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Crook v Sovereign Insurance NZ Ltd WA 34/06 (Wellington) [2006] NZERA 680 (3 March 2006)

Last Updated: 25 November 2021

ATTENTION IS DRAWN TO THE ORDER PROHIBITING PUBLICATION OF CERTAIN INFORMATION REFERRED TO IN PARAGRAPH 51 OF THIS DETERMINATION

Determination Number: WA 34/06 File Number: WEA 81/05

Under the [Employment Relations Act 2000](#)

BEFORE THE EMPLOYMENT RELATIONS AUTHORITY WELLINGTON OFFICE

BETWEEN Jennifer Crook (Applicant)

AND Sovereign Insurance NZ Limited (Respondent)

REPRESENTATIVES B Buckett and A O'Brien for Applicant

P Churchman, B Fleming and E Marx for Respondent

MEMBER OF AUTHORITY G J Wood

INVESTIGATION

MEETING 6-7-8 December 2005

SUBMISSIONS RECEIVED

BY 10 January 2006

DATE OF DETERMINATION

3 March 2006

(Issued to parties 15 February 2006)

DETERMINATION OF THE AUTHORITY

1. Ms Crook claims that the respondent (Sovereign) failed to provide her with a safe workplace, which resulted in her suffering a psychological illness and making her unable to work. She also claims that because of ongoing breaches of duty to her by Sovereign, she was constructively dismissed. Sovereign denies breaching its health and safety responsibilities to Ms Crook and considers that it treated her fairly throughout her employment.

The Facts

2. Jennifer Crook is an experienced services sector line manager. She has held senior positions in Work and Income in New Zealand and the ANZ Bank. In September 2001 she was appointed as Sovereign's Operations Manager for its group superannuation schemes. She was responsible for several staff, including a Mr F, a long serving Sovereign employee who had applied unsuccessfully for the job to which Ms Crook had been appointed. F was subsequently given a more senior role within

the group superannuation team, but he still reported to Ms Crook. Ms Crook in turn reported to Ms Anne Webber, the Senior Manager, Corporate Operations.

