

From: [REDACTED]
To: [Education, Employment and Small Business Committee](#)
Subject: Inquiry into wage theft in Queensland - Call for submissions
Date: Monday, 30 July 2018 3:58:45 PM
Attachments: [FWO-Findings.pdf](#)

To: The Hon Craig Laundy, Hon Grace Grace, Hon Shannon Fentiman and Hon Di Farmer

Dear Ministers,

Please accept my submission to the Inquiry into wage theft in Queensland.

I am still concerned for my safety and also worried about the impact of being publicly identified on my chances of ever returning to work, so I request that you please suppress my details.

I was employed by [REDACTED] trading as [REDACTED] between October 2012 and October 2013.

Soon after I received my first pay slip I became concerned that I was being underpaid and that unreasonable requests were being made of staff.

For example a demand was made by my manager, [REDACTED], that all staff attend a "non-negotiable" unpaid [REDACTED] company strategy meeting at their HQ in Eagle Farm, over 80kms from our Robina workplace. This meeting was on one of my rostered days off.

I tried a number of times to address these concerns with my manager and other [REDACTED] manager but this eventually resulted in them threatening my employment through a performance management process which included unfounded allegations of misconduct after I informed them that I had lodged a complaint with the Fair Work Ombudsman.

The FWO investigated (Reference number: [REDACTED]) and found that there had been ten conventions of the Fair Work Act by my employer. I have attached the findings to this email.

I was also informed that [REDACTED] collective agreement I was made to sign when I was employed by [REDACTED], and which my employer argued allowed them to pay below the award rate, never actually applied to me.

To quote [REDACTED] of the FWO:

I have considered your request for release of information and confirm I am able to provide the following:

“The reason the collective agreement (dated 2007) did not cover the employer and apply to you is based on two sections from the agreement.

The first relates to clause 2.1 of the agreement where it states that it applied to employees (as defined) of [REDACTED]. The second relates to the definition of employee in clause 5.1. In effect, the agreement would apply to you if you were an employee of [REDACTED] and [REDACTED] working in a retail store owned and operated by [REDACTED].

Based on the Fair Work Act 2009 and payslips provided by [REDACTED], it was found to be your employer. The FWO also considered if there was an ASIC link between [REDACTED] and [REDACTED]. In addition, the FWO also considered whether the site at Robina was trading as [REDACTED]. A check of ASIC records did not identify a link between the companies and the site was trading as [REDACTED].

Based on the evidence available, the FWO found that the agreement did not cover the site or apply to employees at [REDACTED].

“2.1 The parties to this Agreement are [REDACTED] [REDACTED] and those employees who are defined in clause 5, and referred to in this Agreement as the ‘Employee’.

5.0 DEFINITIONS AND INTERPRETATION

5.1 The following definitions apply throughout this Agreement except where an alternative definition for the same term is provided in a particular clause or section of this Agreement; in that case the alternate definition will apply.

“Employee” means any person employed by [REDACTED] as a retail employee working in a retail store owned or operated by [REDACTED], but does not include Store Managers.”

I am concerned that this collective agreement is possibly still being used by [REDACTED] to underpay their staff now.

Thank you and regards,

[REDACTED]

Email: [REDACTED]
Phone: [REDACTED]



Australian Government

Fair Work OMBUDSMAN

Inquiry into wage theft in Queensland

Submission No 036

GPO Box 9887
BRISBANE QLD 4001

15 November 2013

[REDACTED]

Reference number: [REDACTED]

Finalisation of the investigation into your complaint

Dear [REDACTED]

I refer to your complaint concerning your employment with [REDACTED] trading as [REDACTED], lodged with the Fair Work Ombudsman on 1 July 2013 in relation to:

1. Adverse action,
2. Forced to take annual leave,
3. Underpayment of hourly rate of pay,
4. Not paid for all time worked,
5. Not provided with meal breaks.

and related correspondence provided to you by the Fair Work Ombudsman.

I am writing to notify you of the outcome of my investigation in relation to your complaint.

Matters determined by Fair Work Inspector

[REDACTED] is an employer within the jurisdiction of the FWO.

You were employed at [REDACTED] between 31 October 2012 and 18 October 2013. You were employed on a Part Time basis, as a Retail employee level 1.

From 1 July 2010, the terms and conditions of your employment are governed by the *General Retail Industry Award 2010* (MA000004) (the MA). Please note that in certain circumstances the rates of pay and penalty rates contained in the MA are subject to transitional provisions.

Your classification under the MA was Retail employee level 1. This is because a retail centre selling goods and services to the public engaged you.

