IN THE COUNTY COURT
OF VICTORIA
AT MELBOURNE
2651/96-MORWELL

B E T W E E N :

KEVIN BLENNER-HASSETT

Plaintiff

v

MURRAY GOULBURN CO-OPERATIVE CO. LTD

Defendant

AND OTHERS

Third Parties

Dates of Hearing at Sale: 24 Nov 1998, 30 Nov 1998
8,9,10,14,15,16 Dec 1998
Date of Judgment 10 March 1999
BEFORE HIS HONOUR JUDGE GEBHARDT

Instructed by:

Appearing for the Plaintiff: Mr J. Keenan QC Simon Parsons & Co

Mr J. Monahan

Appearing for the Defendant: Mr D. Curtain QC Clayton Utz

Mr C. O'Neill

Appearing for Third Parties: Mr R. Webster Minter Ellison

The plaintiff in this action is a 34 year old man. He sues the defendant for damages in negligence and for breaches of the Occupational Health and Safety Act on account of events which he alleges occurred when he was an apprentice fitter and turner at their Wonthaggi premises between 1981 and 1985. His allegations, very serious as they are, if established, amount to unacceptable workplace intimidation and bastardization. It is said that his present mental and physical condition, his present disorders flow from that period of his life when he was 17 to 21. In essence he maintains that his life has been inexorably skewed and damaged because of workplace bullying. The defendant denies liability and pleads in its defence Section 23(A) Limitations of Action Act 1958.

The action, by way of writ, was commenced in 1996, eleven years after the allegations had come to a halt upon the plaintiff's dismissal by the defendant employer.

The particulars as contained in the Amended Statement of Claim state:-

The alleged abuse suffered by the Plaintiff during the course of his employment with the Defendant included the following:

(a) the Plaintiff's clothes were forcibly removed and grease was applied to his genitals;

(b) grey paste known as anti-grease was placed in the Plaintiff's hard-hat without his knowledge so the when the Plaintiff put his hat on his hair was covered with the paste;

(c) the Plaintiff was hung from a safety-harness;

(d) paint was put in the Plaintiff's hair;

(e) the Plaintiff was told to, and did, bring cake to work under threat of having a grease-gun put up his anus if he failed to do so;

(f) the Plaintiff was put in a 44 gallon drum and rolled around the workshop;

(g) the Plaintiff was pinned by having his overalls put in a vice;

(h) the Plaintiff's overalls were nailed to a bench;

(i) the Plaintiff witnessed a work experience employee being hung up from a safety harness and having a fire lit underneath him;

(j) the Plaintiff witnessed ones of the bosses aggressively kissing another young apprentice;

(k) the Plaintiff was threatened with physical harm if he told anyone what was happening to him;

(l) the Plaintiff was frequently subjected to taunts about his lack of knowledge and competence.

(Particular (j) was withdrawn and not relied upon.)

Section 23A of the Limitations of Action Act Application

In 1995 the plaintiff approached a legal firm, Simon Parsons & Co, in relation to an ankle injury, having previously attended Slater & Gordon in 1987.. In the course of appointments with the firm he was asked about previous work-related problems. Initially he said nothing. Later he mentioned the matters the subject of this proceeding. He was referred, upon disclosure of these matters, to a psychiatrist Dr Keryn Fitzpatrick. In turn she referred him to a Ms Robyn Bradbury, a psychotherapist, with considerable experience and expertise. The plaintiff has continued to see Ms Bradbury on a regular basis since then. She, in a sense, began to unlock the closed door of his part trauma. What emerges from this medical evidence is that the plaintiff suffers from post-traumatic stress

syndrome, a complaint which, whilst having a relative novelty in its appellation, is a signifier of events arising out of past traumatizing events but not blossoming until some time later.

Medical evidence on behalf of the plaintiff was given by Dr Ann Miller of Sale, Dr Shirley Prager, a psychiatrist, and Dr Keryn Anne Fitzpatrick, another psychiatrist and Ms Robyn Bradbury - a psychologist who practices, and has for many years, in psychotherapy. The last has had, as I have said, continuing contact with the plaintiff on a regular basis and was the person who identified the causality between the plaintiff's distressed condition and the alleged maltreatment when he was an apprentice. Clearly he was aware of his depressed state, his anxieties and his fluctuating concentration, but, equally as clearly, he didn't make the medical connection until he was diagnosed.

Medical evidence on behalf of the plaintiff was coherent and each of the witness' evidence dovetailed. It is significant in the context of the plaintiff's avowals that all the medical witnesses were women. He could not bring himself to reveal himself or his problems to a male practitioner. That is not surprising given his allegations.

There was no medical evidence led on behalf of the defendant company. A report by Mr Jeffrey Cummins, forensic psychologist, in the defendant's court book was not tendered, but it was acknowledged that he had seen the plaintiff. There being no medical evidence led by the defendant, I could only rely upon the plaintiff's medical evidence which was congruent in its thrust and consistent in the findings.