3. F, who comes from a Cambodian Muslim background, had great difficulty taking instructions from Ms Crook, in part because she had no insurance industry background, but more particularly because she was a woman. Despite issues that flowed from F's attitude, F's performance was rated as fully competent and exceeding expectations in December 2001. In March 2002, F's rating was downgraded to meeting rather than exceeding expectations, as Sovereign came to view F's behaviour towards Ms Crook as aggressive and threatening in a verbal manner.
4. Around this time F took leave to travel to the country of his birth, which he had not visited since leaving many years ago. On his return, his behaviour deteriorated markedly. In particular, by November 2002 he had started refusing to answer Ms Crook's requests and was otherwise deliberately non-cooperative, as well as raising his voice at Ms Crook on occasion. In February 2003, for example, F stood over Mr Crook in a very intimidating manner. He was later disciplined by way of a final written warning for this sort of behaviour.
5. F also began to take a lot of sick leave from this point, as a result of what he said was work stress, which Sovereign believed related to problems he faced after returning to Cambodia for the first time since he left as a child.
6. Ms Crook regularly discussed issues about F with Ms Webber. I accept that Ms Webber assisted Ms Crook greatly after Ms Webber's return from parental leave in March 2002. In particular, Ms Webber took over a lot of responsibilities for Ms Crook in dealing with F while he was away on stress leave. Furthermore, Sovereign directly involved its human resources staff and Ms Webber's manager in dealing with the problems with F. Legal advice was also sought.
7. Ms Crook believed that the matter should be dealt with more quickly and that F's employment should be terminated. Other Sovereign managers believed that F's problems had to be dealt with properly through its disciplinary procedures.
8. F wanted to report to a manager other than Ms Crook but Sovereign would not allow that, a decision with which Ms Crook acquiesced.
9. On 28 April 2003, F was issued a final warning by Ms Webber because of his behaviour towards Ms Crook. F went on extended leave from this period onwards and never returned to work for Sovereign. F raised a personal grievance which was resolved at mediation in August, at least in part to minimise the potential impact litigation could have on Ms Crook and other staff.
10. Ms Crook told Ms Webber on many occasions of her desire for the matter with F to be resolved once and for all and the anxiety and stress it was causing her. In particular, she informed Ms Webber she was suffering migraines, which she believed had resulted from the stress associated with Mr F's behaviour.
11. I accept that Ms Crook was given a lot of support over this issue, including temporary staff to deal with workload issues and the offer of the employment assistance programme (EAP) on more than one occasion. Ms Crook was also offered time off work to assist her over the issues which she faced. This was all in addition to the efforts of Ms Webber and the human resources staff to assist Ms Crook.
12. In fact although Sovereign through its officers was not aware of anything other than Ms Crook being very stressed, anxious and suffering migraines as a result, she had in fact developed a significant and persistent disorder of her mental health, characterised by anxiety and depression and that it was Ms Crook's interactions with F that accounted for the development of this disorder. However, Ms Crook did not seek professional help until some time after the direct period of stress with F had ended.
13. In June of 2003, Sovereign restructured its Wellington operations. Mr Frank Sisley was appointed as the Senior Manager for the Wellington office. Ms Webber, who was then on parental leave again, was made redundant. As a result of these changes, Ms Webber's role, which was in the main strategic, was replaced by a line management role, which involved a more hands-on approach to staff reporting to that position such as Ms Crook.
14. Ms Fenella Gray was appointed on a fixed term agreement to take over the role of manager of the corporate markets team. Like Ms Crook when she commenced, Ms Gray did not have experience in superannuation schemes.
15. In the intervening period, Ms Crook was responsible for a great deal of work that had to be done. She was therefore, unusually, paid overtime for the significant extra work that she did in the July/ August period.
16. Unfortunately, the relationship between Ms Gray and Ms Crook was fraught with difficulties from the very beginning. Ms Crook resisted the more hands-on approach that Ms Gray sought to employ and as a result took a personal dislike to Ms Gray. From her point of view, Ms Gray was very distrustful of Ms Crook and despite some involvement by Mr Sisley, their relationship never functioned properly. No doubt matters were not assisted by Ms Gray raising a complaint from a client with Ms Crook in the first week of Ms Gray's employment.
17. The next week there was an issue over Ms Crook's clothing during a "dress down" day. Ms Crook was very upset about this being raised with her and she took it up with Mr Sisley. Even at this very early point she told Mr Sisley that she did not believe she could work with Ms Gray. Mr Sisley told Ms Crook that she would have to find a way to work through

issues with Ms Gray. Ms Crook also contacted Ms Ellie Lockhart of human resources about her concerns.

