SUPREME COURT OF QUEENSLAND

CITATION:	*McGreevy v Cannon Hill Services Pty Ltd* [2016] QSC 29
PARTIES:	**PAUL KEVIN McGREEVY** (plaintiff) **v** **CANNON HILL SERVICES PTY LTD** ACN 095 396 866 (defendant)
FILE NO/S:	SC No 9229 of 2013
DIVISION:	Trial Division
PROCEEDING:	Civil Trial
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	1 March 2016
DELIVERED AT:	Brisbane
HEARING DATE:	7, 8 and 9 December 2015
JUDGE:	Boddice J
ORDER:	**Judgment for the plaintiff against the defendant in the sum of $112,485**
CATCHWORDS:	TORTS – NEGLIGENCE – DUTY OF CARE – where the defendant company's supervisor refused to slow down the process line – where the plaintiff was given faulty safety equipment – where the plaintiff could not signal supervisor for replacement safety equipment – where there were no supervisors observing the plaintiff – whether defendant company breached their duty of care TORTS – NEGLIGENCE – CONTRIBUTORY NEGLIGENCE – where it was the defendant company's policy to reprimand certain action – where that certain action was undertaken by the plainitff – where the circumstances of the work environment forced the plaintiff to undertake that certain action – whether the plaintiff was contributorily negligent DAMAGES – MEASURE OF DAMAGES – PERSONAL INJURIES – where the plaintiff was injured at work – where the plaintiff voluntarily terminated his employment with the defendant – where the plaintiff suffered physical injury to his shoulder during work – where the plaintiff suffered psychological injury as a result of circumstances stemming from unemployment – where the plaintiff's psychological and

physical injuries largely resolved – whether the plaintiff was entitled to damages

Workers' Compensation and Rehabilitation Act 2003 (Qld), s 305B, s 305C, s 305H, s 306F
Workers' Compensation and Rehabilitation Regulation 2014 (Qld), sch 9 item 93

Fox v Wood (1981) 148 CLR 438; [1981] HCA 41, applied
Kennedy v Queensland Alumina Limited [2015] QSC 317, cited
Woolworths Ltd v Perrins [2015] QCA 207, cited

COUNSEL: K N Wilson QC for the plaintiff
G O'Driscoll for the defendant

SOLICITORS: McCowan's Specialist Lawyers for the plaintiff
BT Lawyers for the defendant

[1] The defendant operates a meat-processing facility in Cannon Hill ('the facility'). The facility's capabilities include meat slaughtering, boning, slicing, processing and packing. The defendant employed the plaintiff as a labourer and meat boner in the facility.

[2] The plaintiff alleges he suffered a spinal injury while at work at the facility on 19 March 2012, due to the defendant's negligence or breach of duty. The defendant does not dispute an incident occurred on 19 March 2012 that resulted in the plaintiff seeking medical attention. However, it denies any negligence or breach of duty, and that the plaintiff suffered any long-term injury.

Background

[3] The plaintiff was born on 28 October 1987. He completed Year Twelve and left school with aspirations of undertaking tertiary education and eventually practising as an architect. He started a diploma of business design and architecture at the Queensland Institute of TAFE. Due to changes in his personal circumstances, he left that course after six months and joined the Australian Army Reserves. After approximately eighteen months, the plaintiff left the Army Reserves and commenced employment with Nolan Meats at Gympie as a meat packer. Over time, he worked through the ranks as a slicer, and as a boner, before eventually becoming a team leader.

[4] On 16 October 2009, approximately two and a half to three years after commencing employment with Nolan Meats, the plaintiff struck a black horse in the middle of the road whilst travelling in his motor vehicle to work at around 4:00 am. The plaintiff suffered shock and headache-like symptoms. He also felt pain in his back, although he did not seek specific treatment for that pain. The plaintiff had time off work. Upon his return, he says Nolan Meats gave him a warning for not attending work. This was despite having medical certificates to excuse his absence. He was unhappy he was

treated in this way when he had "done so much" for the company.[1] He resigned his employment at Nolan Meats.