The school reports of the plaintiff were exhibited and it is clear from those reports that he was a normal school student. There are no indications of unusual or aberrant behaviour, no suggestion of any personality disorder or mental imbalance.

Dr Miller, a general practitioner, had the plaintiff referred to her by Ms Bradbury, the psychotherapist on 16 July 1997. He had a lump in his scrotum which she diagnosed as being of no concern. Subsequently she treated him for nightmares which he said were related to his apprenticeship experiences. She suggested anti-depressant medication for his post traumatic stress disorder. She elaborated at length about the symptomology and the effects of P.T.S.D., with particular reference to the brain's malfunctioning and the production of uncontrollable images. She prescribed Zoloft. She indicated that, with treatment, the condition can improve. She said, "In a case like this where it's been established for some years I can still see that it would be possible for him to improve, but it will take I imagine quite some time, and considerable support, and psychotherapy I think would be entirely appropriate in this situation." She said he displayed "absolutely classical symptoms" of P.T.S.D.

In cross-examination she reiterated that the treatment would take a long time.

In his cross-examination of Dr Miller, Mr O'Neill sought to establish the point at which Dr Miller believed the plaintiff made the connection between his medical problems and his alleged treatment as an apprentice.

“When we look at all these various symptoms you have described, on the occasions you have seen him which you say evidenced the PTSD, your impression was they had been going on for many years?---For some time, yes, yes.

Your impression was that he was aware that these symptoms he was having came about as a result of his time at Murray-Goulburn?---I didn’t see him till 1997 which was some years after the events that he’d described.

I appreciate that. He left there in 1985. But so far as his communication to you and what he was saying to you, and your interpretation of symptoms, in his mind these symptoms he was suffering were as a result of his time at Murray-Goulburn and the treatment?---Yes.

Was it your impression, accepting you didn’t see him until 1997?---Yes.

Your impression was that in his mind he had been putting all these symptoms down to his time at Murray-Goulburn, going back many years?---Yes, well, I don’t think he had anything else to put it down to.

No. I just want to be accurate on this and my question is fairly lengthy and I just want to get it right?---Yes.

The impression that he gave you in ‘97 was that he had been having these symptoms for some considerable period, years, that the symptoms were as a result of his treatment at Murray-Goulburn, and that he knew that these symptoms he was suffering from were as a result of that treatment?---He had been having - I assume, I haven’t asked him directly - he had been having supportive psychotherapy for some time and I assumed that that was because he connected his symptoms with what had happened to him.

Going back, was it your impression that going back, say five years before you see him which would be just roughly the early 90’s, was it your impression he had been having those symptoms since that time?---I don’t think I could comment on that because I didn’t know him then.”

The significance of this is that she connected his disorder with his alleged past experiences. This was in 1997. He had not made the connection before he saw Ms Bradbury in 1995 so that by the time he sees Dr Miller he is in a situation where he has established, in his mind, the causation.

Dr Prager, a consulting psychiatrist, undertook a medico-legal assessment in 1998. She revealed that a WorkCare advertisement regarding workplace bullying had given the plaintiff a sense that his alleged experiences might be taken seriously.

She gave evidence with respect to his work pattern:-

“Then at p.8 did he take you again to a time at Murray Goulburn, the injuries to his right and left ankles, his subsequent work history and might I just stop there and say that his work history as sworn to in an affidavit before His Honour, shows, if I might use the expression “A past history of intermittency of work” - that is, he would work for periods of time with, in particular, one employer, stop and start again. Now, in the light of that history how does that fit with what you have obtained from him?---Well, because he has these chronic intrusive thoughts of the abuse and he has a chronic depressed mood and severe anxiety, I think he uses work as a distraction from - to try and get his mind off his problems and to make him feel better but at a certain point it’s like the pressure building up in a bottle, he tries to suppress all the thoughts and feelings and to not think - trying desperately not to think about these abusive episodes which are constantly on his mind and at a certain point he can’t keep it up any longer and the defence mechanism basically no longer holds and he is unable to work and stops working at that point.

Doctor, he described it this morning to His Honour as when he stops work like that he is ‘Running away from himself’ - now, that’s the way he termed it this morning. What comment, if any, do you as a psychiatrist put upon that expression by him?---I think his true self is the very disintegrated, traumatised self and when he is working he tries to make out he is coping okay and that’s his, you know, external self that he projects to other people, not necessarily terribly well in some circumstances but he tries to show he can work and at a certain point his true self breaks through and all the problems he’s got and he has very low self esteem and he really, I guess in a way, despises himself, because in the beginning or for many years he - he identified, I guess, with the victim role because he was subjected to this terrible sadism at Murray Goulburn and so one way of coping is to think, yes, I am such - I am worthy of this sadism and so this sort of terrible sense of despicable self is someone who is worthy of being tormented day and night for four years, that sense of self breaks through instead of feeling like a normal person feels, which he’s trying to achieve. Does that answer it?

That’s not for me to judge, it’s for His Honour to judge?

---Sorry.”

