

Sexual assault in the workplace: opportunity alone is not sufficient connection for vicarious liability

Browne Jacobson LLP were recently instructed by the defendant in a sexual assault claim in which the High Court had to carefully consider the sufficient connection test for vicarious liability to apply.

14 October 2019

Browne Jacobson LLP were recently instructed by the defendant in a sexual assault claim in which the High Court had to carefully consider the sufficient connection test for vicarious liability to apply.

The claim concerned an educational establishment. The claimant was employed by the defendant as a cleaner. Her role involved working at a college outside of school hours. The court heard that she was one of a number of cleaners employed in the same role and that each had their own allocated area of the college to clean. Cleaners were not expected to work together in the same areas and each had a different set of keys and access cards although any member of the public, if they were inclined, could enter the public areas of the college such as the corridors.

The claimant was sexually assaulted by a co-worker in a locked room for which only she held a key. The defendant provided the claimant with support following this event and was remorseful that such a distressing incident had occurred to the claimant in the workplace. Her assailant was ultimately convicted of the assault on the claimant and others.

The claimant alleged that the defendant was vicariously liable for the actions of her assailant. The defendant deemed that there was not a sufficient connection between the assault on the claimant and the employment by the defendant of her attacker for there to be vicarious liability.

The claimant's assailant was employed in the same role as the claimant. There was no suggestion of his being more senior than the claimant and using that power to assault her.

The assault took place in an area of the building which was assigned to the claimant. There was no reason for the assailant to be in that area and by being there, in a room he did not hold a key for, he was not acting in accordance with the role he was employed to undertake. The court heard evidence that had a supervisor come across two cleaners in the same area, they would be directed back to their respective areas.

It was argued on behalf of the defendant that this case was distinguishable from the cases of *Mohamud v WM Morrison Supermarkets* and *Bellman v Northampton Recruitment*, cases in which the limits of vicarious liability have been tested in recent years. In both those cases the thread of connection between the role of the claimants' assailants and the assaults complained of could be made out.

In this case however the claimant could point only to the opportunity to assault the claimant by way of evidence of a sufficient connection; HHJ Walden Smith found that this was not a sufficient connection to establish vicarious liability.

HHJ Walden Smith commented that whilst the employment gave the claimants assailant the opportunity to carry out a tortious act, even pulling the thread of connection as taught as possible and viewing the field of his employment activities widely, it could not be said that there was a sufficient connection between that and the assault. In the *Mohamud* and *Bellman* cases the wrongful acts were carried out in the connection of employment. That was not the case here.

Whilst the court, like the defendant had enormous sympathy with the claimant as a victim of a crime, HHJ Walden Smith concluded that this was not the basis for a finding of liability against the defendant.

Contact

Laura Broadhead

Senior Associate

laura.broadhead@brownejacobson.com

+44 (0)115 908 4818

Related expertise

Services

Criminal compliance and
regulatory

Dispute resolution and litigation

Health and safety

Employment