Your phased rate of pay under the MA was:

Entitlement	1 July 12	1 July 13
Base rate	\$17.53	\$17.98
Evening (After 18.00)	\$21.91	\$22.48

Public Holiday	\$43.82	\$44.96
Saturday	\$21.91	\$22.48
Sunday	\$31.55	\$34.17
Overtime first 3	\$26.295	\$26.97
Overtime Balance	\$35.06	\$35.96

Adverse Action

You raised allegations that [REDACTED] had contravened section 340 of the *Fair Work Act 2009* (the Act). In particular, an employee has a workplace right where they are entitled to the benefit of workplace law and instrument and is able to make a complaint or inquiry.

You had stated you exercised a workplace right by raising pay issues with your manager. You stated you were threatened by the manager with your employment and forced to take annual leave. In addition, you also alleged at the same time [REDACTED] [REDACTED] commenced an investigation into matters surrounding the release of a television to a client without receiving full payment.

In an effort to determine whether you were threatened with your employment, the manager was offered an interview. The offer of interview was declined.

In the absence of admissions there is insufficient evidence to support a contravention of section 340 of the Act.

You state you proceeded on personal leave in June/July 2013. The evidence you supplied and received from [REDACTED] [REDACTED] [REDACTED] shows you were paid personal leave and, when this expired, you were paid accrued annual leave.

While [REDACTED] did not provide evidence that you had not requested to be paid your accrued annual leave, there is no evidence to support your allegation that you were forced to take annual leave.

Not paid for all time worked

You allege [REDACTED] required employees to commence early, finish after their scheduled shift time, and not enter the time on the timesheet. You stated your scheduled roster would show a start time of 9 am but you were required to attend for "training" at 8.30 am. When considering underpayments, I used the start time of 8.30 am.

The timesheets provided by [REDACTED] [REDACTED] reflects a significant number of start times of 8.30 am. You were unable to produce any evidence that demonstrates you were required to stay past your scheduled roster finish time. You stated your manager could confirm these arrangements.

However, as identified above, your manager has declined an offer of interview. In the absence of admissions, there is insufficient evidence to support a decision for not being paid for late finishes.

Meal breaks

You alleged you did not receive full-unpaid meal breaks including being directed not to leave the workplace. You alleged that you would only receive 10 minutes before your manager would call you back to work.

The timesheets provided by the employer show (in the majority of shifts) a 30-minute meal break. At interview on 20 September 2013, you confirmed you would enter the 30-minute break on your time sheet. You alleged you were directed to do so by your Manager. Once again there are no witnesses to your conversation.

As identified above, your manager has declined an offer of interview. In the absence of admissions, there is insufficient evidence to support a decision you were directed not to take a full meal break.

Details of contravention

Based on the information and evidence made available to us throughout the investigation, we have determined that there have been two contraventions of section 44 and eight contraventions of section 45 of the Act as detailed below:

1. Contravention of section 44 of the Act – Underpayment of Annual Leave

Section 90 of the Act provides for annual leave to be paid at the employee's base rate of pay.

Your base rate of pay for ordinary hours was \$17.53/hour (1 July 12) and \$17.98/hour (1 July 13). You were paid \$17.44/hour.

The above had application for the period of your employment. You did not receive your correct hourly rate of pay for annual leave.

2. Contravention of section 44 of the Act – Underpayment of Personal Leave

Clause 32.1 of the MA provides for personal leave to be provided for in the NES.

Section 99 of the Act provides for personal leave to be paid at the employee's base rate of pay.

Your base rate of pay for ordinary hours was \$17.53/hour (1 July 12) and \$17.98/hour (1 July 13). You were paid \$17.44/hour.

The above had application for the period of your employment. You did not receive your correct hourly rate of pay for personal leave.

3. Contravention of section 45 of the Act – Non-provision of a regular pattern of work written agreement for a part time employee

Clause 12.3 of the MA requires the employer and employee to agree in writing on a regular pattern of work.

The above had application for the period of your employment. You did not have or receive an in writing agreement as required by clause 12.2 of MA.

4. Contravention of section 45 of the Act – Underpayment of ordinary hours rate of pay

Clause 12.7 of the MA requires the employer to pay a part time employee 1/38th of the weekly rate for the class of work.

Your base rate of pay for ordinary hours was \$17.53/hour (1 July 12) and \$17.98/hour (1 July 13). You were paid \$17.44/hour.

The above had application for the period of your employment. You did not receive the correct hourly rate of pay for ordinary hours.

5. Contravention of section 45 of the Act – Non-payment of Overtime

Clause 29.2 of the MA requires the employer to pay overtime where reasonable hours are worked in excess of 38 ordinary hours or agreed hours for a part time employee.

On engagement, you were not provided with a written agreement specifying agreed regular hours. Where there is no agreement, overtime is determined based on a maximum of 38 ordinary hours per week or on a daily basis.

The above had application for the period of your employment. You were not paid for overtime hours.