[5] The plaintiff soon commenced employment at Toner on Demand, undertaking warehouse duties. He did not experience any ongoing problems with his back in undertaking that employment. He also continued to enjoy his previous recreational pursuits, such as rugby union and BMX competition, with no difficulties with his back. He left that employment in 2010, when he and his partner relocated to Brisbane. The plaintiff then obtained employment at the facility. Initially, he was employed by a labour hire company. After approximately eight to twelve months, the plaintiff was employed directly by the defendant. Whilst working at the facility, the plaintiff was employed as a boner.

[6] As a boner, the plaintiff was required to take certain types of cuts from a carcass of meat and place those cuts onto a conveyer belt so that they could travel through to the slicing area of the premises. The plaintiff undertook those duties without any back pain. The plaintiff enjoyed his work at the facility. He aspired to become a team leader.

[7] Throughout the plaintiff's employment with the defendant, the defendant had a disciplinary system for its employees. This involved verbal warnings, written warnings and termination of employment. Discipline was issued for conduct such as working slowly, dropping cuts of meat on the facility's floor or for throwing cuts of meat. The defendant had issued verbal warnings to the plaintiff for working slowly and for throwing cuts of meat onto the conveyor belt.

Pleadings

[8] The plaintiff pleaded the circumstances of the incident in the following terms:

> "4. On or about 19 March 2012 at approximately 7:00am:-
>
> (a) The Plaintiff was undertaking his boning duties in the course of his employment with the Defendant at the top station on the hindquarter rail in the Boning Room at the Premises;
>
> (b) The Plaintiff was working on a process line being the hindquarter rail, in which he was required to, inter alia, remove the T-bone from each carcass as it moved along the hindquarter rail, and cause that cut of meat to be transferred to a conveyor belt;
>
> (c) The Plaintiff was required to undertake the work at a pace corresponding to the speed of the process line;
>
> (d) The Plaintiff was required to wear a metal mesh glove with buckles and straps on his non-knife hand and forearm whilst undertaking the work ('the mesh glove'), which was or became loose fitting and tended to hang down from the fingertips whilst the Plaintiff was undertaking the work, creating a catching hazard;
>
> (da) The glove retaining or tensioning device that reduced the looseness of the mesh glove had broken at approximately 6:30 am,

[1] T.1-16/35.

and, despite a request from the Plaintiff, had not been replaced;

(e) The Plaintiff and his co-workers on the process line were experiencing significant difficulty keeping pace with the process line because the meat carcasses they were required to bone were hard;

…

(f) The Plaintiff requested his supervisor to reduce the speed of the process line as the Plaintiff and his co-workers were having difficulty keeping up, given the problems they were experiencing boning the hard carcasses, but the supervisor refused to do so;

(g) Whilst undertaking the work, the Plaintiff was working in very close proximity to other Boners working on the same section of the process line, making it difficult for him to drop or place the boned meat cuts onto the conveyor belt, particularly given the speed of the process line and the backlog of carcasses requiring him to throw meat cuts onto the conveyor belt;

(ga) Because of the backlog of carcasses on the hindquarter rail, the plaintiff was required to work approximately one metre further away from the conveyor and his normal workstation;

(gb) The position at which the plaintiff was required to work required him to have to transfer the cuts of meat, once removed from the carcass, a further distance to the conveyor;

(h) In the course of performing the work, the Plaintiff;

(i) cut a T-bone short loin from the carcass he was boning ('the meat cut');

(ii) held the majority of the weight of the meat cut in his left hand;

(iii) went to throw the meat cut, weighing at last 5 to 10 kgs, onto the conveyor;

(iv) guided the meat cut with his right hand;

(v) noticed that the meat cut had become caught in the mesh glove;

(vi) rotated clockwise and attempted to guide the meat cut towards the conveyor, and so that it did not fall to the ground;

(vii) in doing so moved awkwardly and suffered injury (hereinafter referred to as 'the incident')."

[9] The plaintiff pleaded that as a consequence of that incident, he sustained injuries to his lumbar spine with associated chronic myofascial pain syndrome, cervical spine and a related psychological injury.

