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“Overbearing” micromanagement and bullying leads to \$2.8 million payout

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Micromanagement might not sound all that serious on face value, but this Fair Work and contract case – which has been labelled one of the biggest payouts for a general protections claim – shows it can have alarming consequences.

A racing club has been hit with a massive payout amounting to \$2.8 million after a long-serving manager was bullied, subjected to an “overbearing [micromanagement style](#)” and effectively driven out of the business.

The [final amount](#) comprised \$214,250 for pain and suffering, \$1,169,048 for past economic loss, \$78,980 in interest on past economic loss, and future economic loss of \$869,745, as well as additional penalties.

This order comes after [the Federal Court ruled](#) last December that the company was negligent in preventing the employee from psychiatric harm. It found that the club’s CEO breached the company’s contract with the manager by withholding her benefits and denying her bonus. It also found he engaged in bullying behaviour, such as singling her out, micromanaging her tasks, distracting her from work with relentless emails, denying her benefits that were willingly offered to other staff members and performance managing her after she complained of work-related stress.

Justice Steven Rares found the board failed to address the manager’s complaints about the CEO’s treatment of her, and said the CEO “effectively destroyed [the manager’s] life”.

Will Snow, Partner at Finlayson, says the judge's comments highlight why the payout is "so enormous".

"The manager suffered a lot. This is certainly one of the larger amounts that has been awarded recently by courts in relation to this sort of claim," says Snow. "As the judge stated in the decision, 'What is the ruin of a person's quality of life worth?'"

"The circumstances were exacerbated by the fact that, separate from how she was treated and the fact that the employer was negligent in allowing this damage to be done to her mental health, the employer didn't pay her commissions, [annual leave](#) or [long service leave](#)."

The manager never returned to the workplace after going on [stress leave](#) in October 2016.

"This is fundamentally a key HR risk which was not managed because this employer didn't have any internal or external HR expertise." – Will Snow

Three years after the manager's last day at the organisation, another employee made a complaint about the CEO which led the board to enlist an external HR facilitator to investigate his behaviour.

Upon investigation, the board asked the CEO to resign.

Before we dive further into the specific details pertaining to the manager's treatment by the CEO, let's first unpack the manager's history at the company and how this alarming situation came about.

Background to the case

In 1991, the manager in question started working for the company as a contractor.

In 2005, when she was appointed sponsorship and marketing manager, there was an agreement reached with the company's former CEO that she would be

paid an annual retainer of \$25,000, 10 per cent commission and superannuation.

After the company's auditor recommended that, based on the nature of engagement, she should be considered [an employee instead of a contractor](#), the company acknowledged it needed to retrospectively pay her other entitlements including annual and long service leave.

However, this arrangement was not formalised in an [employment contract](#), but was a general understanding agreed upon by the then CEO and manager.

It operated smoothly for a number of years, however the informal employment arrangement and the transition to a new CEO in 2016 brought about major issues. Soon after commencing in his role, the new CEO told the manager that she was earning too much money.

Although Justice Rares recognised that the informal nature of the employment agreement meant the new CEO "was not unreasonably curious to understand the unusual and largely unwritten contractual remuneration structure", he said by June 2016, the new CEO was familiar with the structure and understood how her entitlements were paid.

The absence of a written contract, however, meant the arrangement relied on there being "a lot of trust", says Snow, noting that the new CEO didn't have an established trusting relationship with the manager.

"Everyone knew what the deal was – the manager got a small retainer and her package was otherwise commission-based on the sponsorships that she organised – but I think it would've been protective for her and the business to have had that in writing. That's where the mistrust seems to have begun," says Snow.

Bullying begins and builds

The new CEO "bullied and harassed [the employee] from the outset of his role", and subjected her to an "overbearing [micromanagement](#) style" which included a "dogged interrogation" about small expenses such as fuel, parking and drycleaning costs for tablecloths used at a work event – all of which were under \$75 each.

In an email to the CEO, the manager stated:

I feel that you don't trust me in performing my sponsorship duties that I have carried out for the last 25 years with the full disclosure with [the former CEO] and the board.

I am happy to come in and talk through any issues that need clarification, however I am losing sleep and constantly thinking about these emails and other questions you are raising.

I need to focus totally on securing sponsorship for the club as the next six months is extremely time consuming.



Photo: Pexels, by Liza Summer

After answering what Justice Rares called the CEO's "trivial queries", and producing receipts for all expenses, she was told she was no longer permitted to have a credit card.

The CEO also denied her annual bonus "because he was irritated by 'her demands'", which Justice Rares said were simply to "have the money then due to her paid".

The issues came to a head in the workplace in October 2016 when the manager claims the CEO called the manager to tell her, "You don't have permission to go to the barriers".