6. Contravention of section 45 of the Act – Non-payment of evening (after 1800) penalty

Clause 29.4 (a) of the MA requires the employer to pay a penalty for ordinary hours worked after 6.00 pm.

Your base rate of pay for evening hours was \$21.91/hour (1 July 12) and \$22.48/hour (1 July 13). You were paid \$17.44/hour.

The above had application for the period of your employment. You did not receive the correct hourly rate of pay for evening work.

7. Contravention of section 45 of the Act – Non-payment of Saturday penalty

Clause 29.4 (b) of the MA requires the employer to pay a penalty for ordinary hours worked on a Saturday.

Your base rate of pay for Saturday hours was \$21.91/hour (1 July 12) and \$22.48/hour (1 July 13). You were paid \$17.44/hour.

The above had application for the period of your employment. You did not receive the correct hourly rate of pay for Saturday work.

8. Contravention of section 45 of the Act – Non-payment of Sunday penalty

Clause 29.4 (c) of the MA requires the employer to pay a penalty for ordinary hours worked on a Sunday.

Your base rate of pay for Sunday hours was \$31.55/hour (1 July 2012) and \$34.17 (1 July 13). You were paid \$17.44/hour.

The above had application for the period of your employment. You did not receive the correct hourly rate of pay for Sunday work.

9. Contravention of section 45 of the Act – Non-payment of Public Holiday penalty

Clause 29.4 (d) of the MA requires the employer to pay a penalty for worked performed on a Public Holiday.

Your base rate of pay for Public Holiday hours was \$43.82/hour (1 July 12) and \$44.96/hour (1 July 13). You were paid \$17.44/hour.

The above had application for the period of your employment. You did not receive the correct hourly rate of pay for Public Holiday work.

10. Contravention of section 45 of the Act – Non-payment of Annual Leave Loading

Clause 32.3 of the MA requires the employer to pay annual leave loading of 17.5%.

The above had application for the period of your employment. You did not receive annual leave loading.

The underpayment arising from these contraventions was calculated to be \$3751.57 (gross).

I informed you on 13 November 2013 that your former employer had rectified the underpayment by deposit of \$2769.57 (after tax amount) into your bank account. You confirmed that this amount had been received on 14 November 2013.

Please be advised that the Fair Work Ombudsman will be taking no further action in relation to your matter. The Fair Work Ombudsman may still consider it appropriate to take court action to seek a penalty against your former employer in relation to the contraventions. We will advise you if this occurs.

The Fair Work Ombudsman welcomes feedback on the handling of your complaint and invites you to contact our Review team at RT@fwo.gov.au alternatively you can write to the team at:

Review Team
Fair Work Ombudsman
PO Box 1356
BENDIGO VIC 3552

Contact details

Should you wish to discuss this matter, please contact me on [REDACTED], by email at [REDACTED] or by post to the address above. Please quote the reference number: [REDACTED]

Yours sincerely

[REDACTED]
Investigator
Fair Work Ombudsman

Reasons for decision

9 December 2013



Department of
Justice and Attorney-General

[REDACTED]

[REDACTED]

By email: [REDACTED]

Dear [REDACTED]

RE: Application for review

I refer to the application for review received on 29 October 2013 in relation to the decision by WorkCover Queensland (WorkCover) to reject your application for compensation (the application).

Review decision of 3 December 2013

I have set aside the decision of WorkCover to reject your application, and substituted a new decision to accept the application, in accordance with section 32 of the *Workers' Compensation and Rehabilitation Act 2003* (the Act).

Background

You lodged the application of 1 July 2013 with WorkCover for an injury described as 'anxiety/depression'. You stated that the injury was sustained as a result of 'workplace bullying' on 27 June 2013. At the relevant time, you were employed as a Retail Supervisor by [REDACTED]

WorkCover rejected the application and under cover of their reasons for decision, dated 31 July 2013, advised that the decision was based on section 32(5) of the Act.

It is this decision that you seek to have reviewed.

347 Ann Street Brisbane
GPO Box 149 Brisbane
Queensland 4001 Australia
Telephone 1300 361 235
Website www.qcomp.com.au

ABN 13 846 673 994

Reasons for decision

Grounds for review

In the application for review, you state your grounds in that management action was not reasonable.

Review process

The review is an independent administrative process or a 'review on the papers'. This means that as the decision-maker, I have considered the material on WorkCover's claim file [REDACTED] and any new information provided by you or another party during the review process.

All of the evidence including submissions, the application for review and WorkCover's file has been considered, although I may not specifically refer to all of the documents in my review decision.

Submissions were provided during the course of the review. Documents requiring release were provided to the relevant other party, in accordance with procedural fairness and the relevant other party was given an opportunity to provide comment on the released documents.

Issue for determination

Section 108 of the Act states that compensation is payable for an 'injury' sustained by a 'worker'.