18. I accept that Ms Crook did raise matters relating to F between June and September 2003, in a general fashion, but that Mr Sisley and Ms Gray were loathe to speak to Ms Crook about these matters in any detail because the issues had preceded their employment with Sovereign. From her own evidence, however, Ms Crook had improved markedly once she learned, in early July, that F would not be returning.
19. Her condition deteriorated again, however, soon after Ms Gray started work. When later requesting sick leave, Ms Crook mentioned that she was tired and EAP was offered by Ms Gray. Ms Crook did take advantage of the services of EAP once. However, within a couple of days of that, she was contemplating suicide, something that she never told any representative of Sovereign. What Ms Crook did was see the locum at her general practitioner's, who prescribed a course of anti-depressant drugs.
20. Ms Crook then went on sick leave from 3 October. She saw her general practitioner on 6 October and was advised to change her medication to deal with her problems in sleeping.
21. Also on 6 October, Ms Gray and Ms Lockhart visited Ms Crook at her home. I accept that they did so in order to find out what was wrong with her, so that they could assist her if they could. During the visit, Ms Crook raised her concerns that she had not been adequately supported concerning F. She then limited the impact of the statement, I find, by stating that she just had to get that matter off her chest and that things were going to be fine. Ms Crook also gave permission to Ms Lockhart to contact her general practitioner about her medical treatment.
22. Ms Lockhart in fact had two subsequent discussions with her doctor. The doctor informed Ms Lockhart that Ms Crook was agitated and anxious and not coping with work, that she was unable to return to work at that point and that counselling could be of assistance.
23. Ms Crook later withdrew Sovereign's access to her doctor on his advice. His concerns about his contact with Ms Lockhart were borne out of a general concern about giving too much information about patients to employers. When he raised this issue with Ms Crook's mother, Ms Crook withdrew authority for Sovereign to contact him.
24. Having lost confidence in Ms Gray already, Ms Crook contacted her former manager, Ms Webber, for assistance, during her period of leave. She told Ms Webber that she was unwell and that she felt that Ms Gray was undermining her. Ms Webber raised those concerns with Ms Lockhart in human resources. Ms Lockhart was in fact aware of most of these concerns by that point.
25. Ms Crook saw her general practitioner several times that month, but was unable to return to work. She did improve during this period, however. Her anger disappeared and her outlook improved for the better. On 29 October she told her doctor she wanted to go back to work. Her doctor agreed that she could return to work on 3 November, but that she should stay on her anti-depressant medication.
26. Ms Crook was determined to show no signs of weakness on her return to work because she felt that any such signs would result in her employment being terminated in the same manner as F's. Accordingly, she declined again the opportunity to go back to EAP. She also considered that no return to work plan involving lesser hours or lesser duties or other special treatment was necessary. Accordingly, Sovereign's officers prepared no such plan. When returning, Ms Crook had informed Ms Gray that she would finish up her existing tasks before moving onto a new job and that she had already started looking for a new position.
27. During Ms Crook's absence, Ms Gray, with the assistance of the whole team, had drawn up a list of projects that had to be dealt with. Some were minor in nature, but others required longer term attention. Ms Crook felt that the list was drawn up to undermine her management.
28. Ms Crook went to see Mr Sisley about this accordingly on 10 November. I accept that at this meeting Mr Sisley again supported Ms Gray's right to set the scope of work for Ms Crook's staff to complete.
29. Mr Sisley later counselled Ms Gray to stick to the issues with Ms Crook and try to avoid any personal comments. Perhaps as a result of that, it was from this time that Ms Gray tried to avoid all contact with Ms Crook. Ms Crook also tried to avoid all contact with Ms Gray. They were required to have weekly meetings, however, and during these meetings there were communication difficulties between them.
30. No witness other than Ms Crook, however, gave direct evidence of any bullying by Ms Gray of Ms Crook. Those witnesses who did give evidence that they believed there had been bullying had been told so by Ms Crook, yet they did not see any. For instance, Ms Crook developed a close personal relationship with one of her staff from December 2004, yet while he remained in Sovereign's employment, he did not observe any bullying. Ms Crook's partner (they moved in together in April 2004), was not even aware of the fact that she had serious work-related health issues until they moved in together.
31. Ms Gray did not have a private office and there were few if any private meetings between her and Ms Gray. Furthermore, other witnesses gave evidence of Ms Crook

making disparaging comments about Ms Gray. It was clear that the two managers did not get on, but it was Ms Crook who made disparaging public comments about Ms Gray, I find.

32. Ms Gray was employed under a number of fixed term agreements. Ms Crook and other staff approached Ms Sisley at one point to suggest that she not be re-appointed. Mr Sisley decided to re-appoint her, perhaps in part because Sovereign was undergoing further restructuring which could have seen the whole of the corporate markets area relocated to

Auckland.