This was a departure from his conduct towards other employees, none of whom required the CEO's permission to visit this particular area to see the horses line up at the start of the race. The CEO denied he was this prescriptive and said he politely asked her to return to the office to attend to some duties.

However, Justice Rares sided with the manager, stating: “[The CEO] was attempting to strip [the employee’s] authority, senior status and autonomy from her.”

Reflecting on the judge’s commentary, Snow says the case is interesting because “there was a clear factual finding that the CEO had an overbearing micromanagement style... This finding was key to the determination that the manager had been exposed to psychological risk and bullied”.

“There are few cases that neatly analyse what micromanagement looks like... There are many examples of people being bullied physically, and examples of workplace stress and [people getting sick if they work in emotionally distressing jobs](#), but this is a really useful case because it looks at the actual emails and exchanges to understand exactly what an ‘overbearing micromanagement style’ looks like and the detrimental impact this can have on some people.”

Board fails to act

After the October 2016 incident, the manager asked the CEO to inform the board about his treatment of her. The CEO ignored the complaints and instead asked her to meet directly with him to discuss her [performance at work](#).

When the employee sent a [medical certificate](#) confirming that “work stress” rendered her unfit to work for the next week, the CEO forwarded the email to his father-in-law with the comment “Dropping like flies...”

“A genuinely concerned person would not have behaved in this manner... [The CEO] had no concern for her welfare,” ruled Justice Rares. “Rather, [the CEO’s] true colours came out in his triumphal statement that reflected what he had been doing for months, namely, trying to force [the employee] out of her job without dismissing her, because he knew that there was no basis to do so.”

Snow homed in on this incident as “strong evidence that instead of reacting to the employee’s complaint, he doubled down by telling her to come to his office to discuss her performance”.

“This was a problem for the employer because it is [adverse action](#) – subjecting someone to a detriment because they made a complaint. She never came back to work after that.”

“What’s also interesting in this case is that there was no dedicated HR or people management function. That puts all the pressure on the employee to manage this herself.” – Will Snow

The employee also explained the impact the CEO’s behaviour was having on her mental health to several directors of the board. For example, she told one director: “I haven’t stopped [crying](#) for a week. I can’t do my work. I’m so stressed. I can’t eat. Can’t sleep... I’ve just gone from... being a confident sort of person to just nothing.”

She also said she couldn’t complete her tasks for a major work event because of the CEO’s constant demands to answer his emails, and that this amounted to him “constantly harassing” her.

The court ruled that the board didn’t sufficiently act on the employee’s complaint. Snow says there are clear lessons for how other companies should respond in such a situation.

“If a senior employee has a complaint or concern about the CEO’s conduct and the board is made aware of it, the board needs to step in and help the parties resolve that issue.

“The board here was really inactive in responding to this particular issue. It appears that they accepted the CEO’s version of events entirely to the exclusion of what the employee was talking about.”

What the board should have done, first and foremost, was take the employee’s complaints seriously.

“An alternative and perhaps improved approach to what happened would have been to have met with the employee when she raised the concern, to get the full story from her. The board could then take advice on what steps need to be taken to resolve this,” says Snow.

“Ideally the board would’ve facilitated both parties to resolve the concerns. They could’ve also talked to the CEO and said, ‘She’s doing a good job, don’t hound her about receipts and other unnecessary things.’”

Why HR was needed

The case provides strong support for the critical role that HR plays in addressing issues and mediating [conflict in the workplace](#).

Snow notes there is no evidence that the company obtained advice from an HR consultant.

“If the board didn’t feel they had the expertise to resolve this, then it would have been time and money well spent to engage a third party, such as a good HR consultant, to help resolve this issue,” he says.

“What’s also interesting in this case is that there seems to have been no dedicated HR or people management function for the employer. That puts all the pressure on the employee to manage this herself.”

“This is fundamentally a key HR risk which was not managed because this employer didn’t have any internal or external HR expertise.”

It was only in 2019 – three years after the employee’s last day at the organisation – that another employee made a complaint about the CEO which led the board to enlist an external investigator.

“The board had an external HR consultant to look into it but the ship had obviously sailed for this manager three years before.

“There’s always the opportunity to act a lot earlier, and if you do act earlier, you retain more staff, and cultural issues are checked... The case is a clear demonstration of the usefulness of HR in managing risk. HR was completely missing from this piece and this has caused a massive award of damages against the employer and a terrible outcome for the health of the victim of the behaviour.”

Source: https://www.hrmonline.com.au/employment-law/micromanagement-bullying-payout/?fbclid=IwAR2sBI6SNw0aCyOS6-294ZfNZhDkHPMQNo_3vN4IV_ce_Xm7Xs5o800-_Vk