Therefore, the issues to decide are:

1. Are you a 'worker' within the meaning of section 11 of the Act?
2. Did you sustain an 'injury' within the meaning of section 32 of the Act?

It is not disputed that you are a 'worker' within the meaning of the Act. This is not an issue for review.

The issue to be decided at review is whether you sustained an 'injury' within the meaning of section 32 of the Act. If the provisions of section 32(5) of the Act are satisfied, they exclude a psychiatric or psychological condition from the definition of 'injury' within section 32(1) of the Act.

Therefore, I must determine whether it is more probable than not that:

- you sustained a personal injury
- the personal injury arose out of or in the course of your employment
- the employment was a significant contributing factor to the injury
- the injury arose out of or in the course of:

Reasons for decision

- reasonable management action taken in a reasonable way by the employer in connection with your employment
- your expectation or perception of reasonable management action being taken against you
- action taken by WorkCover in connection with your application for compensation.

I will now consider each element in turn.

Did you sustain a personal injury?

On 27 June 2013, [REDACTED], General Practitioner, issued a non-workers compensation medical certificate diagnosing you as totally incapacitated for employment as a result of 'stress'.

On 29 June 2013, [REDACTED], General Practitioner, issued a workers compensation medical certificate diagnosing you as suffering from 'anxiety and stress', which you stated was caused by 'worker was bullied and targeted by manager as a result of complaint lodged for incorrect wages an' on 27 June 2013. [REDACTED] advised that you first attended upon their practice in relation to the injury on 29 June 2013, and they considered the injury to be consistent with the stated cause. [REDACTED] noted that there were no pre-existing factors.

On 8 July 2013, [REDACTED] (Mental Health Clinician) issued a non-workers compensation medical certificate, in which they noted that 'He presented with symptoms stress and anxiety that precipitated by work related issues'.

I note the decision of *Groos v WorkCover Queensland* [2000] QIC 52; 165 QGIG 106 (21 September 2000) which is authority for the proposition that a DSM IV diagnosis is not necessarily required to make a finding that the worker has sustained a psychological or psychiatric injury. Evidence of impairment or incapacity for work may imply injury and is sufficient evidence of a personal injury being sustained.

Having considered the medical opinions of [REDACTED], and in the absence of any specialist psychiatric opinion, I am satisfied that you sustained a personal injury of a psychological nature, namely anxiety and depression.

Reasons for decision

Did the personal injury arise out of or in the course of your employment and was the employment a significant contributing factor to the injury?

In *Lackey v WorkCover Queensland*¹, the Industrial Court held that the phrase 'arising out of' involves a causal or consequential relationship between the employment and injury, but does not require a direct or proximate relationship.

In submissions to WorkCover, you stated that the following stressors were causative of your injury:

1. I feel unreasonable requests were made upon me
You provided examples whereby you were required to attend a meeting 100km away from the area you live and work, on an evening and it was to be unpaid
2. I feel I have been targeted and bullied as a result of my attempt to address issues at work.
You state you there some problems with your entitlements, being asked to threaten customers and the matters in stressor one, which you approached your employer to have a meeting about. Within a few days you state you were advised you were to be performance managed.
3. I feel upper management escalated the threats against me without looking at the facts.
You state that the issues were escalated to upper management who did not listen your side and threatened you with a show cause meeting.

I have perused all of the information available at review and consider that interactions above are established, albeit with differing recollections of the events. So, that together with the opinion of the medical practitioners in that that your injury resulted from matters relating to work, leads me to conclude that your injury arose out of your employment and employment is a significant contributing factor.

Given that stressor two and three are closely linked in subject, I will consider them together as stressor two.

You had decompensated thereby sustaining the injury by 27 June 2013. However, I note the report of [REDACTED] of 24 October 2013, which details your ongoing stress in relation to dealing with issues of your pay and required further treatment. I note that the pay issues were ongoing until the recent Fair Work outcome which I will discuss later in the decision. Given the information of [REDACTED], I consider it relevant to consider all events, including those after 27 June 2013.

¹ [2000] QIC 43

Reasons for decision

Did the injury arise out of or in the course of management action?

In *Avis v WorkCover Queensland*², the Industrial Court held that the phrase 'arising out of' involves a causal or consequential relationship between the management action and the injury, but does not require a direct or proximate relationship.

The events and interactions you have cited as causative of your injury relate to interactions and directions of management, so this together with the medical opinion leads me to conclude that your injury arose out of management action.

Was the management action reasonable and taken in a reasonable way?

1. I feel unreasonable requests were made upon me

You state 'I was requested to attend an unpaid work meeting on a rostered day off'. You state that on 23 June 2013 you were notified of a 'non negotiable' staff meeting to be held at Eagle Farm on Tuesday 25 June 2013. You state that this was the first time you had been made aware of the meeting and already had plans on that night. You state that this is an hour away from the Gold Coast and you were not going to be paid for this time.

