



## Addressing Workplace Bullying: Key Insights from a Recent Employment Relations Authority Case

### Parker v. Magnum Hire Limited [2024] NZERA 85

#### Background

In this recent ERA decision, David Parker brought personal grievances against his employer, Magnum Hire Limited, for unjustified actions causing disadvantage due to workplace bullying and an unjustified suspension from work. Parker also claimed constructive dismissal due to the hostile work environment.

#### Key Findings

- 1. Unjustified Disadvantage – Bullying (failure to provide a safe workplace):** Parker experienced bullying from the director, which the Authority said “was or ought to have been reasonably foreseeable in the circumstances” to Magnum Hire Ltd. The bullying was found to have caused both psychological and physical harm to Parker.
- 2. Unjustified Disadvantage - Suspension:** Parker was suspended without proper consultation or process when he needed to work from home due to medical reasons. The ERA found this suspension unjustified and lacking in fair process.
- 3. Constructive Dismissal:** Parker's resignation was deemed a constructive dismissal due to Magnum Hire's failure to address the bullying claims adequately. The ERA found that Parker had no reasonable option but to resign.

The Authority Member's key findings in respect of the behaviour Mr Parker experienced included (as noted in the decision):

- a. Mr Field regularly accused Mr Parker of not doing his job;
- b. Mr Parker was reprimanded many times by Mr Field for "using the weather as an excuse" for machinery breakdowns and such like;
- c. Mr Field would "play the nice guy" on some occasions yet other occasions become angry and defensive, shouting at Mr Parker, and stonewalling him;
- d. On several occasions Mr Field accused Mr Parker of running a café on Magnum's time;
- e. Mr Field would threaten Mr Parker's job security;
- f. Mr Field disempowered him to act in the full capacity of a General Manager, and often interfered with his day-to-day work despite him being in a senior role;
- g. Mr Field once referred to when Mr Parker was "going to die" and how his duties would need to be replaced by another employee;
- h. He would swear in a raised voice, for example: "That's fucking bullshit ... bullshit ... absolute shit";
- i. Mr Field threatened to review or cut Mr Parker's salary;
- j. Mr Field made at least one offensive and derogatory comment about Mr Parker in front of other people, such as calling him a "lemon";
- k. On 19 September 2021 Mr Field told Mr Parker he was considering replacing him with a CEO and claimed he had already started advertising for such a position, stated that Mr Parker was "useless", shouted at Mr Parker and made hurtful comments.

## **Compensation Awarded**

In its determination dated 14 February 2024, the Authority ordered Magnum to pay the following sums:

- \$105,000 in compensation under s 123(1)(c)(i).

- \$32,463.68 (gross) in lost income.
- \$5,071.50 for psychologist fees.
- \$1,000 by way of a penalty.
- An additional \$3,000 penalty to the Crown.
- The parties were ordered to confer regarding bonus entitlements, holiday pay, and interest to resolve those matters without further determination.

On 5 March 2024, Magnum sought a stay of execution of the Authority's awards, which led to further legal proceedings. On 22 April 2024, the Authority issued a second substantive determination, ordering Magnum to pay Parker additional sums:

- \$100,000 in bonus entitlements.
- \$8,000 in annual holiday pay.
- Interest from 21 May 2016 on the bonus entitlements and holiday pay.
- \$1,897.50 for additional psychologist fees.
- \$20,500 in costs.

## **Lessons for Employers**

1. **Address Bullying Proactively:** Employers must take all complaints of bullying seriously and act promptly to investigate and resolve such issues. Providing a safe workplace is a fundamental obligation.
2. **Fair Process in Suspensions:** Any decision to suspend an employee must be justified, consulted upon, and follow a fair process. Arbitrary suspensions can lead to significant legal repercussions.
3. **Constructive Dismissal Risks:** A hostile work environment can force employees to resign, leading to constructive dismissal claims. Employers must ensure a supportive and respectful workplace to mitigate this risk.

## Tips for Employers

1. **Implement Clear Policies:** Establish and communicate clear policies on unacceptable behaviour, including bullying, harassment and discrimination. Ensure employees know how to report issues and what steps can be taken to address their concerns (both formal and informal).
2. **Regular Training:** Provide regular training for all staff on respectful and expected workplace behaviour, how to handle bullying complaints and communicate effectively, and the potential consequences of demonstrating unacceptable behaviour.
3. **Support Systems:** Consider what other support systems can be offered to employees experiencing workplace issues e.g. access to counselling, facilitated discussions, and mediation services.
4. **Consultation and Communication:** Engage in meaningful consultation with employees when making decisions that may affect their employment and ensure transparent communication throughout the process.

By learning from recent ERA cases and implementing best practices, employers can foster a positive and legally compliant workplace environment.

Do not hesitate to reach out to me if you have wish to discuss this topic further or if you would like some support with policies, training, communications or investigation.

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