Further she described the vulnerability of adolescence and the impact upon the identity of such of the trauma described by the plaintiff to her.

“What comment do you make upon that period of, if I might like to us it, abuse during his work period at such a young age?---Well, he is very vulnerable being an adolescent. I mean, I think it’s a shocking thing to do to a person, a human being, at any age, but being an adolescent is a very vulnerable time because that is the time when the sense of identity is being formed and so the sense of identity of who you are, getting back to your point before, about the sense of self, is being formed from a child, the child sense of identity which is different to the adult sense of identity, so it’s a transition time and therefore a very vulnerable time in the sense of development of sense of self and sense of identity. So, to traumatise a person at that age, has devastating - potentially devastating consequences which it has done in this case, in my opinion.

Just on that point, going to the bottom of p.9, you describe how he described lack of confidence in intimate relationships, like to marry and have children, no confidence in the ability to be attracted to women, feels unworthy of women and like, prior to his apprenticeship, the only time he has had sexual intercourse was when he had drunk alcohol. Now, he has sworn also to us that with men he doesn't trust men and he seeks female doctors for his treatment. Do you recognise that he does seek female doctors from your limited exposure to him?---Yes."

She painted a bleak landscape. She said she was not optimistic because the disorder had prevailed for a long time: "It's been persistent for a long time", she said. She goes on, "I guess I'm unfortunately reasonably pessimistic in this case, although I prefer, as a treating - my treating psychiatrist part of me would like to maintain hope always."

In cross-examination Mr O'Neill sought to elicit that the plaintiff was aware of the causal relationship between his disorder and his alleged workplace experiences.

"What I am putting to you, is that realisation or appreciation is something that he's had for many years, as you understand it; is that right?---Not in the same way as now.

In what way was it different in earlier years?---Well, I think in earlier years, he felt that whatever way he felt and whatever was happening to him was because he was a bad person and an undeserving person and everything was his fault, so he - he didn't think of it - so whatever happened to him in life that was bad including Murray Goulburn, happened because he was a despicable person worthy of being treated as a victim. That's a different state of mind to becoming aware of a possible triggering causation of how he feels - it's a different way of thinking about it."

Once again I am satisfied that it wasn't until the consultation with Ms Bradbury that the resolution in his mind of causality occurred.

Ms Robyn Bradbury is a clinical and neuro psychologist. She has had extensive experience in dealing with trauma both here and overseas. She is currently a consultant to the International Red Cross in Geneva. There were two reports from her tendered and she gave evidence. In her evidence she referred to the first consultation and noted his anxious and depressed state. She noted his excessive drinking and his inability to stick at a task for any sustained length of time. She also said that he had become a social isolate. She had read his school reports and his apprenticeship reports, noting that there was nothing to suggest any trouble in his childhood and adolescence. She went on to say, "So some event has intervened this course of his development and I think that the four years of what has happened is that event." In essence it may be said that the plaintiff's development into a complete humanity has, like the fatherless Telemachus on Ithaca, been arrested.

With respect to post traumatic stress disorder she said, "With post traumatic stress disorder it is very uncertain to predict what peoples' lives are going to be like".

She said, in cross-examination, “one of the symptoms of post traumatic stress disorder or one of the symptoms of people who have experienced physical maltreatment and abuse and torture is that they don’t want to speak about it to anyone. There is a great deal of shame ... sexually humiliating things are things that are very rarely spoken about by people who have experienced them.”

She had a real concern about suicide, “...the most common concern I had was that he was going to suicide.”

In re-examination by Mr Keenan, she said, “As I said, you know, I think a person in this position wants to prove themselves, and if he couldn’t prove himself in the workplace to be up to the - as he said, to be a man enough to take it, then he would probably spend a good deal of the rest of his life trying to be accepted by these people, which of course is unrealistic, but that’s the way that he perceived himself in the workplace to be no good unless he was a man in their eyes without sharing a drink with them, so he is in a real Catch 22.”

This related to matters put by Mr O’Neill about contact between the plaintiff and some of the defendant company’s witnesses after he had undergone the treatment at the factory, namely when he subscribed to a Tattslotto syndicate and when he had drinks at hotels.

Dr Fitzpatrick, a qualified and experienced psychiatrist, first saw the plaintiff on 28 June 1995. She assessed the plaintiff as suffering from chronic depression and anxiety. She referred to his loss of self esteem:-

“Essentially he has missed out on all of those growing up years, from late teens through his twenties, where he should have been making a network of friends, he should have been developing relationships, he should have been I guess developing other sorts of interests and activities that would have enhanced his personality, his self esteem. I guess his self confidence. They have been lacking because of his on-going problems. So I think even now, if he was to be successfully treated for the depression and anxiety and could come to terms with past abuse, there would still be major difficulties for him fitting into, I think, a fairly healthy normal lifestyle, because of all those losses, because he hasn’t developed a lot of those sorts of skills over the last 15 to 20 years.”

She went on to say that he was bound to have problems with commitment to work, to relationships, to other interests.

