

**NORTHERN TERRITORY ANTI-DISCRIMINATION COMMISSION**

**LOCATION:** On Papers

**TRIBUNAL:** Traci Keys  
HEARING COMMISSIONER

**DATE OF DECISION:** 5 December 2013

**HEARING NO:** C20100128-04

**COMPLAINANTS:** Mr Willem Vollebregt

**First Respondent:** Reidy Investments Pty Ltd t/as Desert Palms  
Resort

**Second Respondent:** Ms Angela Reidy

**COUNSEL:** **COMPLAINANT:** Self -represented  
**RESPONDENTS:** Mr David Sweet,  
Minter Ellison Lawyers

## **Decision**

1. On 18 April 2013 I found that the First and Second Respondent had breached section 31(2)(d) and section 24 of the *Anti-Discrimination Act* in relation to incidents occurring between 28 February 2009 until the engagement of a security firm in September 2009.
2. Parties were invited to make submissions in regard to what orders I should make by 7 May 2013. Submissions were received from the Complainant and from the Respondent on behalf of the first and second Respondent. Submissions were received on 26 June 2013 from Counsel Assisting.
3. There has been considerable delay in making these final orders and that is regrettable, and some of that fault must rest with me. However it has been a difficult decision to make as submissions received from both parties did not provide me with the key information I required to make these orders, making the task bigger than it really needed to be. Lacking in submissions was specific information from the Complainant about what he expected and what evidence supported his claims. In regard to the Respondents no information was provided via their submissions regarding compensation already paid that might have been relevant to my consideration. It is not my job as Hearing Commissioner to guess or make this up. I lastly note that I was assisted by submissions from Counsel Assisting, Ms Farquar and for that I am grateful.
4. In issue is what orders under section 88 of the Act I should make for Mr Vollebregt in response to the incidents subject to this complaint.
5. Section 88 provides as follows:

### **Orders after hearing**

- (1) If, after the hearing of a complaint, the Commissioner finds the prohibited conduct alleged in the complaint is substantiated, the Commissioner may make one or more of the following orders:
  - (a) an order requiring the respondent not to repeat or continue the prohibited conduct;
  - (b) an order requiring the respondent to pay to the complainant or another person, within a specified period, an amount, being an amount not more than that prescribed, that the Commissioner considers appropriate as compensation for loss or damage caused by the prohibited conduct;
  - (c) an order requiring the respondent to do specified things to redress loss or damage suffered by the complainant or any other person because of the prohibited conduct;

- (d) an order declaring void all or part of an agreement made in connection with the prohibited conduct, either from the time the agreement was made or subsequently.
  - (2) In this section, the specified things a respondent may be required to do, include, but are not limited to the following:
    - (a) employing, reinstating or re-employing a person;
    - (b) promoting a person;
    - (c) moving a person to a specified position within a specified time.
  - (3) In this section, *damage*, in relation to a person, includes the offence, embarrassment, humiliation, and intimidation suffered by the person.
  - (4) If, after the hearing of a complaint, the Commissioner finds the prohibited conduct alleged in the complaint is not substantiated the Commissioner shall make an order dismissing the complaint.
6. I agree with Ms Farquar's submission that this is not a case in which section 88(1)(a),(c),(d) are relevant remedies. It is also not a matter in which section 88(2) will apply as Mr Vollebregt is no longer in the employment of the First Respondent. It is therefore section 88(1)(b) that I need to consider, if the Respondents should be ordered to pay Mr Vollebregt compensation for loss or damage caused by the prohibited conduct.
7. Section 88 (3) further defines damage to include "offence, embarrassment, humiliation and intimidation."
8. The question is what loss or damage did Mr Vollebregt suffer as result of the incidents between 28 February 2009 until September 2009 as a result of the Respondent's conduct.

### **Parties Submissions**

9. Mr Vollebregt's submits that he should receive "substantial financial compensation." He notes \$40,000 spent in finding and buying a new residence. He indicates further losses to include his loss in capacity being not only due to his injury but to the stress placed upon him by the 2<sup>nd</sup> Respondent. He also says that the process was humiliating for him. He suggests no compensation amount for either of these losses.
10. Problematic with his submission is that it does not delineate the period in which he says he should be compensated. His submissions seem predicated on an understanding that his entire complaint before the Commission was found to be proven, this is not the case. I accept however despite this lack of

delineation that what he is saying is that during the relevant period the failure to accommodate his special need resulted in him ultimately being unable to continue working. That the fall out of this was stress, humiliation, career loss and costs associated with being required to relocate.

