Steps to a positive workplace culture

MKA: Risk Mitigation

3RD QUARTER 2006

MKA Risk Mitigation has had another intense quarter. July to September was spent completing several workplace culture surveys and occupational stress prevention projects. We continue to pursue our objective of psychologically safe workplaces as a benefit to management, employees and customers. In another step to achieving this objective, MKA Risk Mitigation has developed a suite of strategic training programs aimed at senior management. These programs are designed to equip candidates for senior management roles with tools for strategic analysis and change implementation.

The period of 1990 to 1995 saw an almost five-fold increase in occupational stress claims in NSW Public Service. Lack of planning and communication around organisational change was a substantial factor behind this increase in stress claims. The NSW Public Service is again facing a similar period of upheaval and restructuring, (this time necessitated by budget shortfalls). MKA Risk Mitigation's new strategic training programs are designed to mitigate the risk of stress claims from inadequate communication and planning around organisational change.

In this newsletter we examine three cases with their complex relationship between occupational stress and employment termination.

MKA: Making Knowledge Accessible

Court Cases

TWU v Orica PTY Ltd [2001] NSW IRComm 156

This case involved termination of an employee with 18.5 years of service. The problem essentially began with the management of unrostered overtime as specified in an unregistered EBA. Operators were expected to work their share of unrostered overtime, as this obligation was factored into the rate of pay. A supervisor Shayne Moffitt became aware that some operators were not doing their share of overtime, and this was causing conflict within the team. Mr Moffitt displayed the hours of overtime worked by each employee in the crib room.

Due to personal circumstances, an employee, Mr Jurd indicated that he was unprepared to work unrostered overtime. Another operator Frank Nemeth told Mr Jurd that he should leave if he was not prepared to work to the EBA. Mr Jurd responded by giving Mr Nemeth (who was a sizeable man) a push on the arm, and then leaving the site. Mr Jurd later told Mr Moffitt that he was resigning. Mr Jurd met with management the next day, and requested a transfer. He also claimed that he was suffering from high blood pressure. Management indicated that they could not provide a transfer and Mr Jurd claimed he had no option but to resign. The management team indicated that this was not necessary. Shortly after this meeting, Mr Jurd consulted with his doctor who diagnosed severe anxiety and he would be off work for a month.

Management decided to leave the matter for several weeks, before having further discussions with Mr Jurd. In this discussion, Management tried to separate the performance issues (inappropriately pushing Mr Nemeth) from the medical matters (Mr Jurd's stress claim). Management later decided to accept Mr Jurd's verbal utterance that he was going to resign. It should be noted that Mr Jurd had at no time submitted a written letter of resignation.

The Court held that Mr Jurd's circumstances amounted to constructive dismissal. There was reference to Cherry v Allied Express Transport (1997), where "a resignation uttered in a heated exchange in ambiguous terms – runs the risk of a contrary finding being made." The court also referred to the intellectual make-up of an employee being relevant. The idea was that a reasonable amount of time needed to have lapsed after an utterance, and then the topic of whether someone really meant to resign needed to be revisited. Words of resignation uttered in the heat of the moment were held to be ineffective, if they were immediately withdrawn once the heat has died down. The court held that Mr Jurd's resignation was ineffective given his mental health and the "provocative manner" in which the overtime disparity was discussed. The court was referring to the lack of private discussion about the overtime disparity. It was also concluded that the Company had failed to follow its own stress management policy. Termination was held to be unreasonable and unjust whilst Mr Jurd was suffering from ill health.

Olagas v Impresstik (2006) NSWIR Comm 1057

In this case, the applicant was terminated on the grounds of employment being abandoned. The applicant had previously been employed as a storeman for a number of years, and his relationship with his supervisor had deteriorated over the previous two years. On his final day of employment (August 30th 2005), Mr Olagas had obtained a certificate from his doctor, and this indicated that he had suffered from anxiety and depression in the workplace. Mr Olagas provided an additional certificate on 13th September 2005. This certificate advised that he was fit for permanently modified duties, "to return to work and not be harassed and abused by his supervisor." Mr Olagas indicated he was prepared to return to work, but not under the supervision of his former supervisor. This was not acceptable to the employer.

A week later the union became involved in negotiating terms of separation for Mr Olagas. Unfortunately the management team were not communicating with each other about the management of this case. A senior manager, Mr Brackenreg was unaware of the industrial negotiations, and sent a letter to Mr Olagas advising that he was considered to have abandoned his employment from the 30th August 2005.

The Commission found that for an employee to abandon his employment, it must be clear that the employee has evinced an intention to no longer be bound by terms of the employment contract. The problem was that Mr Olagas had told his employers that he was prepared to return to work on 13th September 2005. This behaviour and the discussions around the terms of separation indicated that Mr Olagas still considered himself to be bound by the employment contract. Naturally the commission ruled that Mr Olagas had not abandoned his employment!

Philip Brunt v The Continental Spirits Company [2005] NSW IRComm 1133

In this case the applicant, Mr Brunt, complained of work pressures which resulted in anxiety and a severe drinking problem in the last two years of his employment. It seemed that Mr Brunt had been treated in a belittling and denigrating manner by his supervisor. Mr Brunt had subsequently consumed some company product at the workplace, and arrived home in a drunken state. Mr Brunt's wife claimed that she phoned management and sought assistance under the company's Employee Assistance Program. Mrs Brunt claimed that she was given a guarantee that her husband's employment would not be effected. Mrs Brunt subsequently disclosed that her husband had been drinking company product in the workplace. Up till this point in time, management had no knowledge of the incident.

The Commission criticised the employer as failing to follow their own EAP Policy which stated that no one would be disadvantaged by seeking assistance. Mr Brunt's employment was held to have been prejudiced by seeking assistance under the EAP Policy. The Commission also criticised the employer for terminating an employee with 18 years of service, and for only having regard to the disciplinary aspects of the Drug and Alcohol policy. Given these circumstances, the Commission found that the termination had been harsh.

Future Topics

- Creating positive, performing, professional workplace cultures
- Inspired Performance Management
- A Drug Free Workplace
- Adventurous workplaces without risk
- Positive Mental Health at Work
- Safety Culture Plus
- Real Team Building
- Social Sustainability as a competitive Advantage

MKA Risk Mitigation

Specialist intervention in Risk Mitigation.

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