33. An example of the type of difficulties that Ms Gray and Ms Crook had was concerns Ms Crook raised over Ms Gray placing another of her direct reports in charge while she (Ms Gray) was away. Ms Crook resented that and told Ms Gray that this was a case of her undermining her again.
34. Another example of problems was in May 2004 when Ms Gray arranged for vouchers to be given to Ms Crook's staff to acknowledge their good work. Ms Crook declined to accept her voucher. However, on the whole, both Ms Gray and Ms Crook tried to remain professional, particularly in front of their staff.
35. On 10 May 2004, however, a significant event occurred, which was to lead to Ms Crook leaving work, never to return. In early May 2004, there were difficulties with a prospectus for which Ms Crook's team was responsible, although they were not responsible for the difficulties. Ms Gray was involved in the matter initially, as Ms Crook had been away. On Ms Crook's return, Ms Gray informed her of her actions, which Ms Crook felt were inadequate. Ms Gray said that she could not rectify the situation without being given concrete examples of what she was supposed to have done wrong.
36. Ms Crook later spoke to the staff member responsible (named here simply as "H") for administering the scheme subject to the new prospectus and asked her how it was getting along. She simply responded that Ms Crook should ask Ms Gray, I find, as a matter of fact, upon the acceptance of that staff member's evidence, who was no longer an employee of Sovereign. Ms Crook may in fact have overheard that staff member complaining about how the situation was impacting negatively on her.

However, when asked directly about the situation, she responded merely that Ms Crook should ask Ms Gray.

37. As a result of this conversation, Ms Crook sent an email to Ms Gray, copied to Mr Sisley, stating:

"[H] just caught up with me on the STB situation. She is not at all comfortable with the way it is being handled, and her perception is that every time she tried to talk to you about the product yesterday and felt that she was cut off if she tried to explain something. This is quite different to your view this morning that everything was just fine and all has been resolved. I gather that Craig is down today and intending to work through this. Fenella you may wish to catch up with [H]."

38. Ms Gray was concerned about the email as it did not accord with her view of how the work had been dealt with the day before. Ms Gray accordingly took the matter up with H. She was shocked at the contents of the email and became very upset. She declined Ms Gray's suggestion that the three of them have a discussion over the matter because she was so annoyed with Ms Crook.
39. Ms Gray then sought advice from Ms Tanya Fletcher-Dunlop of human resources. Accordingly those three had a meeting that day. The meeting did not go well. Ms Gray told Ms Crook that H had denied the contents of the email and Ms Crook insisted that they were accurate. Matters moved on to the relationship between Ms Gray and Ms Crook. Ms Crook again expressed a lack of confidence in Ms Gray. This upset Ms Gray, who then left the meeting.
40. Subsequent to the meeting, Ms Crook approached H. She was aware that Ms Fletcher-Dunlop intended to speak to her. She apologised over any misunderstanding. She also told H, I find, that if she was spoken to she needed to state that she, Ms Crook, had apologised for upsetting her and asked if H could tell Sovereign that Ms Crook's version of events as set out in the email was in fact correct. H declined to do so and then Ms Crook asked if she would simply state that it was a misunderstanding between the two of them. H declined that suggestion as well.
41. H told Ms Gray of this conversation and she took the matter up with Mr Sisley. Mr Sisley raised the matter with Ms Fletcher-Dunlop and a decision was taken to

commence a disciplinary investigation on the basis that serious misconduct may have occurred.