11. His most substantial claim is the loss of his job and career. However he fails to provide any medical evidence to support this, it appears to be pure conjecture. The only evidence provided at hearing that supports his claim is the fact that his medical practitioners required him to work less than he did. This was presumably to assist his recovery or to prevent further aggravation. However there is no evidence that it would have meant recovery, he was already at reduced capacity at this time. His injury was clearly a very serious back injury with no guarantee of recovery, irrespective of what Ms Reidy did or did not do.
12. I also note that this is not a workers' compensation jurisdiction; at the heart of failure to accommodate a special need (section 24) is not what caused his injury but how his employer responded and treated him as a result of his injury. The loss or damage I need to consider is the loss experienced by Mr Vollebregt because accommodations provided were inadequate. The result of this failure is a loss of equality of opportunity to perform his job to the same extent as someone without a back injury. I do not rule out that this loss could be a loss of his job or career, and in many ways mimic what one could be compensated for in a workers' compensation jurisdiction.
13. To succeed in proving that the failure in this instance resulted in his job/career loss I would need a very direct link, and evidence to support this. Mr Vollebregt would need to show that the failure to adequately accommodate his special needs during the period of 28 February 2009 – September 2009 resulted in him being permanently incapacitated and therefore unable to ever work in this capacity again. I am not satisfied on the evidence before me that this is the case.
14. In regard to relocation expenses I see this as too remote to these claims. The relocation expenses arise as a result of him losing his job; I have already made it clear in my decision dated 18 April 2013 that I did not find prohibited conduct in relation to the fact that he was dismissed.
15. It is therefore clear that any damages for this complaint relate to non-economic loss and the damage suffered by Mr Vollebregt in having to manage a range of situations when he was clearly unwell. This includes ensuring the hotel was running smoothly 24 hours, 7 days a week; dealing with anti-social behaviour after hours and managing his back injury. I accept that this must have been a very stressful and demoralising period for him, given his length of

tenure with the First Respondent, his senior role in the organisation and the public nature of his role.

16. The second complaint relates to discrimination in the workplace (31(2)(d)). I found that the Respondents had breached this section in regard to the ways in which Mr Vollebregt was treated prior to and after his termination. For example:

- a. Removal of his daughter from the work roster (refer to email dated 14 March 2010);
- b. Appointing a new manager without advising Mr Vollebregt;
- c. Removing his car port shade cloth;
- d. Sending the police to issue a trespass notice,
- e. Cutting his phone and internet access.

17. In my decision dated 18 April 2013, I found there was a course of conduct by the Respondents that excluded Mr Vollebregt from the change in management process and that must have been “both demoralising and humiliating for him, at a time that he was least able to manage.”<sup>1</sup> The conduct failed to acknowledge that he had provided value as an employee, and failed to respect the status that he had as Manager.

18. It is clear from Mr Vollebregt’s submissions that he felt humiliated. This is something that can be compensated. Again I am not provided with a specific amount, but it is clear from Mr Vollebregt’s submissions that the impact of the conduct during this period was quite distressing for him.

19. The submissions received on behalf of the Respondents in regard to both complaints provide little assistance in determining whether a compensation order should be made. The submissions are in the nature of appeal grounds disputing the original decision rather than submissions about the nature of the orders to be made. In brief they say that no orders should be made. I cannot agree with this position.

20. No submissions were made by the Respondent about the impact of compensation paid in other jurisdictions that may overlap with any compensation in this jurisdiction. I therefore made a request of the Respondent’s lawyer for this information. In response I was advised by an email dated 24 June 2013 of the specific compensation payments made as a result of an unfair dismissal claim and a worker’s compensation claim. However it was not accompanied by any explanation as to what the

---

<sup>1</sup> Vollebregt v Reidy Investments Pty Ltd t/as Desert Palms Resort & Angela Reidy unreported 18 April 2013, p8.

compensation was for. I therefore will have to assume that any payment made to date is not for any of the loss I am considering here.

21. Ms Farquar provided me with some case law in regard to the types of damage awards made under the *Disability Discrimination Act*. While none of these cases contained facts reflecting this case, they were nevertheless useful in considering the broad range of damages for non-economic loss in a disability setting. She correctly identifies that damages awarded in cases of non-economic loss are lower than those in which economic loss is claimed. She summarises that the case law appears to be in the range of \$5000 to \$15,000.


### **Finding**

22. In this particular case, I am of the view that the embarrassment and humiliation experienced by Mr Vollebregt was not at the lower end of the scale, it was by no means trivial in nature. He had held a position of status and had previously felt he was a valued employee. The conduct occurred in a very public setting, at his work, which was also his home. It is also however not at the extreme end of the spectrum, the conduct occurred over specific periods of time and while Mr Vollebregt may presumably had some residual feelings of humiliation it is an issue that did come to an end. It is in my view in the mid-range. I am of the view that the embarrassment and humiliation is greater for the section 31(2)(d) complaint than the section 24 complaint. I am of the view that an appropriate order would be a total damage award of \$7,500 for all prohibited conduct in which a breach was found (s24, s31(2)(d)).

### **Orders**

23. I therefore order under section 88(1)(b) that the Respondents pay to the Complainant the amount of \$7,500 within 28 days of this decision.

24. I make no orders as to cost.



Tracy Keys

**HEARING COMMISSIONER**

5 December 2013