In cross examination she said that the plaintiff “appreciated that the problems that he had been having were as a result of what had occurred at Murray Goulburn”. Once again this was an attempt to establish that the plaintiff was aware of causality before 1995. I don’t accept that, as I have already indicated. Once it is clear to the plaintiff that his continuing problems are explicable by past events, then the connection is made, not before. His illumination, his subjective awareness, was entirely dependent on the revelations of Ms Bradbury.

In the evidence of Dr Fitzpatrick this was said:

"Doctor, he has sworn that whilst he recognised his symptoms of anxiety over the years, after leaving Murray Goulburn, that it was not until after some attendances with Ms Bradbury that he was able, first of all to tell her what happened and secondly that he learnt from her that that was the cause of his problems, what comment if any would you make upon that?---I think it is understandable, the age at which the abuse occurred I think was at a fairly formative time of his personality, where I think he would have had difficulty I guess making sense of it, or being able to sort of keep it in perspective, and I think at that time I briefly remember, he raised it with his family who were not at all supportive of what he was going through, their advice was to just try and work harder and fit in better, and 'I'm sure everything will be all right.' So he wasn't getting I think a true perspective of what he was going through and I think the way he finally dealt with it was to just distance himself from it, both geographically and emotionally."

In its submission the defendant at para 2.6(c) say the plaintiff "was aware of a six year time limitation for the bringing of proceedings arising out of such abuse." I do not accept that as he was aware of the relationships between the alleged abuse and his mental condition. That he admits that he knew about time limitations with respect to his ankle is an entirely different and separate issue. Until the plaintiff knew of the medical connection he was in no position to initiate any proceedings. He said, in answer to a question from Mr O'Neill of counsel for the defendant, "I didn't even know I had a disability."

I am satisfied that it was not until 1995 that the plaintiff made any connection between his instability, his anxiety, his depression and the alleged experiences of his apprenticeship. That is, the alleged causal relationship was not established until that year.

In those circumstances I am prepared to allow an extension of time and thus proceed to a determination of the issues of liability and damages. I find that there is no prejudice to the defendant in this course of action.

The particulars cited (supra) delineate the incidents constituting the alleged intimidation and the plaintiff gave substantial and measured evidence in support of them. In cross-examination it was suggested that they didn't occur, that they were invented.

The plaintiff gave evidence with respect to the incidents set out in the particulars of the claim. While I do not propose to revisit all the evidence, it is significant that the central issue of liability rests upon the veracity of the plaintiff's evidence in the context of the denials by the employee, Mr Jobling and former employee, Mr Simbeck. The defendants maintain the episodes did not occur, that they are a product of the plaintiff's inventiveness.

The denials have to be assessed not only in the context of the plaintiff's evidence but also that of Mr Patrick Bourke, Mr Graham Drury, Mr Sean Cross and Mr Frank Morgan.

The general nature of the atmosphere can be seen in a response from the witness, Mr Graham Drury who says:

“It’s been put in this case, Mr Drury, that there was effectively a climate of serious and non serious pranks being perpetrated on a range of people in this workshop and around it, over the years in 1981 through until 1985, and that it was performed on a lot of people and everyone knew about it, including the management. What do you say about that?---I’d say the pranks that went on in the workshop were - were the same sort of things that - that went on in the majority of workshops. Little bit of grease in the hat, the overalls tied in a knot, nothing serious and all part of a bonding of - of a group of guys that have worked together all day everyday.

It’s said that the serious pranks such as the greasing of the genitals, placing someone in a drum, threats of physical harm was prevalent and rife at that time and that again, everyone knew about it. What do you say about that?---I don’t - I didn’t see anything that was - resembled anything like that.”

The plaintiff gave the following evidence:

“When I first started I thought they were teasing me and they’d say they were going grease me from head to toe. they were going to hang me in a harness and I just took it as a joke. Between 2 and 3 months after I started it actually happened. Simbeck and Jobling escorted me to a back room, leant me against the stool. Jobling removed my clothes from the waist up, my pants, my underpants then the grease was applied to my genitals. When my pants were taken down I just closed my eyes. The only thing I felt was the grease gun and the steel on my genitals.

The next thing I can recall is being in the toilets cleaning myself up.

I went back to the workshop, I had to go into the lunch room and most people were laughing about it knowing that it had happened. Bruce Fiddler said to me “If you don’t bring your cake in boy next time, we’ll stick the grease gun up your arse.

* * *

I was hung up in a harness in the workshop. A safety harness approximately 10 foot off the ground. They thought that was amusing. I was there 5 to 10 minutes. People in the workshop could see.

* * *

Very early in the apprenticeship it was funny to have the back of your overalls done up tightly so that you can’t get away and you can’t undo it and you’re there for the view of everybody else that walks into the workshop.

* * *

A schoolboy Frank Morgan on work experience. He was hung up in a harness and Simbeck lit a fire under him using WD40 and kept spraying it under his feet as he swung over it.

