Landmark stress case will benefit claimants

Dickins v O2
(Court of Appeal — 16 October 2008)

THE claimant had been promoted to a position in the defendant company for which she was not fully qualified and for which she was not fully supported. She had previously had a 'minor crisis' at work, resulting in a two day absence, when working on an external audit. Her new position involved audit work which she found extremely difficult. She undertook an audit in February 2002 alone and, as a result, was at the 'end of her tether' with exhaustion and stress.

In March she went on a holiday but returned still exhausted and requested a move to a less stressful job but no vacancies were available. At a meeting in April 2002 she explained to her manager she wanted a six month 'sabbatical' because of stress and exhaustion. It was agreed that he would make enquiries with occupational health and she would contact the company counselling service. She did not do so as she was already receiving counselling through her GP. Shortly afterwards she left her employment and did not return.

At first instance the court accepted there had been a breach of duty as when Ms Dickins presented to her manager in April 2002 it was obvious she was under extreme stress and about to 'crack up'. She should have been immediately sent home and referred to occupational health. Damages were reduced by 50% to reflect apportionment with other non-work related factors.

The defendant appealed on the findings of foreseeability, breach and causation and the Court of Appeal referred to the decision of *Sutherland v Hatton* (2002) when addressing these issues. It found that there was sufficient evidence for the trial judge to conclude that the defendant had a clear indication of impending harm to the health of the claimant. The meeting in April 2002 was important as it was then that the claimant clearly spelt out the seriousness of her condition.

Turning to breach, the court rejected the submission that the availability of a counselling service meant the defendant had fulfilled its duty. The passage in *Hatton* was guidance only and the provision of a service will not be sufficient for an employer to discharge their duties on every occasion. Furthermore, the court upheld the judge's finding that an immediate reference to occupational health would have been of value and the claimant should have been sent home.

Finally, the court agreed that the breach of duty had made a material contribution to the illness although expressed doubts about the approach to apportionment in *Hatton*. It was of the view that in many cases the injury could be regarded as indivisible and an apportionment would not be appropriate.

The appeal was dismissed.

Stress: work and non-work problems were allowed to mount up.

COMMENT

This case is important as it is one of the first occasions where a claimant has been successful following a 'first notification' breakdown and the Court of Appeal has agreed. It was accepted that after *Hatton* the threshold for a claimant to overcome was significant. With this ruling, and the comments made on some of the *Hatton* principles, it appears the bar has been lowered in the claimant's favour. **David Armstrong, BLM London**