[10] The pleaded particulars of negligence and/or breach of contract are extensive, alleging failures to: ensure the safety of the plaintiff; take reasonable steps to avoid and/or minimise all reasonably foreseeable risks of injury; ensure a safe workplace, safe and

appropriate plant and equipment and/or a safe system of work; and to undertake proper risk assessments of the workplace and of the plaintiff's system of work. The particulars also allege the defendant allowed, encouraged and/or directed the plaintiff to undertake the work in a manner that placed him at risk of injury whilst performing the work.

[11] In addition to those particulars, the plaintiff pleaded particulars of negligence and/or breach of contract specific to the alleged circumstances of the incident:

> "(c) Failing to identify the risk of injury the plaintiff was being exposed to when undertaking the work and handling T-bones and other heavy cuts of meat when:
>
> (i) wearing the mesh gloves which could become loose fitting and not properly fitted to plaintiff's hand and had a tendency to hang down from the fingertips whilst undertaking the boning work, thereby creating a catching hazard;
>
> (ii) working on a process line that was moving at an excessive and unsafe speed in the circumstances of the work being performed;
>
> (iii) throwing large and heavy meat cuts onto the conveyor belt;
>
> (iv) being required to bone the larger and/or hard meat carcasses on the process line;
>
> (v) the workplace was set up in such a manner that impeded the plaintiff's capacity to drop or place meat cuts onto the conveyor belt and to avoid throwing meat cuts, in particular, the plaintiff was required to work in close proximity to a number of other boners, working on a fast paced process line and at an unsafe distance from the conveyor.
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> …
>
> (g) Failing to warn the plaintiff of the risk of injury to which he was being exposed in the course of performing the work, in particular:
>
> (i) when handling large cuts of bony meat with the mesh gloves, particularly when the gloves were or could become loose fitting and tendered to hang down at the fingertips whilst undertaking boning work, thereby creating a catching hazard when undertaking the work;
>
> (ii) working on a process line that was moving at an excessive and unsafe speed in the circumstances of the work being performed;
>
> (iii) being required to work away from his normal station and which then involved or required throwing large and heavy meat cuts onto the conveyor belt;
>
> (iv) undertaking the work in a rushed manner to keep up with the process line;
>
> (v) boning the larger and/or hard meat carcasses on the process line; and/or
>
> (vi) working on a fast paced process line in very close proximity to other boners;

(h) Failing to provide the plaintiff with safe and proper plant and equipment, and/or adequate and proper resources (including product and co-worker assistance) for the safe performance of his work duties, in particular:

(i) to avoid him, by reason of the position in which he was required to work, having to throw large and bony meat cuts onto the conveyor belt;

(ii) where he was at reduced risk of having large bony meat cuts caught in his protective mesh glove;

(iii) where he was not required to work on the process line at such a pace that it placed him at risk of sustaining injury;

(iv) where he was not required to bone very large and/or hard carcasses of meat on a process line that was set at an inappropriate speed for such work to be done in a safe manner;

(v) where he was not required to wear an ill-fitting or loose mesh glove that tended to hand down at the fingertips whilst undertaking boning work, creating a catching hazard when undertaking the work;

(vi) where he was not required to work in close proximity to other boners on a fast paced process line;

(vii) where glove tightening devices were readily and promptly available.

(i) Failing to implement and maintain a safe system of work where its workers and supervisors, including the plaintiff, were instructed and trained that:

(i) large cuts of meat and bony meats were not to be thrown onto the conveyor belt;

(ii) bone or meat may get caught in the mesh gloves provided for the boning work, when handling same, particularly given the mesh gloves were prone to be loose fitting and had a tendency to hang down at the fingertips when undertaking the work, creating a catching hazard, and care should be taken when handling large and heavy meat cuts as a consequence;

(iii) workers on the process line should not be exposed to working at such a place that placed them at risk of sustaining injury in having to keep up with the process line;

(iv) the speed of the process line should be commensurate with a pace by which the work to be performed could be carried out in a safe manner;

(v) where the meat carcasses to be boned on the process line were the larger carcasses normally processed were hard, making boning more time-consuming and/or difficult, then the usual speed of the process line should be reduced to accommodate those circumstances;

(vi) workers should not be working with an ill-fitting or loose mesh glove that tended to hang down at the fingertips whilst undertaking the work, as this created a catching hazard when undertaking the work; and/or