42. Mr Sisley called Ms Crook to a meeting on 13 May to tell her of the investigation. He followed a human resources template on what to say to Ms Crook. He covered the fact that the investigation was into an allegation of serious misconduct, that Ms Crook was entitled to representation, that she should not discuss the matter with other staff and that she should take the rest of the day off. The letter sets out clearly the course of action Sovereign intended to follow and the matters that it was investigating.
43. Ms Crook believed that she was being treated in exactly the same way that F was. In some ways leaving work that day was a relief to her, she stated, because she had determined from that point never to return to work at Sovereign, and she never did.
44. Ms Crook then took legal advice. A letter was sent to Sovereign accordingly, requiring further information from it and stating that Ms Crook was deeply distressed by the way Sovereign had conducted itself to date. It was noted that Ms Crook had to remain off work because it was unsafe for her to return. In fact, Ms Crook had been to see her doctor on 17 May, where Ms Crook was told that she could no longer return to her place of work as she was suffering symptoms of a very bad depressive illness.
45. A meeting date could not be agreed between the parties to investigate the claim of serious misconduct and Ms Crook was informed that from 25 May 2004 she would no longer be paid, as she had used up all of her sick leave entitlements.
46. On Ms Crook's behalf, it was noted that the next meeting date set could not met because of short notice and that Ms Crook was not in a fit state to attend any such meeting.

47. It appeared that Ms Crook had been sent correspondence addressed to Ms Buckett, but this was not through Sovereign's doing. Despite further correspondence, including a suggestion that Ms Crook seek alternative representation due to Ms Buckett's absence, no meeting was able to be arranged. I accept that any difficulties in communication related to misunderstanding between the parties and the non-availability of representatives, rather than any actions by either party that were not in good faith.
48. Sovereign wanted Ms Crook to return to answer the allegations of serious misconduct and did not accept that there had been any mistreatment of Ms Crook. Ms Crook, for her part, had no intention of returning to work and was quite unable to work anyway. Instead Ms Crook was quite rightly actively trying to improve her health and no doubt the stress of the problems that occurred at work was not helping this.
49. However, by 2 July 2004 Ms Crook had also determined to meet with a specialist to obtain a report which, Ms Buckett stated, would be made available to Sovereign but "*it might be that this report is more useful in contemplation of litigation*". That accurately set out the view of Ms Crook, which has not changed since she left Sovereign with no intention of ever returning. On the other hand, Sovereign was able under the employment agreement to require an employee to undergo a medical examination by a registered medical practitioner nominated by Sovereign. Ms Crook saw that as an attempt to invoke the disability clause in the agreement and indicated no hope of Sovereign doing anything to restore the relationship or to rehabilitate Ms Crook back to work. Therefore, on that date, Ms Crook advised Sovereign that she:
- "has no option but to accept the repudiation and elect resignation and to claim damages purely as a result of the actions of the employer"*.
50. Despite numerous attempts at mediation, matters have not been resolved and it therefore follows that the Authority has to issue a determination.

Credibility

51. There can be no certainty in determining in an investigation setting what did or did not occur on any particular occasion. The Authority is instead required to determine the facts on the balance of probabilities, i.e. what is more likely than not to have occurred. In this case, a terrible set of circumstances has befallen Ms Crook, who has suffered a severe psychological injury. For this reason I prohibit the publication of all of her medical records and any of the details of Ms Crook's injuries other than as set out in this determination.
52. No doubt as a result of her injuries, Ms Crook has come to believe that Sovereign is a cruel and callous entity, which failed to protect her when she needed it most, although she does not hold this opinion of any of its staff on a personal level. It was unfortunately clear from her evidence, however, that she was not in a fit state to assist the Authority greatly over the key disputed events in this matter. Furthermore, there was no direct evidence to support her claims of bullying by Ms Gray, as explained above. By contrast, I was impressed by a number of Sovereign's witnesses, and in particular Ms Crook's former manager, Ms Webber, and its human resources consultants, Ellie Lockhart and Tanya Fletcher-Dunlop.
53. As a result, wherever there are disputed claims between Ms Crook and witnesses for Sovereign, I have preferred the evidence of Sovereign's witnesses in determining the facts, as it was more likely to have been accurate.