* * *

Simbeck put paint in my hair in the workshop as a second year apprentice. I retaliated by putting some lubricant back into Simbeck's hair but I was warned never to do it again and I had to put up with that short of thing."

* * *

MR KEENAN: Apart from being six foot seven, is Jobling a strong man?---Yes.

Physically big?---Not as big as Graham Simbeck, but any time there was ever any heavy lifting to be done, Graham Simbeck and Brian Jobling did it.

Can you tell the court of another episode with Simbeck and paint in your hair:---Yes, Graham Simbeck put paint in my hair in the workshop, I probably would have been about a second year apprentice, and at that stage, I must admit I rebelled actually against them; these people, and I retaliated by putting Traffolex, which is a lubricant, back into Graham Simbeck's hair, and I was warned that I should never do it again. He was an apprentice and had to put up with that sort of thing, so should I.

I want to take you to another one where you had an experience with a drum. Would you tell His Honour of that?---I was in the workshop close to the back store.

What stage was this in you four year period?---It's hard to be precise, but I would say 18 months to the second year as an apprentice. Graham Simbeck picked me up from behind, one arm under the back of my legs, the other around my shoulders, picked me up and put me into a 44 gallon drum, bottom first with my legs and hands sticking out. He then rolled me down an incline from the store, and I put my hand out to try to stop the drum rolling and it went over my fingers. When I got out, I complained of that, and he returned and said, 'Well, you should have kept your fingers inside the drum.'"

* * *

"Question: 'Did you see anyone else ever being rolled around in that drum in a similar way to the way you were?'

Answer: 'No, only a school boy put into that drum the same way I was and he had rotten milk tipped over him and he was from school on work experience. His name was Sean Cross.'

* * *

The plaintiff was subjected, he said, to verbal intimidation. He was threatened with further genital abuse. He was attributed with want of “manliness”.

When he first started there he was threatened with the prospect of being locked in a room and the girls from the butter room were going to have oral sex ‘with us’.

Mr Sean Cross, a real estate agent in Leongatha, had been on work experience in the factory for two weeks in 1982. He was in the electrical room. He gave evidence as follows:

“Can you tell the court then, in the weeks that you were there, the two weeks, were there any pranks played upon you?---Nothing serious. At one stage, and it was pretty standard sort of stuff, I was placed in a 44 gallon drum, which had the top cut off it, and had some milk poured on me, and that was one thing I suppose, and the other thing I guess was out the back where the boilers were, I was strung up in a harness for 10 or 20 minutes, or whatever. I guess about ---

About 10 or 20 minutes?---Yes, something like that.

Could you let yourself down?---No.

How many people participated in stringing you up?---Three, something like that, I suppose.

Are you able to identify any of those people?---No, not really, it was 15 years ago, so - yeah. About 15 years ago.

Mr Cross, were you ever told that that was a training procedure for your own safety?---No, not at all, no. It was just a prank.

You were left dangling?---Yes.

About high up?---Well, I guess, normally - I don’t know, it seemed at the time to be high, probably about that height off the ground.”

Mr Patrick Bourke gave evidence via video-link from Townsville where he is now a salesman for an engineering company. He was employed at Murray Goulburn in the years mid 70’s to 1987 or 1988, a period of about ten years. In his evidence, with respect to the allegations of intimidation, he said:

“The place was renowned for it.”

Further he said the behaviour was known outside the factory. He said of Mr Blennerhasset that he was continuously ragged, he was “a guinea pig.”

He said it was all a “game”. He said that if it had been his son he wouldn’t be quite so sure that it was a game.

“Could you tell His Honour, firstly, as far as Kevin was concerned did you see him the subject of workplace (indistinct)?---Yes, I did.

Could you tell the court what sort of episodes you saw?

---Well, look, it’s hard for me to remember who was involved in what but I definitely know that he was - he had his testicles greased on probably more than one occasion - that sort of thing - - -

Which you saw yourself - - -? --- I’m sorry?

Which you saw yourself?---I did, yeah.

Can you mention or recall any of the people involved in that?

---Graham Simbeck was one, probably Brian Jobling.

That’s about all I can remember.

Can you describe what happened on this occasion or those occasions?---Well, he was just virtually stripped down and had his testicles greased. I mean, there’s only one way of doing that.

Did you see any other incidents?---Yeah, look, there was probably quite a few that I can’t remember. I mean, I’ve had by-pass surgery since then, so, it’s a long time ago but, look, continuously Kevin was ragged and, you know, he was sort of the -what would you call it, the - the guinea pig or whatever. Look, to actually say exactly what happened and when, my memory is not that good but it was on a continuous basis.

Do you remember anything about any hoist?---Yeah, mainly a block - I think it was mainly a block and tackle where he was hoisted up off the ground and, I’m not sure if there was a fire lit under him or he was just left dangling from the ceiling. That sort of thing was quite common there.

Did you see others have that same treatment?---I did.

What about work experience kids - did you see them treated in any way?---Yeah, much the same way. Not so much with the greasing but hoisted off the floor and dangling from the ceiling themselves and their bikes and that sort of thing.

