



HIGH COURT OF AUSTRALIA

Public Information Officer

6 April 2005

NUHA JAMIL KOEHLER v CEREBOS (AUSTRALIA) LIMITED

Cerebos was not liable for a psychiatric condition suffered by Ms Koehler as Cerebos had no reason to suspect that her working conditions were a risk to her psychiatric health, the High Court of Australia held today.

Ms Koehler, 50, claimed she was unable to cope with the workload she was given in her three-day-a-week job as a merchandiser, setting up displays of goods in Perth supermarkets. She had worked as a full-time sales representative for 18 months, negotiating sales of Cerebos's products to independent supermarkets. When Cerebos lost the right to distribute a brand of tea, it retrenched Ms Koehler but offered her the part-time merchandising job. On her first day when she was shown the list of stores for which she would be responsible she said she could not possibly cover them all in three days, but her supervisor asked her to try it for a month. Ms Koehler repeatedly complained orally and in writing that she had too big an area, too many stores and too little time, and suggested ways to improve the situation, but never mentioned that the work was affecting her health. After five months in the new position she consulted her doctor about aches and pains from lifting boxes of goods. Ms Koehler was eventually diagnosed with fibromyalgia syndrome, a psycho-physical disorder resulting in severe pain, and a depressive illness, both caused by her work.

Ms Koehler sued Cerebos, alleging its failure to take the steps she suggested breached its duty to provide a safe system of work. This duty was a common law duty giving rise to the negligence claim, a duty under the *Occupational Safety and Health Act* and an implied term of her employment contract. Commissioner Rodney Greaves in the Western Australian District Court found Ms Koehler's workload was excessive, that Cerebos needed no particular expertise to foresee the risk of the kind of injury suffered, and that Cerebos failed in its duty to ensure all reasonable steps were taken to provide a safe system of work. Ms Koehler was awarded damages of \$856,742.81. On appeal, the Full Court of the WA Supreme Court held that Cerebos could not reasonably have foreseen that Ms Koehler's duties exposed her to a risk of psychiatric injury. Ms Koehler appealed to the High Court.

The Court unanimously dismissed the appeal. It held that a reasonable person in the position of Cerebos would not have foreseen the risk of psychiatric injury to Ms Koehler. She had agreed to perform the duties which caused her injury and Cerebos had no reason to suspect that she susceptible to psychiatric injury. Within the bounds of applicable statutes, parties are free to contract so that an employee will do more work than may be the industry standard, often rewarded with higher pay. Employers are entitled to assume, in the absence of signs warning of the possibility of psychiatric injury, that employees can do the job. There was no indication that Ms Koehler had any particular vulnerability. Her complaints suggested an industrial relations problem rather than a health risk. Cerebos was not shown to have breached a duty of care.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*