The Law

54. The law in relation to an employer's duty to provide a health and safety workplace was set out by the Court of Appeal in *AG v. Gilbert* [\[2002\] NZCA 55](#); [\[2002\] 1 ERNZ 31](#). It was stated that:
- "The duty to take reasonable steps to maintain a safe workplace is also a term now implied by common law into employment contracts, in recognition of their special nature."*
55. It was implicit in that judgment that an employer would take all reasonable care to avoid exposing an employee to unnecessary risk of injury or further injury to his or her physical or psychological health and in particular would provide and maintain a safe system of work. The Court of Appeal went on to state:
- "... these are formidable obstacles which a potential plaintiff must overcome in establishing breach of a contractual obligation. Foreseeability of harm and its risk will be important in considering whether an employer has failed to take all practicable steps to overcome it. These assessments must take account of the current state of knowledge and not be made with the benefit of*

hindsight. An employer does not guarantee to cocoon employees from stress and upset, nor is the employer a guarantor of the safety or health of the employee. Whether workplace stress is unreasonable is a matter of judgment on the facts. It may turn upon the nature of the job being performed as well as the workplace conditions. The employer's obligation will vary according to the particular circumstances. The contractual obligation requires reasonable steps which are proportionate to known and avoidable risks.

The reasonableness of the employer's conduct must therefore be measured against knowledge reasonably obtained by employers mindful of their responsibilities.

... If a plaintiff is able to show that the employer failed to do what was reasonable at the time and was in breach of a contractual obligation, no reason of policy inhibits contractual liability for psychological injury.

... In some cases a risk may not be apparent without specific information about the vulnerability of a particular employee. That was the reason the plaintiff in Gillespie failed and why the plaintiff in Walker was successful only for injury suffered after the employer became aware that he had already suffered one breakdown.

After Mr Gilbert returned to work in October 1995 after extended sick leave, there can have been no doubt about his vulnerability to stress but it does not follow that in all cases the risk will need to be matched to the particular employee. If the risk is one which applies generally, the knowledge of specific vulnerability may be irrelevant. If the employer unreasonably failed to take all steps practicable to remove or manage the risk and it is reasonably foreseeable that any employee may suffer harm as a result, then the employer will be in breach of the term of the contract to maintain safe working conditions."

56. In *Koia v. AG in respect of the Chief Executive of the Ministry of Justice* [2004] 2 ERNZ 215, the applicant was unsuccessful because the Department had in place a capable and sensitive manager to deal with a very difficult work environment. That manager had encouraged the applicant to get help for his stress and the applicant had a warmth and appreciation for the way his manager had conducted herself towards him. Another factor there was the provision of EAP, which had not been utilised by the applicant.
57. The issue of foreseeability was dealt with in *Edmonds v. Attorney-General* [1998] 1 ERNZ 1. The Court held that it was unable to conclude on the evidence that the plaintiff was exposed in his job by the conduct of the supervisor to a reasonably foreseeable risk to his mental health. At p.25 the Court held:

"I have held there was excessive verbal abuse which became a feature of his job and which led to his mental ill health and to his resignation. I do not think it reasonable, however, to hold, for the purposes which I am required to serve, that his depressive condition was a reasonably foreseeable risk. The conduct was in the doctor's opinion the medical cause, and I accept that. For it to be the legal cause, however, it must be objectively reasonable and foreseeable. To me, that means it must have been foreseeable that any normal employee would have developed symptoms of mental illness if treated in the way that the plaintiff was here. I am unable to go that far."

58. This case also involves a claim for constructive dismissal. Principally at issue here is the question of a breach of duty by the employer leading an employee to resign. As

the Court of Appeal held in *Auckland Electric Power Board v. Auckland Provincial District Local Authorities Officers' IUW (Inc)* [1994] NZCA 250; [1994] 1 ERNZ 168:

"To determine that question all the circumstances of the resignation have to be examined, not merely of course the terms of the notice or other communication whereby the employee has tendered his resignation. If that question of causation is answered in the affirmative, the next question is whether the breach of duty by the employer was of sufficient seriousness to make it reasonably foreseeable by the employer that the employee would not be prepared to work under the conditions prevailing: in other words, whether a substantial risk of resignation was reasonably foreseeable, having regard to the seriousness of the breach."