Do you remember an occasion when a fire was lit?---Yes, there was one occasion when a fire was lit. I’m not sure whether that involved Kevin though or a work experience kid - I’m not sure.

What can you say about the knowledge of the employer as far as these episodes were concerned?

Do you recall any incidents with helmets or paint or any other incidents in particular, if you think about it?---Oh yeah, quite a few where you grease the helmets or when they come in they'd put it on their head and it was - their head was covered in grease - paint, that sort of thing. You know, look, it was quite a regular occurrence."

And under cross-examination:

"Mr Bourke, the incident that you say you witnessed was an incident where Mr Blener-Hassett had grease applied to his testicles; is that right?---That's right.

And you witnessed it?---I did.

You're sure of that?---Absolutely positive.

Where did it happen - whereabouts in the - - -? ---In the lunchroom.

In the lunchroom?---That's right.

You're sure about that?---I'm absolutely positive.

Have you got a good memory of these events going back so far?

---I've got a very good memory of that one because it was in the lunchroom.

...

There was only this one occasion?---That was one occasion.

It's happened on more than one occasion, I believe.

On how many occasions did you witness it happen to Mr Blener-Hassett?---I think it was twice I had seen it happen to Kevin but only one that I could absolutely swear to that it was actually Kevin."

It is not surprising that there is a divergence between the plaintiff's and Mr Bourke's evidence as to location and the surrounding circumstances. It is some years since the alleged incident of which Mr Bourke gave evidence. I am satisfied that the episode occurred and that there is sufficient congruence between the plaintiff's version and that of Mr Bourke. Given the passage of time and the vagaries of memory I would have been somewhat concerned if the two versions had jelled in specificity and particularity. Mr Bourke said the incident occurred in the lunch room, the plaintiff said it was in the electrical room. I give no weight to that discrepancy.

The plaintiff's evidence had a consistency and internal logic which supported his predictable and comprehensible reaction to the events by which he was confronted. The image of "manliness" was clearly held up to him and internalized by him, all in the context of still being a teenager. I accept his evidence as to the episodes and the prevailing culture which was designed to initiate him into acceptance of and, probably, later practice of the acts of the culture. Apart from the existence of butter-maids it was a male culture immersed in its hierarchical behaviour and prepared to enforce it by way of verbal mockery and intimidation, and by way of physical subjugation.

It is consistent and understandable that the plaintiff, aged 17, felt ashamed, embarrassed and confused about the episodes to which he was subjected, that his way of dealing with the horror of them was to try and tough it out in what he assumed was a "manly" way.

Mr Graham Drury has been employed at the defendant company for 30 years. He is a fitter and turner. He works as a maintenance officer. With respect to the alleged incidents he said he saw nothing. He, like other witnesses, confirmed the tying of overalls during the lunch break. He did see, on one occasion, a towel lit under someone suspended in a harness.

The explanation, repeated more than once, by the defendant company for the harness episodes was that they were training for new workers. That explanation sits most uncomfortably with the weight of the evidence and I do not accept it. Not one of the witnesses who had been involved in the harness episodes gave any evidence to the effect that they were told that they were going through a training exercise. Mr Cross says unequivocally, "No, not at all, no. It was just a prank".

Mr Drury conceded in the end that these were "pranks".

Mr Frank Parr worked at Murray Goulburn until 1989. He had been an employee for 40 years. He was a leading hand. On the evidence of Mr Cooper, the branch manager, he was a liaison between the factory and administration. Indeed it is apparent that with respect to the plaintiff Mr Cooper saw Mr Parr as the go-between. What Mr Parr didn't see or said he didn't see would not have been passed on. His evidence was equivocal. In cross-examination he said, "Well, if I was in the workshop all day long, it wouldn't have happened then. If I'm away working somewhere else, it could have happened and I wasn't there to see it and I didn't hear about it because they didn't like telling me those sorts of things - they wouldn't tell them to me, they know I'd go and tell management."

Question: "That's your explanation, is it?" "I think it is, yes. That's my explanation".

He was unable to account for Mr Bourke's evidence. He thought Mr Bourke a "rough diamond" but "honest".

Mr Graham Jobling, a maintenance supervisor with the defendant company, started in 1979. He knew the plaintiff.

He was categorical in his denials concerning the first alleged sexual assault.

“I’ll say that’s absolute nonsense. It’s not correct at all.” Similarly with respect to the second he said, “No, not at all. Totally not at all.” With respect to the anti-seize in the plaintiff’s helmet, he said, “I don’t believe I did it, but it has happened. It happened to me at Murray Goulburn. It’s one of those practical jokes.”

In cross-examination, “Are you telling the Court the truth?”, to which he replied “That’s correct, yes.” “Never (with respect to one of the harness incidents) ever happen?” He said, “No, not that I’d seen, no.”

Mr Jobling was not a convincing witness and I am satisfied he was such because he was not truthful.

