

HEAT GOES ON RASH DECISIONS

Failure to take an employee's medical condition into account led to two personal grievance claims. While one was successful the other was not, confirming that both employers and employees have a duty to ensure workplace health and safety, says Charlotte Hatlauf-Coles.

A RECENT EMPLOYMENT

Relations Authority determination again confirms the need for employers to act fairly and reasonably when balancing business needs and employees' medical needs in the workplace.

In *Martin McAtear v New Zealand Aluminium Smelters Limited*, Mr McAtear, a process controller of carbon bake fires at the Aluminium Smelters, raised two personal grievances for unjustified disadvantages against his employer.

The first personal grievance related to the Aluminium Smelters' failure to rotate Mr McAtear from the bake fires (causing him to suffer from a heat rash that became ulcerated) and the second related to an instruction to lift heavy objects at a time when he was under a medical direction not to do so.

Mr McAtear's position as a process controller at the smelter involved working for lengthy periods of time on a hot surface above extremely high temperatures. This caused him to periodically suffer from heat rashes.

While there was no formal

system of rotation, Mr McAtear would usually request his crew leader to rotate him away from the carbon bake sporadically, in order to have a break from the extreme temperatures and to manage his heat rashes. His crew leader would grant his requests for rotation whenever possible and Mr McAtear was able to control the heat rashes in that way.

However, in 2005 a new crew leader commenced work who had been instructed that process controllers were expected to be at the fires. Accordingly, despite continuous requests, Mr McAtear was not allowed to rotate away from the fires anymore.

His heat rash subsequently worsened to the stage where it became ulcerated and required medical treatment.

In September 2006, Mr McAtear was instructed to lift some flue caps. He claimed that he advised his supervisor that he was under a medical direction not to lift heavy objects (due to a non-work accident that injured his elbow), but that his supervisor asked him 'to give it a go' anyway. As a result of lifting the flue

caps, Mr McAtear aggravated his existing injury.

Authority's decision

The Authority held that the Aluminium Smelters' failure to rotate Mr McAtear away from the fires was unjustified and not the action of a fair and reasonable employer. It stated that a fair and reasonable employer would have taken some steps to investigate rotation in terms of the known risk of heat rash for Mr McAtear and to prevent or minimise injury.

The Authority concluded that the company had failed to provide Mr McAtear with a safe workplace by failing to take steps to prevent or minimise his heat rash and rotate him away from the fires.

With regard to the instruction to lift heavy objects, the Authority determined that a fair and reasonable employer would not have asked Mr McAtear to carry out a task that he was reluctant to carry out.

It noted that Mr McAtear was not entitled to be compensated for the heat rash itself (as he had

already received compensation from ACC) but awarded him \$5000 for humiliation, loss of dignity and injury to feelings relating to the heat rash and his employer's failure to prevent and/or minimise it.

However, the Authority did not award Mr McAtear any compensation for the unjustified disadvantage relating to the instruction to lift the flue caps. It reasoned that employees are required to take steps to ensure their own safety at work and Mr McAtear should have refused to lift the heavy objects.

The case confirms that both employers and employees have duties to ensure workplace health safety. For employers, this can involve listening to employee concerns and taking their medical conditions into account. Failure to do so can result in damages and costs in the Authority, and potentially, a prosecution by the Department of Labour. **et**

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