



HIGH COURT OF AUSTRALIA

11 December 2024

ELISHA v VISION AUSTRALIA LTD
[2024] HCA 50

Today, the High Court allowed an appeal from a judgment of the Court of Appeal of the Supreme Court of Victoria. The appeal principally concerned the availability of damages for psychiatric injury to an employee in circumstances where the injury arises from the manner of the employee's dismissal.

The appellant, Mr Elisha, was employed by Vision Australia Ltd ("Vision Australia") in September 2006. In March 2015, Mr Elisha was involved in an incident while staying at a hotel during travel for his work duties. The circumstances of the incident were disputed. The incident was reported to Mr Elisha's manager, who, in email correspondence with Vision Australia's human resources staff, stated that she was unsurprised by the allegation given previous reports of allegations of aggressive behaviour. On 19 May 2015, Mr Elisha met with his manager who told him there was a "serious" complaint against him and gave him a "stand down letter" that required his attendance at a meeting two days later. The letter stated that the meeting would be conducted in accordance with the Vision Australia's enterprise agreement and enclosed the "Vision 2015 Disciplinary Procedure" ("2015 Disciplinary Procedure"). The allegations set out in the stand down letter were confined exclusively to misconduct during the hotel incident.

At the meeting, Mr Elisha denied the allegations in the stand down letter. The next day, during a meeting of Vision Australia management staff, including Mr Elisha's manager, a recommendation to prefer the hotel proprietor's account of the hotel incident over Mr Elisha's account was accepted. The decision was informed by previous allegations of aggressive behaviour by Mr Elisha, which were not put to Mr Elisha at the meeting. Mr Elisha's employment was terminated on 29 May 2015, and he was subsequently diagnosed with a major depressive disorder. In August 2020, Mr Elisha commenced proceedings claiming damages for his psychiatric injury.

The primary judge characterised the disciplinary process as "a sham and a disgrace" and held that Vision Australia breached the 2015 Disciplinary Procedure, which was incorporated into Mr Elisha's employment contract, by failing to provide Mr Elisha with a letter containing the allegations upon which Vision Australia ultimately acted in terminating his employment. The primary judge awarded damages for breach of contract, concluding that the risk of psychiatric illness was not too remote. The primary judge rejected Mr Elisha's alternative claim for damages for breach by Vision Australia of a duty of care to provide a safe system of investigation and decision making with respect to discipline and termination of employment, concluding that the claim rested upon a duty of care that was not presently recognised by the common law. The Court of Appeal allowed Vision Australia's appeal on the basis that: first, damages for psychiatric injury were unavailable for a breach of contract other than where the psychiatric injury was consequent upon physical injury caused by the breach or where the object of the contract was to provide enjoyment or relaxation; and second, Mr Elisha's psychiatric injury was too remote from Vision Australia's breach.

The High Court rejected Vision Australia's contention that the 2015 Disciplinary Procedure was not incorporated into Mr Elisha's employment contract and held that psychiatric injury is part of a class of physical or personal injury for which damages are recoverable for breach of contract. In any case, the scope of a contractual duty is determined by reference to the nature of the liability that the parties might fairly be regarded as having been "willing to accept". Further, the High Court held, by majority, that Mr Elisha's loss was not too remote because the kind of damage suffered (psychiatric injury) and the general manner of its occurrence was within the reasonable contemplation of the parties, at the time of the contract, as a serious possibility. A majority of the High Court held that it was unnecessary to consider whether Vision Australia owed Mr Elisha the duty of care in tort alleged.

This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.