(vii) boners working in too close a proximity on a fast paced process line impeded the capacity of bonders to undertake the work in a safe manner;

And, such instruction and training was reasserted, monitored and enforced;

…

(k) Instructing, allowing and/or encouraging the plaintiff to wear the mesh gloves:

(i) when it was aware or ought to have been aware that the mesh gloves tended to be or become loose fitting and to hand down at the fingertips, creating a catching hazard, which could catch onto meat cuts or other objects whilst undertaking the work, and particularly in circumstances the defendant was aware or ought to have been aware that:

(A) meat cuts were being thrown by its boners onto the conveyor belt; and/or

(B) the boning work was being undertaken at a fast pace; and/or

(ii) when there was more appropriate hand protection for the task at hand, with less risk of catching onto meat cuts and other objects;

thereby placing the plaintiff at a higher risk of sustaining injury from bony meat cuts becoming caught in same;

(l) Instructing, allowing and/or encouraging the plaintiff to work away from his normal work station and as a result be required to throw large cuts of meat onto the conveyor belt in the course of undertaking his work, thereby placing him at risk of sustaining injury;

…

(n) Requiring the plaintiff to work on a process line that was set at such a speed:

(i) the plaintiff was required to rush his work duties to keep up with same;

(ii) the plaintiff was required to move from his normal position with the result that he was required to throw meat cuts onto the conveyor belt;

(iii) it was excessive and unsafe in the circumstances of the work to be performed;

(iv) it was unsafe for the plaintiff and his co-workers to bone the larger and hard meat carcasses on the process line; and/or

(v) the plaintiff did not have time to drop or place meat cuts onto the conveyor belt or to identify and/or check that his mesh glove had become attached to the bone in the meat cut;

(vi) it required, encouraged and/or pressured the plaintiff to work in an unsafe manner;

(vii) the plaintiff did not have time to readjust the loose fitting mesh glove so that it was not hanging down at the finger tips whilst undertaking the work;

thereby placing the plaintiff at risk of sustaining injury;

(o) Failing to reduce the speed of the process line when requested by the plaintiff and other boners working on the process line with the plaintiff, because they were having great difficulty keeping up with the same and/or to

provide any adequate or proper response to the plaintiff's reporting of the difficulties he was experiencing in undertaking the work;

…

(q) Failing to reduce the speed of the process line to accommodate the difficulties and time delays the plaintiff and his co-workers were experiencing with boning the larger hard carcasses of meat of which the defendant was aware or ought to have been aware.

…

(t) Requiring the plaintiff to undertake the boning work in a work environment and/or under a system of work, which:

(i) impeded the plaintiff's capacity to drop or place boned meat cuts onto the conveyor belt;

(ii) required and/or encouraged the plaintiff and his co-workers to throw meat cuts onto the conveyor belt;

(iii) was unsafe.

(u) Failing to heed complaints of the plaintiff and his co-workers as to the unsafe nature of the workplace and/or system of work.

…

(y) Failing to slow down the process line when there was a backlog of carcasses.

…

(bb) Failing to provide the plaintiff with a glove tightening device promptly after his request for one.

(cc) Failing to have in place a clear protocol for slowing or stopping the powered chain feeding hindquarters onto the unpowered hindquarter rail when circumstances required for that to occur."

Evidence

[12] On Monday 19 March 2012, the plaintiff commenced his shift at the facility at about 5:30 am. The plaintiff and his co-workers were boning cow carcasses at the top station on the hindquarter rail in the boning room. They were required to remove the T-bone from each carcass as it moved along the hindquarter rail and place that cut of meat onto a conveyor belt. Each cut of meat weighed about five to ten kilograms. On Monday mornings, the fat on carcasses was harder than it was on other mornings because the carcasses had been refrigerated over the weekend. This made the boners' work more time-consuming than on other mornings.

[13] While undertaking this work, the plaintiff and his co-workers were required to wear a metal mesh glove with buckles and straps on their non-knife hand and forearm. The defendant provided the plaintiff and his co-workers with a plastic device which could tighten the metal mesh glove around their arms, hands and fingers ('glove-tensioning device'). The defendant only provided each boner with a single glove-tensioning device.