Mr Graham Simbeck is now a self-employed sign-writer who worked from 1973 - 1985 at the defendant company. He was a fitter and turner. He knew the plaintiff. He was specific in his denial of the first episode of sexual assault alleged to have been committed with Mr Jobling. “No, that never happened,” he said and further, “No that never ever happened to anybody at Murray Goulburn while I was there.”

In relation to the 44 gallon drum episode he was asked, “Did you place him in the drum and roll him as I’ve described?” He responded, “I suggest that that would be severely dangerous.” Then, “No”.

He was something of a cartoonist and said the whole smoko room was covered with his cartoons (a fact which seemed to have been largely unnoticed by a former branch manager, Mr John Cooper). The plaintiff was cartooned on hands and knees “spitting the dummy”. He recalled overalls being nailed to a bench over the lunch break. that was the limit of his expressed experience of “pranks”.

In cross-examination Mr Simbeck contradicted himself about the harness episode. He denied Mr Morgan’s evidence. Likewise he was unaware of Mr Stanley Elliot’s evidence of someone being put in a drum and rolled in it. That would be “a stupid act” in his view. Mr Cross’ evidence of his episode in the drum was not seen by Mr Simbeck. Mr Cross does business with Mr Simbeck.

Having seen and heard Mr Simbeck I formed the view that his evidence was unreliable.

Further in his final comments addressed to me, he expressed a loyalty to the defendant company which transcended his oath. It was embellishment to a question which had nothing to do with his gratitude.

Mr Frank Parr, former leading hand at Murray Goulburn in the time the plaintiff was doing his apprenticeship denied any knowledge of any of the happenings led in evidence. He did see a “training” performance in the harness once. He said he saw nothing, heard nothing, I do not accept that. Mr Parr was evasive and self-protective.

The witnesses Messrs Drury, Simbeck, Jobling and Fiddler were all evasive and self-protective, each tried to circumvent the detail and precision of the workplace incidents. There were clear inconsistencies about the nature and purpose of what were variously described as “pranks”, “serious pranks”, “high jinx” and “practical jokes”.

I formed a clear view that there had been a collusive closing of the ranks in defence of the company by these witnesses.

Witnesses who said they didn’t know of the physical intimidation (which I do not accept) seemed to believe that that entitled them to deny the existence of such intimidation, notwithstanding the apparent atmosphere prevailing at the company.

Both Mr Jobling and Mr Simbeck are big and tall men. The plaintiff is diminutive and at 17 his growth would not have been complete.

Mr John Cooper, who was the Branch Manager of the defendant company at the time of the plaintiff’s apprenticeship and subsequent eleven months’ work before his termination, gave extensive evidence about the Leongatha factory hierarchy and managerial structure (Exhibit “2”). He worked, he said, to improve the workplace morale and to engender sound relations with the unions.

With respect to the plaintiff he gave extensive evidence about complaints he received about him and how he had put him “on notice”. None of this was ever put to the plaintiff. Mr O’Neill, counsel for the defendant, accepted that and said he hadn’t known of the matters raised. This was not the only occasion during the proceeding where this had occurred. That such a situation did occur convinces me that either instructions were incomplete or that the pressure of the received evidence led witnesses to invent rationalized explanations to justify their positions. The rule in Browne v Dunn is pre-eminently a rule of fairness. To raise in defence a catalogue of matters, especially ones relating to complaints, which were never proffered to the plaintiff, is a clear denial of that fairness and reinforces my belief that there was little credibility to be attached to the defendant company’s evidence. Mr Cooper’s evidence lacked credibility.

It was, in my view, significant that Mr Cooper admitted, under cross-examination, that it wasn’t until 1985 that any really concerted effort was made to address, on a collective basis, the issues of workplace health and safety. This was at a time of the enactment of the Accident Compensation Act and the WorkCover organization.

In cross-examination of the plaintiff by Mr O’Neill this interchange occurred.

“Mr Simbeck will come to this court and give evidence?---Yes.

In relation to the use of the safety harness in the workshop, and he will say that it was used from time to time to show the junior employees how it was to be used as a training exercise. He will be lying when he says that?---

-I don’t think he’ll be expressing the truth very well.

And he will say that no one was ever forced to use it. It was suggested to the junior employees, people doing their apprenticeship, that it would be in their interests to learn about the way the harness was used, and he and others would assist in putting them in, and lifting them up a short distance and lowering it. He’ll be lying when he says that, in the workshop?---He won’t be expressing the truth. I don’t like to - - -

He’s lying - - -?---Use that word.

- - - isn’t that right?---I don’t like to use that word.

Why not?---Because - I don’t like to use it.

If what I tell you is correct, he will telling a story that’s just completely different from what you say about the use of this

harness - - -?---That’s right - - -”

In my view this embodies much of the attitude and disposition of the plaintiff. He was unwilling to attribute to others’ mendacity. In this he was remarkably fair. What he was saying was that a version of events put to him was not correct. In a real sense the burden for this court is to assess all the evidence and to decide whether the requisite burden has been achieved. I am satisfied that the events as particularized did occur and that there was negligence on the part of the defendant company which no amount of “closing-of-the-ranks” could conceal.

