffrey and Progressive Enterprises Limited v ACC* where a claimant was on a four-month secondment to a supermarket in Greymouth against the backdrop of the Pike River Disaster. In that case, the Court rightly found that there was no proper evidential basis for a decision to be reached that a mental injury could be reasonably expected to occur to the appellant.

[129] That is not the case here.

[130] For the foregoing reasons therefore, I find that the appellant has proved on the balance of probabilities that she has satisfied the requirements of s 21B and that she has suffered a work-related mental injury.

[131] Accordingly, the appeal is allowed.

[132] Costs are reserved.

Judge C J McGuire
District Court Judge

Solicitors: Medical Law Limited, Grey Lynn