[14] The plaintiff said there was a back up of carcasses on the process line at approximately 7:00 am on 19 March 2012. In addition to the issues relating to the relatively harder meat, the plaintiff encountered an equipment failure. His metal mesh glove was loose fitting and his glove-tensioning device broke at approximately 6:30 am that day. In the pleading, the plaintiff alleged he requested a replacement, but no replacement was forthcoming as he undertook his duties of employment. In evidence, the plaintiff said the glove-tensioning device broke not too long after he started work, sometime around 6:00 am. He could not recall asking for a replacement; the team leader had gone into the back office and there was no one to ask. The plaintiff said if he left his post to get a new one, the continuous chain would back up, resulting in the plaintiff receiving a warning of some sort.

[15] The plaintiff claims he asked his supervisor to reduce the pace of the process line, but the supervisor declined to do so. The backlog of carcasses meant the plaintiff was required to work about one metre further away from the conveyor belt and his normal workstation. Consequently, the plaintiff and his co-workers were working in closer proximity to each other, standing "shoulder to shoulder".[2] This made it difficult for the plaintiff to place the cuts of meat onto the conveyor belt. The plaintiff threw the meat onto the belt instead. The plaintiff accepted they were instructed not to throw meat cuts, but said the position at which the plaintiff was working also required him to transfer each cut of meat, once removed from the carcass, a further distance to the conveyor belt. This distance was about "a good metre to a metre and a half."

[16] The plaintiff alleged he cut a T-bone short loin from a carcass at about 7:00 am, held the majority of its weight in his left hand and began to throw the meat cut onto the conveyor, guiding the meat cut with his right hand. The plaintiff said he perceived that the meat cut had become caught on the metal mesh glove and rotated clockwise. The plaintiff then sought to guide the meat cut towards the conveyor belt so that it did not fall on the facility's floor. In doing so, he moved awkwardly and injured himself. The plaintiff said "to save the beef", he "staggered forward through the other carcasses to make sure that the T-bone landed on the [conveyor] belt without hitting the floor".[3] The plaintiff felt immediate pain in his right trapezius muscle.

[17] The plaintiff reported the incident to his supervisor, Brendon Cusson, saying, "I've hurt my shoulder, like, I think I should go see someone."[4] Mr Cusson asked if he could work until 'smoko', the first morning break, which was at about 7:30 am. Mr Cusson also stopped the chain so the workers could catch up on the back up of carcasses. The plaintiff continued to work until smoko when he filled in an incident report (the 'Report'). He was then sent to the defendant's Workplace Health and Safety officer (the 'WHS officer') who arranged for him to see a local general practitioner. Later that day, the plaintiff returned to the facility and worked out a return-to-work program with the WHS officer, before returning home.

[18] In the Report, the plaintiff recorded the following version:

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2 T 1-23/29-20.
3 T 1-27/27-29.
4 T 1-28/44-45.

> "Was boning T-bone off the body and threw T-bone onto belt, mesh glove got caught on a piece of bone and the weight of the T-bone whipped my body forward. As the morning went on the pain got worse. After I came back from lunch pain was too much to continue boning."

[19] The plaintiff ticked the incident type as "sprain/strain", with the location being "shoulder/neck/back".

[20] The plaintiff said he told his fellow boners he hurt himself at the time of the incident. None of those boners were called to give evidence at the hearing. The plaintiff explained he could not recall the names of his fellow boners on the shift in question. There was no evidence from the defendant as to what, if any, enquiries it made of the plaintiff's fellow boners on that shift.

[21] Mr Cusson did not see the incident. Mr Cusson completed the "immediate action" section of the Report, recording:

> "Paul was spoken before incident about throwing T-bones onto belt and not dropping them on. He advised me of incident after smoko and upon which was sent to first aid for treatment."

[22] The Report was later sent to Neil Carstens, who was the shift manager on 19 March 2012. Mr Carstens added to the immediate action section "to be issued with further action".

[23] Mr Cusson could not remember the terms of any discussion he had with the plaintiff when the plaintiff reported the incident on 19 March 2012. He could not remember whether he spoke to the plaintiff that morning about throwing meat. He did not remember whether the reference to "before the incident" related to that day.