I am satisfied on the weight of the evidence of the plaintiff, of the witnesses Bourke, Morgan and Cross, of Mr Elliot and, to an extent, Mr Drury that there was a culture of intimidation present at the Leongatha factory when the plaintiff was an apprentice. I am satisfied that the corroborative evidence with respect to the sexual assaults and the other incidents, namely the harness and the 44 gallon drum episodes gave support to the plaintiff’s evidence. He did not invent these episodes. He didn’t have to, because they occurred.

I am satisfied on all the plaintiff’s medical evidence that he suffers from P.T.S.D. and that his life has been materially affected with respect to both his identity and his relationships with other people.

I am further satisfied that the company had no practices in place to ensure that the types of behaviour which occurred were either monitored or governed. I am satisfied the perpetrators were fully aware of their practices and never gave them a second thought. It was customary and a part of “initiation” into a set of values which we might now regard as singularly abhorrent.

Whatever is said about the plaintiff's future employment can only be done in the light of his past work history and in the context of his disturbed psychological, mental, emotional condition. He has had employment but on his evidence and supported by the medical evidence, it has been fitful, not sustained and lacking purpose.

After he finished at the defendant company his history is this:-

In 1986, he was a fitter and welder in Kalgoorlie, Western Australia. That was followed by employment as a pipe fitter and maintenance fitter in Sale and Morwell, as an instrument fitter in Morwell, an instrument fitter at Shell in Geelong, an instrument fitter at APM in Morwell, an instrument fitter/pipe fitter at Altona, offshore casual work for Siemens, casual work since 1994 with Colin Gooding Construction, APM at Morwell and since 1997 as a casual fitter with ABB offshore.

Exhibited references indicate that employers have been satisfied with his work.

His bursts of employment are punctuated by gaps. It is not as though he is unwilling to work but rather that the work is undermined by the disintegration in his personality, the difficulty of facing himself.

On the basis of the medical evidence I am satisfied that, if he ever works again, it will be three or four years before his deep-seated problems will be resolved. The prognosis for his capacity to maintain sustained and continuous work is not encouraging: there was a marked hesitancy by the medical witnesses with respect to this issue.

Having been satisfied of the liability of the defendant company I turn now to the issue of compensation by way of damages.

In assessing damages I have had specific regard to the medical evidence concerning the plaintiff's prognosis, the medical evidence concerning his capacity to undertake sustained work, his past employment pattern and the relationship between his disability and that pattern. Necessarily an assessment is subject to the serious imponderables raised by the plaintiff's condition and its longevity. I accept that further regular treatment will be required for at least 3 years. Such treatment may remediate the severe personality disorder, it may not. Further I accept that future employment will be subject to the caprice of the disorder. Exactitude in determination of any assessment is bound to be elusive. Any determination to be made is done subject to the vicissitudes of life.

The plaintiff is relatively young and is obviously equipped with considerable skills in his trade. Absent the disability there would be little doubt about his employability and his capacity to engage in sustained work.

Throughout the years since 1985 he has, apart from a trip overseas, undertaken what might be described as "binge" work, work which has been in some respects a means of abstracting himself from his disability, escaping the force of it. His gross earnings for the

years 1989 to 1997 were in evidence. They vary between $9,000.00 and $40,000.00. Recent employment has been on a sub-contractual basis.

He said in evidence, “I like work and I’d hide behind my work and then I couldn’t cope any more. I’d want to pack up and leave again. I don’t understand it. Maybe that’ll be a question for my doctors but I just had to get away”.

Ms Bradbury said, “One of the features of post traumatic stress disorder is that people work themselves to exhaustion, then they have a feeling of rage, anger, helplessness, want to withdraw into themselves, perhaps binge drink and then they will go back into the work force for a period of time.”

I am satisfied that there has been a loss of earning capacity and that a measure of such was occasioned by the regular visits to Ms Bradbury.

I assess past losses to be represented by psychotherapy costs $15,290.00, medication at $650.00, other medical $200.00, travelling costs associated with psychotherapy $17,000.00, loss of wages $65,000.00 (which includes a component for the lost days when psychotherapy sessions were attended). Future loss is represented by medical expenses associated with psychotherapy ($15,000.00) and psychiatry ($4,400.00), travel ($10,000.00), earning capacity $75,000.00. These latter figures take into account present payment of a future sum, and allowance for the vicissitudes of life.

The total of those figures is $202,540.00. I award $150,000.00 in general damages, damages for pain, suffering and the loss of enjoyment of life.

As a matter of global assessment I round those sums to $350,000.00.

In arriving at my assessment of the above figures I have had regard to the written submissions of counsel. As can be seen I do not accept that the evidence justifies the minimalist assessment for which defendant’s counsel argued.

There will be judgment for the plaintiff in the sum of $350,000.00. I will hear argument on interest and costs.

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