You submitted copies of text messages of Sunday 23 June 2013 between you and [REDACTED], your Store Manager. Mr [REDACTED] said he was sending you a friendly reminder about the meeting and 'This is a non negotiable and everyone has to attend'...'We will probably close the store early to ensure we are on time'. You responded by saying 'First I heard about this...'. Mr [REDACTED] responded by indicating an email had been sent out with all the details 'but like usual no one passes anything on'.

I have perused the roster contained in the WorkCover file and note that you had rostered days off from Sunday 23 June 2013 and including 26 June 2013.

In [REDACTED] submissions to WorkCover, dated 19 July 2013, it is stated that you were asked to attend the strategy meeting, as were all staff and no one is paid to attend. It is further stated that there was an expectation that all staff would make every reasonable effort to attend, and the same expectations also apply to other company events such as the awards night and end of year party party. It is further stated that the request for all staff to attend this meeting was reasonable and free of any threats to those that could not make it.

² [2000] QIC 67

Reasons for decision

It is very clear from the text of [REDACTED] that the attendance at the meeting was 'non negotiable', which is at odds with the information suggested by [REDACTED] [REDACTED].

It is not reasonable to advise you that you must attend a work related meeting, on an evening of a scheduled RDO; one hour and over 80km's away from your place of work/home. [REDACTED] stated that attendance was 'non negotiable' for all staff – that means it was stated that they did not have a choice. Additionally, it is evident that you may have been able to car pool to the event, but were not going to be remunerated for your time to attend.

You have provided information describing a situation whereby you took a \$90 deposit from a customer for a TV on 15 May 2013. You state that the customer's husband apparently attended the store on 16 May 2013, a day that you were not working, to collect the TV. You state that your manager alleges that the customers did not pay in full for the TV, and that you were blamed for letting the TV leave without full payment.

WorkCover contacted the customer who made the initial deposit, [REDACTED], and she advised that you took a deposit for the TV and her husband attended the store the following day to pick it up. [REDACTED] went on to advise that five weeks later she was contacted by you and advised that there was a discrepancy with invoices and he requesting photocopies of the invoices as you could not locate copies. [REDACTED] states that [REDACTED] sent her an email stating she had to come in and pay within 24hrs or he would advise Authorities. [REDACTED] states that [REDACTED] was very aggressive during a meeting between you, her and [REDACTED] and that [REDACTED] said that if she paid for TV you would keep your job and if she did not, you would be fired. [REDACTED] could not recall if you were in the room when that statement was made.

You emailed [REDACTED] on 24 June 2013 and indicated that you had discussed your pay rate previously and hours that you had not been paid for, and stated you had contacted Fair Work Australia and required copies of your pay slips. You also stated:

Lastly, regarding the [REDACTED] TV sale.

I am unhappy at the way this has been handled for the following reasons:

1. I feel this should have been addressed earlier. The sale was a long time ago and because we see hundreds of customers it is hard for me to remember.
2. Shortly after the actual sale took place, both [REDACTED] and you adjusted the sale in our system when I was not present. Why wasn't a problem seen then?
3. You haven't been able to retrieve the original invoice. You personally did the credit note which

Reasons for decision

usually includes a reference to the original invoice - where is this reference?

4. Despite the lack of clarity around this sale, you have asked me to threaten our customers. I believe this is an unreasonable request that is outside the scope of my responsibility as defined by the Retail Employee Collective Agreement. I am not a lawyer and I am absolutely unwilling to make what is essentially a legal threat against our customers - surely [REDACTED] would prefer to engage someone fully qualified to handle this situation?

5. I would also like you to know that this request has caused me undue stress and in combination with everything else in this email I am currently feeling uncomfortable about our workplace.

Please feel free to forward this email to higher management or HR, as when I called head office they refused to speak to me about pay except through you.

I hope that we can co-operate on resolving these matters as I really do value our workplace and want to be part of a company that treats both it's customers and employees correctly.

I note an email from [REDACTED] to [REDACTED] on 25 June 2013, as follows:

I have spoken with [REDACTED] in regards to this panel and our records indicate that he has handed the product over without the final payment being made....

In an email from [REDACTED] to [REDACTED] of 26 June 2013, he states ' One last thing if your husband can remember who took the TV out whether it was [REDACTED] who is the tall guy with the beard it would really help out as well to find out where our training is lacking... '.

I further note an email from [REDACTED] to [REDACTED] of 28 June 2013 in which it is evident that [REDACTED] believes the TV was paid for. [REDACTED] states that [REDACTED] told her that that the staff member whom served her husband no longer works at the store.

At that date (28 June 2013) you were still employed by [REDACTED].

