

## **Cronin-Lampe: Record Breaking Award**

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The Employment Court's recent judgment in Cronin-Lampe v Melville High School (5 December 2023) is, in a number of respects, breath taking and record breaking.

Mrs Cronin-Lampe and her husband worked as guidance counsellors in a high school which, amongst other things, suffered a number of student suicides over several years. The Cronin-Lampes worked in the school from the late 1990s until 2011. Both were diagnosed with PTSD and (after a period of time off work) eventually ended their employment in late 2012.

Essentially, the Court held that over many years, their workplace was dangerous due to the school's wrongful actions. This included a failure to properly respond to concerns (including bullying), a failure to manage workloads, and various failures to adequately support the couple in their roles.

The amount awarded to Mr and Mrs Cronin-Lampe (a combined total of \$1.79 million) is staggering. A costs award will follow. Given the amount of time taken to hear and determine the case, that award will also be very large.

We suspect an appeal is likely – ultimately this award will (it seems) be funded by an insurer, and there will almost certainly be an appetite to challenge some aspects of the judgment. One area of possible challenge will be the Court's decision to award the couple approximately \$170,000 for losses resulting from the sale of their rental property (the Cronin-Lampes needed money after they left their jobs, so were forced to sell their rental early).

**Key takeaway: Don't put problematic employees in the too hard basket – deal with the situation.**

The key take away for employers is that they cannot ignore employees who are struggling from stress or mental unwellness related to their work.

That includes ignoring direct complaints. It also includes ignoring signs of unwellness or dysfunction (disengagement, patterns of absence or sick leave, conflict with other staff, unusual behaviour, poor performance). That advice is particularly important where the work is inherently stressful, either due to its nature, or its volume.

Obviously, this is very easy to say but much harder to achieve. These situations are often complex, and it's usually difficult to name a single cause. Employee unwellness and dysfunction at work tends to be caused by a variety of factors, including:

- Problems with how the work is organised and structured (some workplaces are blatantly unsafe).
- Problems with the work itself (as above, some work is inherently stressful).
- Personality conflicts and differences in the workplace (this might include bullying – more often it's simply a result of people being different, and not getting along).
- Unforeseen personal events in the employee's life.
- The employee's particular characteristics and vulnerabilities, some of which may mean they are simply not suited for their role.

The normal approach in New Zealand is to ignore these issues, and hope they resolve themselves (we don't, as a rule, enjoy conflict).

Frankly, this approach often works – the most common outcome is that the employee will resign unhappily and look for work elsewhere.

However, if the employee remains at work, the problems aren't investigated and remedied, and the employee suffers harm (due to the employer's breach), then the size of their legal claim can be enormous.

In a worst-case scenario, the employer will find itself liable for much of the employee's lost income for the remainder of their working life. That wasn't quite the case here (the Conin-Lampe's weren't awarded everything they sought), but it wasn't far off – the Court awarded the couple a combined total of \$1,060,000 in lost income, plus significant interest.

Therefore, if employees are suffering at work, don't leave them in the too hard basket. Get your hands dirty, investigate and make a call.

If the problem is with your workplace, then fix the issues as well as you can (the legal standard here isn't perfection – you just have to take reasonable steps). Don't be defensive – be open minded, call on outside help when that's wise (it often is – you're unlikely to be able to clearly identify things you've been getting wrong for years), document what you do and follow up to make sure its effective.

If the problem is (wholly, or partly) with the employee, then also address that. Is it their conduct? Then put them under fair pressure to change – tell them what you want, and (reasonably) hold them to account. If they won't change, then look to (again, fairly) dismiss, even if that involves some legal risk. Having them stay and potentially suffer harm is a real ticking time bomb, both for them, and for the organisation.

Is the problem instead the employee's health, or their characteristics? In other words, they aren't doing anything wrong, but (for whatever reason) they are suited for the role, or for your environment? If that's the case, then deal with that also. This will require a combination of sensitivity, strategic nous, and lateral thinking (perhaps you may work towards an agreed exit that allows the employee to leave with dignity and security). Again though, that's potentially far better than leaving the employee in a situation which, for them, is going to be dangerous, and which is going to result in a possible significant liability.

### **Should the courts be awarding this much money?**

We think that's a really good question. If it wasn't for the insurer, you and I (the taxpayer) would be paying this money to the Cronin-Lampes, via the Ministry of Education, so this is an issue for all of us.

This case probably won't be the final word. As above, we think an appeal is likely, although it's not an inevitability. That said, even if an appeal is brought, it's by no means a given that the Cronin's award will be significantly reduced. In many respects the judgment is unsurprising. If (as the Court found) an employer causes an employee harm, then the law has long held that employers are liable for the loss flowing from that harm, even if that is a large number (we saw a number of large workplace stress awards in the late 1990s and early 2000s).

However, the principle that employers must pay for harm is subject to a number of checks and balances. In particular, awards in this area must be moderate, and must align with common sense and community expectation.

Ultimately, we're not at all sure that an award of this size does that. Employers need to be incentivised to keep staff safe, but it may be that more senior judges (or even Parliament) need to intervene and impose a greater degree of moderation on these types of awards.

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