

Employee burnout: recent Employment Relations Authority decision.

***Perry v The Warehouse Group Limited* is the latest decision from the Employment Relations Authority to deal with employer obligations where an employee raises mental health concerns. As we head into the new year, the decision serves as a reminder for employers about their obligations in such circumstances.**

*Perry v The Warehouse Group Limited*¹ is also noteworthy because the employee successfully argued for constructive dismissal—a claim that is typically challenging to prove and which often leads to substantial financial remedies when successfully argued by the employee.

The facts

Stephen Perry started his sales position with the Noel Leeming Group (NLG) in September 2019. By June 2021, he informed his employer about suffering from burnout.

In June 2020, NLG underwent a restructure. Although Perry's role was initially unaffected, the removal of the employer's after-sales administrative team significantly affected his responsibilities. Perry had to take on administrative tasks previously handled by others, substantially increasing his workload and causing stress as he tried to manage both his typical sales role and the added administrative duties.

Perry first raised concerns about the impact on his work-life balance during his performance review and a team meeting in the second half of 2020.

During this period, additional changes were introduced to Perry's role without proper consultation, coinciding with NLG's merger with The Warehouse Group (TWG). Perry experienced abrupt changes in his job title, email address, uniform, and sales, without prior notice. Perry also faced new pressure to start selling Warehouse Stationery products to his existing customers, further increasing his workload.

Perry first raised burnout concerns in June or July 2021. He informed his manager that he was "burnt out" and could not continue due to being "broken by the workload." Perry was crying during the meeting and, at one point, banged his fists on the table.

Although he did not consider Perry's workload to be excessive, Perry's manager encouraged him to access EAP support and offered him additional leave "off the books" to address his stress.

A couple of months later, in September 2021, Perry scheduled another meeting to address his burnout. Once again, Perry was offered ongoing support in his role.

A few weeks after the meeting, Perry resigned, citing breach of his employment agreement and injury sustained to mental burnout. He requested \$30,000 (after tax) to fund his recovery.

The company's response reiterated its previous offer of support to continue in his role. However, Perry's employment ended on 12 November 2021.

The decision

Perry successfully argued that he was constructively dismissed, on the basis that his employer had breached

¹ [2023] NZERA 773

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its employment duties to him. Perry contended that he had not been provided with a safe working environment.

The Authority said it was evident from June/July 2021 that Perry was contemplating resignation due to burnout. Despite this, TWG did not discuss Perry's concerns with him again until months later.

Similarly, although a meeting took place in September 2021 during which Perry indicated an intention to resign, the continuing issue of burnout was not escalated further.

The Authority considered it was reasonably foreseeable that Perry's continued employment would be untenable unless his burnout concerns and other issues were adequately addressed.

The Authority found that these were not the actions of a fair and reasonable employer, commenting that although Perry was offered EAP and additional leave:

"A fair and reasonable employer with TWL's resources would have taken more formal and proactive steps to understand Mr Perry's mental health situation at the time".

Substantial remedies

Having succeeded in a claim for constructive dismissal, Perry was awarded several financial remedies.

Compensation for hurt and humiliation

Perry provided evidence that his burnout led to such severe distress he required medical intervention and counselling from July 2021 onward. He further stated that even after leaving TWG, for at least 12 months, he struggled to recover, depleted all his savings, and had to rely on a benefit.

The Authority found that Perry's evidence of "a self-reported injury" and an "undated untested letter from a counsellor" did not support an alleged medical diagnosis of "serious psychological injury" but nevertheless awarded \$25,000 in compensation for hurt and humiliation.

Compensation for lost wages

Perry also received three months' lost wages, with the Authority not satisfied it should exercise its discretion to award more, given the lack of evidence supporting his claim that he was unable to look for or obtain alternative employment.

Compensation for loss of benefits

Perry was also entitled to recover five days' lifestyle leave for being unable to use it for its intended purpose. Lifestyle leave was designed for "a longer holiday or second break" but Perry used 5 days' lifestyle leave in August 2021 to aid his burnout recovery.

Takeaway

Perry v The Warehouse Group Limited serves as a reminder for employers about their obligations to employees with mental health concerns. Employers faced with supporting employees struggling mentally should ensure proactive steps are taken to understand what is causing the issue, and what is required to address it. In some cases, this may involve seeking the opinion of the employee's GP or other medical professional.

Want to know more?

If you have any questions about employer obligations when an employee raises mental health concerns, please contact our specialist [Employment Team](#).