Determination

59. The balance of medical evidence clearly supports a finding that Ms Crook's mental illness was caused by work factors. It was Ms Crook's association with F that caused the mental illness in the first instance, I find. While she had got a lot better, her resistance to the new management responsibilities, and accordingly new management style, of Ms Gray led to a relapse in her condition. These findings do not mean, however, that Sovereign breached any of its duties to Ms Crook under law.

60. Ms Crook was quite right to be anxious over the time the issues relating to F took to be finally dealt with. On the other hand, I accept that F's behaviour deteriorated greatly after his return from Cambodia, but I note that he spent a lot of time away from the office after that. Furthermore, Sovereign had obligations to F as well as to other staff such as Ms Crook, and much of the delay in dealing with the matter was a result of its obligation to treat F fairly.
61. With the benefit of hindsight, it is easy to say that matters would not have reached the level of seriousness with Ms Crook had F been treated more firmly, but that would be at the risk of unfair treatment to him. Sovereign had a delicate balancing act to undertake and it can not be said that it did not take all reasonable care in assisting Ms Crook.
62. Here it is important to note that management staff are expected to deal with difficult employees, that being a chief management function. In any event, Sovereign provided plenty of support to Ms Crook over this period, including offering to have other managers to deal with F (and Ms Webber in fact doing so), Ms Webber and human

resources supporting Ms Crook, and EAP, leave and temporary staff being offered. Furthermore, at the time of the events involving F, Ms Crook displayed no overt signs of mental illness and only told her manager of anxiety and resulting migraines.

63. I accept that Sovereign's actions in refusing to allow F to report to another manager were reasonable ones to take within its management prerogative. It was open to Sovereign, I hold, to decide that were it to grant F's wishes it might only encourage his behaviour. There was therefore no breach of duty by Sovereign to Ms Crook in this regard. By resolving matters with F later, Sovereign also minimised the risk of ongoing harm to Ms Crook from having to deal with this situation.
64. Furthermore, I hold that the "delays" in dealing with F's behaviour were not breaches of Sovereign's duty to Ms Crook to provide her with a safe and healthy working environment. There was insufficient evidence for a finding that Sovereign unreasonably delayed its disciplinary processes in relation to F. Indeed it had to go through the disciplinary processes and it was not aware of the degree to which Ms Crook was suffering from F's behaviour. For example, Ms Crook's memos on F did not reflect the seriousness of her mental condition as it developed.
65. I therefore determine, with relation to the F matter, that as events unfolded at the time, the risk of harm to Ms Crook was not reasonably foreseeable by Sovereign. I also find that Sovereign had taken all reasonable care to avoid exposing Ms Crook to unnecessary risk of injury to her psychological health and did provide and maintain a safe system of work in relation to F.
66. What must be assessed next, by contrast, is Sovereign's reaction to Ms Crook's concerns about F, in particular in October 2003. After F left, Ms Crook's health improved markedly, on her own evidence. It was not until Ms Gray commenced employment that she had a relapse. Sovereign did offer support to Ms Crook over this period through Mr Sisley and human resources, as well as again offering EAP and additional staff resources. On the basis of the facts set out above, I find that there was no breach of duty to Ms Crook in relation to Ms Gray's behaviour.
67. I accept, however, that Ms Crook's negative reaction to Ms Gray in effect constituted a relapse of her original illness, as was opined in a psychiatric report. I therefore need to

consider whether, at this later date, Sovereign failed in its duties towards Ms Crook in relation to exposing her to unnecessary risk of further injury to her psychological health.