In [REDACTED] submissions to WorkCover he states:

[REDACTED] made a reasonable request asking [REDACTED] to make contact with [REDACTED] to recover the outstanding money she owed on a TV purchase. It is the salesman's responsibility to ensure that full payment is made on every purchase before the goods leave the store.

After we looked into the banking receipts on the day in question, we deduced that [REDACTED] released the TV without taking full payment.

Reasons for decision

Not only did [REDACTED] not follow this reasonable directive but when [REDACTED] came into the store to make her payment (after confirming with her bank records that she hadn't paid for the goods), [REDACTED] actually advised her that he knew her legal rights and told her that she didn't need to make any further payment. [REDACTED] and [REDACTED] exchanged details outside the store and I am of the understanding that they have since been in contact with each other.

In a statement taken by WorkCover from [REDACTED], the following was recorded:

He took a deposit on a TV for a customer, that customer came back to the store actually the husband did to collect the TV. Obviously in these situations the salesman should take payment before releasing of goods and payment was not taken.

[REDACTED] came into the room, he wanted to address the issue, the two pieces of paper have got nothing to do with TV. The papers have no relevance to the issue. In a nutshell the sale belonged to another salesman not [REDACTED], he reversed the sale out of [REDACTED] name and into the other sales man. [REDACTED] was annoyed the sale didn't belong to him and to [REDACTED].

I have perused the roster which records that you were on an RDO on 16 May 2013 – the day the TV was alleged to have been released to the customers husband.

The only evidence available at review is that you took the nominal deposit from [REDACTED] which is evidenced in an invoice that I have viewed. This particular invoice also records a further \$100.00 payment. I would also note that the customer stated that a further payment of \$35 was made which is not recorded on the invoice. I am unable to conclude that you had any involvement in the TV being released allegedly without full payment, as this event occurred on a date which the rostered records was an RDO.

It is evident that [REDACTED] has made you responsible for following up with [REDACTED] in relation to the alleged invoicing discrepancies.

I note that it is suggested that you were the salesman for the TV and as the salesman you should have felt responsible for following up with the customer, however, it is also recorded that [REDACTED] was the salesman as you were allegedly annoyed that the sale was reversed out of your name and that this was done after the 'actual sale' took place.

Reasons for decision

It is reasonable for [REDACTED] to investigate the matter relating to the TV, however, I do not consider it reasonable to make you solely responsible for releasing the TV on a day it appears you were not in the store. Additionally, from the information of [REDACTED] it appears that the person who released the TV may have been [REDACTED]. [REDACTED] also indicates that her husband paid in cash, and it is evident that the invoicing was altered at some stage after you took the deposit. Further, I do not consider it reasonable to make you responsible for the sale and all the latter contacts with the customer, for a sale which actually appears to be [REDACTED] sale, including any legal steps or threats thereof, and in any event would be the domain of management. Additionally, I do not consider it reasonable that management threaten your position as confirmed by the customer.

2. I feel I have been targeted and bullied as a result of my attempt to address issues at work and I feel upper management escalated the threats against me without looking at the facts.

As outlined in stressor 1, you emailed [REDACTED] on 24 June 2013 and indicated that you had discussed your pay rate previously and hours that you had not been paid for, and stated you had contacted Fair Work Australia and required copies of your pay slips. You also stated that you were dissatisfied with a number of issues relating to the TV incident.

[REDACTED] responded by email of 24 June 2013, as follows:

.... First of all the meeting [meeting of 25 June 2013 at Eagle Farm] was emailed through to the main email and was brought up at several meetings. It was originally last Tuesday but was then moved to tomorrow...

This statement is in contrast to [REDACTED] text message of 23 June 2013 where he stated that whilst an email had been sent out 'but like usual no one passes anything on'.

[REDACTED] went on to state:

Second in regards to the TV I did bring this to your attention several weeks ago and asked you then what had happened and your response was they paid in full. It clearly shows on the invoice that they haven't. Whatever [REDACTED] brought to me is in no relation to this as the TV had already left without payment. If you we're responsible for allowing the TV to leave without payment then I would think you would want to do what is necessary to recover those lost funds.

Reasons for decision

██████████ also stated that:

In regards to your pay as I have said to you before I will forward your concerns on to payroll to investigate. I would however think you have all your copies of your pay slips as they are sent directly to your email address.

On 25 June 2013, you sent the following email to ██████████:

Thanks for the prompt reply ██████████.

Please don't take this personally as that is far from my intention. I am writing to you in your capacity as my manager and the representative of our employer.

Regarding the meeting, I'm on three shifts a week and it was never mentioned at either of the two morning meetings I attended. As you wrote in your SMS, nobody passed on the information and I haven't seen it on the roster either. Also, it takes a lot of time to go from the Gold Coast to our ██████████ ██████████ at Eagle Farm and back. If employees are not getting paid for their time it is very serious and I personally refuse to allow myself to be exploited. If we are getting paid for the "non negotiable" meeting, then let me know what time I should be at Robina to meet you and I'll be there.

For the ██████████, you were not sure what had happened when you approached me about it the first time. There was the new invoice, which I believe you created under ██████████ number, along with the credit note which would normally be created against the original invoice which you didn't have. You know this makes it very confusing and I don't understand how we could have the invoice in our system ██████████ without the till being out if we haven't received payment. You also know I have taken responsibility for chasing it up with the customers and asked them to provide us with their invoice or a proof of payment, but I must draw the line - I'm not about to threaten our customers with legal actions especially as this could very well be a mistake in our system. I have it on advise that I cannot be required to do something which is outside the scope of my role as a Retail Sales Consultant. Also, last week ██████████ told me, in front of ██████████, that I had not done anything wrong, so I really think that someone should take a good look at our system to work out what has happened.

Thank you for passing on the information to payroll. I do have my payslips but I'm requesting my time sheets. I spoke to ██████████ about this on Sunday and he told it was a simple task for a manager to print out the time sheets.

I appreciate that you have been accommodating with shifts and also that you were able to turn to me to cover shifts for other staff. I'm sorry that you are disappointed, but I don't really understand why? I sincerely hope that you are not disappointed just because I am standing up for my employee rights under Australian law. I've put up with not getting correct breaks and not getting paid for the time it

Reasons for decision

takes to close the store, both of which we should be paid for, and I'm not going to put up with being asked to take hours of my time for a meeting outside a rostered shift which is not paid.

I look forward to discussing everything in person and getting it all resolved so that we can get on with the job of selling great products.

On 27 June 2013 at 10.59am, you sent an email to [REDACTED] making a request that you meet that day during work time to discuss your pay and breaks. I note that you were rostered on the late shift that day.

[REDACTED] responded that day indicating you both could certainly talk but most of the issues would be covered in your performance review the following day with [REDACTED]

Also on 27 June 2013, [REDACTED] sent you an email indicating you had spoken on the phone, and stated:

We have a scheduled meeting tomorrow at the Robina Store to discuss a serious breach of company policy. I have also agreed to discuss some issues that you have raised with your Store Manager. You are welcome to bring along a support person to this meeting.

This meeting was requested earlier this week once the facts about the alleged breach of company policy came to light.

Today you have informed me that you have obtained a medical certificate stating you are unfit for work until Sunday.

Please let me know once you have a clearance from your doctor to attend our meeting. I would like to have this matter resolved before you return to work.

You emailed [REDACTED] and sought clarification on what 'serious breach of company policy' had occurred. [REDACTED] stated that [REDACTED] had made you aware of the breach and he would not discuss the matter by email. You returned email at 9.30pm on the same date (27 June 2013) and stated you had a right to know what was going on and pointed out that [REDACTED] said if you had any questions to ask. You went on to outline some issues in relation to the TV, in that you had been threatened with the sack, being asked to lie to the customer about the invoice in [REDACTED] name which [REDACTED] had viewed himself and [REDACTED] himself giving the customer a further item 'off the books' (e-reader). You asked for the complaints resolution policy.

Reasons for decision

By email of 28 June 2013, you asked [REDACTED] again for relevant documentation to be emailed to your home address, as you were told not to return to the workplace, and you repeated your request to know what breach had occurred as [REDACTED] had not advised you. Just prior to this, [REDACTED] emailed you and said 'as you are aware, all of our policies and procedures are located on the [REDACTED]'.

[REDACTED] later emailed you and stated:

The primary cause for this meeting is to discuss your handling of the Bravia TV that left the store without payment. [REDACTED] has discussed this with you and I would like to hear your response before we make any decision regarding the matter.

The documentation you have requested (less than 24 hours prior to our meeting) was freely available to you since you started with the company last October. See attached copy for your reference.

I find it odd that the first mention of any discontent with [REDACTED] has come after you were notified that we are having a show-cause meeting.

In any case, please let me know once your doctor gives you the clearance to attend our meeting.

From an email of 27 September 2013 from [REDACTED] to you, it appears that a meeting took place in relation to an email you sent to other staff in relation to their pay and entitlements, and it was stated that you were being given the opportunity to respond before any disciplinary action was taken.

By email of 18 October 2013 your employment was terminated, even though it appears [REDACTED] was advised that you were unwell and unable to attend the scheduled meeting. It is stated:

In light of this we have been unable to obtain your response to the new allegations set out in our letter dated 27th September. As such, we have only been able to consider the information, which has been provided to us by other witnesses to these matters.

As we explained to you in our meeting on 23rd September, we have been undertaking a process of investigation regarding a number of serious allegations, which have been made against you with respect to your behavior in the store. We consider these allegations to be very serious and we are of the opinion that they constitute serious misconduct.