68. Certainly there was no breach of duty by Sovereign in the sense of alleged bullying by Ms Gray. While on leave in October 2003, however, Ms Crook did raise concerns about her treatment by F, although she downplayed them to some extent. Ms Webber was also told of the concerns and raised them with Sovereign's human resources section.
69. I find that Sovereign's approach to Ms Crook over this matter was again one open to a fair and reasonable employer. Human resources staff tried to liaise with Ms Crook's doctor until that option was removed by Ms Crook. Ms Lockhart sought to implement a return-to-work plan but Ms Crook insisted on a complete return without such a plan. She also resisted suggestions that she might take up EAP.
70. I find that Mr Sisley and Ms Gray's actions in declining to discuss the F matter in detail with Ms Crook were an acceptable way for them to deal with this matter, particularly as Ms Lockhart was available for Ms Crook to discuss matters with and Ms Crook had discussed matters of concern to her throughout the period between June and September 2003.
71. Sovereign, faced with a manager who wanted to get on with the job and appeared to be doing so successfully, in terms of identifiable results, had taken all reasonable care to avoid exposing her to unnecessary risk of further injury to her psychological health, I find. Furthermore, Ms Crook did not seek medical attention until after being told of the disciplinary investigation and had not mentioned her health concerns much to her partner, let alone to Sovereign's officers. This meant that her continued psychological injuries were not reasonably foreseeable by Sovereign.
72. It therefore follows that any risk was not foreseeable as no reasonable employer would have been aware of such risks because Ms Crook did not tell them and her behaviour did not exhibit itself as that of a person mentally unwell.
73. In this regard, it is important to note that the medical evidence was not only that Ms Crook may well have not exhibited any signs of mental illness during this period (because she was determined to put on a brave face), but also that in that situation no employer would know that such a problem existed.
74. Furthermore, it was clearly open to Sovereign to investigate Ms Gray and H's claims of misconduct by Ms Crook, which

led to Ms Crook leaving for good. What I have determined is that Sovereign was correct to treat the matter seriously and investigate it formally and that it was the fact that this issue arose which was the final straw for Ms Crook. My findings of fact, while they do show that Ms Crook suggested to H that she tell Sovereign management that it was H who was wrong, also show that she did apologise to H about the situation and that it was possible that H had made the comments attributed to her by Ms Crook, but in a conversation with another employee that Ms Crook actually overheard. A formal investigation may well also have uncovered the degree of illness caused to Ms Crook in reaction to F's behaviour, a highly relevant factor in Ms Crook's favour. In this regard the Authority would be wrong to determine whether serious misconduct occurred and I make no such finding.

75. For all the above reasons I therefore reject Ms Crook's claims in relation to the alleged failure to provide and maintain a safe system of work and thus that Sovereign did not take all reasonable steps to avoid exposing her to unnecessary risk of injury or further injury to her psychological health.
76. It is clear from the submissions on behalf of Ms Crook that it was Sovereign's alleged failure to adequately address its breaches of duty that left Ms Crook with no option but to resign. These breached obligations were those of failing to provide a safe and healthy work environment for her, as a result of which she suffered foreseeable injury.
77. Having dismissed her claim that Sovereign had breached these obligations, it follows that there has been no constructive dismissal of Ms Crook. This is because there was no breach of duty by Sovereign of sufficient seriousness to make it reasonably foreseeable that Ms Crook would not be prepared to work under the conditions prevailing, as Ms Crook was not subjected to an unsafe system of work and it was open to Sovereign to launch a disciplinary investigation into alleged serious

misconduct. I do not accept that any of the misunderstandings that occurred after Ms Crook left work but before she resigned were serious breach of duty to Ms Crook. In many ways they related more to difficulties over the availability of representatives and Ms Crook's state of health. In any event, on her own evidence, Ms Crook had left, determined not to return, before this time anyway. It also follows from the above that Sovereign had not followed a course of conduct with the deliberate and dominant purpose of coercing Ms Crook to resign.

78. I therefore formally dismiss all of Ms Crook's claims against Sovereign.

Costs

79. Costs are reserved.

G J Wood

Member of Employment Relations Authority

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