Reasons for decision

Allegation 1

On the 17th May you allowed a customer to take home goods without paying for them. When the store manager attempted to rectify the issue with the customer, you interrupted the negotiations taking place in the office between the Store Manager and a customer, you accept that you interrupted the meeting despite being directly asked by the Store Manager beforehand not to get involved. You claim that the Store Manager was asking you to lie to the customer and threatened your position of employment. These claims have been categorically denied by the Store Manager and other co-workers who witnessed the exchange.

In relation to the allegation that you interfered with a customer's attempt to make payment by shouting, "You don't have to pay any more money at all. I know your legal rights", you deny that this occurred. Your response to this allegation is that your words were "I know my legal rights" and that the Store Manager had no right to threaten you. These claims have been categorically denied by the Store Manager and other co-workers who witnessed the exchange. Based on the information before us, we have found that the allegations with respect to your conduct in store have been substantiated.

Allegation 2

In relation to the email that you sent to other staff members of [REDACTED] on 12 September 2013, concerning the company's terms and conditions of employment, you have made no attempt to explain this action nor why you consider this action to be appropriate. We have given you two opportunities to respond to this allegation. However, on both occasions you have failed to attend the meetings we have scheduled with you to discuss this issue. As such, we have considered all of the information available to us in relation to this issue and we have found that this allegation has also been substantiated.

Outcome

The conduct as described above is unacceptable to the [REDACTED]. On the first occasion you enabled a product to leave the store without receiving payment. This resulted in a significant loss for the company. You were then given a reasonable and lawful direction 'not to get involved' in the negotiations between the Store Manager and the customer. Despite this direction, you wilfully and deliberately intervened and interfered with the customer's attempt to pay her account. By conducting yourself in such a manner you have jeopardised the reputation, profitability and viability of the business. Additionally, while you were on leave, you have also wilfully and deliberately created a web site which you have distributed to our employees without our consent. The material contained in this website is inflammatory and jeopardises the reputation, profitability and viability of [REDACTED] and your actions are inconsistent with the continuation of your employment with us. Accordingly, [REDACTED] has decided to terminate your employment for Serious Misconduct. This termination is effective immediately...

Reasons for decision

I note the above events/outcome occurred over five months after the TV was released from the store, and almost four months after you sought to meet and discuss your concerns with management.

I have perused all of the information available and I consider the investigation process lacking, in so far as the allegations you raised. I particularly note no evidence of any investigation into the totality of allegations against [REDACTED] and your pay concerns, of which you were vindicated as noted below.

Whilst I am unable to conclude upon direct evidence that [REDACTED] acted in retaliation to your complaints about your pay, I do note that Fair Work Australia determined that you were owed back pay. I am not privy to whether other staff may have a similar action against [REDACTED]. I would also note that the TV left the store on 16 May 2013, however, this issue appears to have received momentum proximate to your complaints about your entitlements and [REDACTED] treatment of you.

It is not my role to investigate [REDACTED] accounting practices, security footage or the credibility of all involved. However, having considered the stressors, events and related documentation, I find that you had genuine concerns in relation to accusations being made against you, the accuracy and honesty in relation to documentation, expectations placed upon you and the accuracy of your entitlements and wages and threats made in relation to your employment. Overall, I find that your concerns were not investigated and addressed adequately, and I note that it is now substantiated that you were not being paid wages correctly. Further, the 'investigations', outcome and dismissal appear to have occurred whilst it is reported that you were medically unfit to provide any further responses.

Having made this conclusion, and giving the issues global consideration, I determine that management action was unreasonable. Therefore, section 32(5) of the Act is not enlivened such to exclude your 'injury from the definition of 'injury' in section 32 of the Act and you have an entitlement to compensation.

Summary

After consideration of the relevant evidence outlined above, I therefore conclude that the provisions of section 32(5) of the Act do not exclude the psychiatric/psychological condition from the definition of 'injury' within section 32(1) of the Act.

Reasons for decision

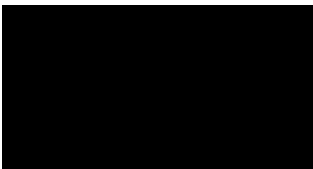
Therefore, I have determined that you sustained an injury an 'injury' in accordance with section 32 of the Act and you have an entitlement to compensation.

Appeal rights

If either party disagrees with this decision then either party may appeal to the Queensland Industrial Relations Commission in Brisbane. Either party has 20 business days from the date of receipt of this decision in which to lodge an appeal. A copy of the notice lodged with the Commission must also be served on the Workers' Compensation Regulator within 10 business days.

For information about the appeal process please contact me or refer to www.qcomp.com.au.

Yours sincerely



Review Unit

Workers' Compensation Regulator

cc



cc WorkCover Queensland