[24] Mr Cusson accepted he may not have been on the production floor at the time of the incident. There was a time during the morning shift when he would leave the floor to attend to paperwork in his office. In that event, there were other supervisors present on the floor and, in particular, in the slicing section. Boners knew to tap their knives on the metal uprights to attract the attention of a supervisor.

[25] Mr Cusson also accepted the meat on a Monday morning shift would be dry because it had a two-day chill. However, the defendant had a system whereby an assessment was made as to the hardness of the meat before commencement of the shift. The chain speed would be set for production during the shift after that assessment. Once set, the chain speed could not be sped up. It could, however, be quickly slowed or stopped to address any incident or back up in carcasses.

[26] Mr Cusson agreed the backing up of carcasses caused problems. It created a safety issue, as boners were boning too close together.[5] As a consequence, boners may not be working where they ideally ought to be positioned to undertake their duties.[6] A further

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5 T.3-30/40.
6 T.3-31/15.

difficulty arose if the boner was not working in the ideal position. The boner would be positioned a distance from the conveyor belt. As a consequence, the worker may have to carry or throw the meat from that position onto the conveyor belt. This could expose the worker to a risk of injury.

[27] Mr Cusson said boners were not encouraged to throw meat cuts. He had only seen that happen occasionally. If he observed it, he would speak to the worker.[7] If he identified a back up of carcasses, he would seek to ascertain the reason and, if necessary, stop the chain. That could be easily done. The chain could also be easily restarted quickly. He could not recall if he stopped the chain on the morning of 19 March 2012. If there had been a back up of carcasses, he would have stopped the chain to allow the boners to catch up.

[28] Mr Carstens gave evidence it was the task of the supervisors to scrutinise the production line, and to address major problems. A back up of carcasses in the boning area caused difficulties further down the production line, because it limited the product in the slicing area. Supervisors were present in each area. It was highly unlikely there would be no supervisor present on the production floor at any time during a shift. If a boner had difficulties with a glove-tensioning device, a supervisor could quickly find a replacement. Replacements were located on the production floor. If a supervisor were to leave the floor to go to the office, that supervisor would notify the other supervisors so they may cover the leaving supervisor's area.

[29] Mr Carstens did not observe the incident. He became aware of it as a consequence of the Report. He placed his recommendation on the bottom of the form. Mr Carstens initially wrote "file note to be issued", but crossed out "file note". Instead, it read "to be issued with further action". Mr Carstens believed he was looking at a file note of the incident. After review, he became aware the plaintiff had been given a warning already by way of file note.

[30] Mr Carstens agreed it was the supervisor's role to direct and manage the chain to ensure an even flow. It was up to the supervisor to decide whether to stop the chain, which was a simple process of pushing a button. If there were a back up in carcasses, he would expect the supervisor to deal with it by stopping the chain. The system installed by the defendant was designed to eliminate the physical strain on boners by holding and carrying meat. The boner was positioned so the cut dropped onto the conveyor belt. He could not see any reason why a boner would need to adopt a crouching position when undertaking their duties.

[31] Mr Carstens said if a boner threw meat onto the conveyor, there was a risk the meat would drop to the floor. As a result, the defendant discouraged that practice. It was also a major safety concern. Mr Carstens was aware, through discussions with his supervisors, that boners were, from time to time, throwing cuts of meat onto the conveyor belt. Toolbox meetings were held to inform employees that the defendant would not tolerate it.[8] Mr Carstens agreed no individual boner was under constant observation by a supervisor, but said boners would be under regular observation.

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7 T.3-32/35.
8 T.2-50/1.

[32] Mr Carstens said if an individual boner was falling behind in his work, the supervisor ought to attend to it promptly. Similarly, if there was a back up of carcasses, or a boner was observed throwing meat cuts, a supervisor ought to attend to that promptly. If a boner fell behind, there was no need for the boner to leave the position to get the attention of the supervisor. A supervisor should be in the vision of the boner. Alternatively, the boner could bang his or her knife on the metal infrastructure to attract the supervisor's attention. Mr Carstens agreed boners were discouraged from leaving their workstations, because that would stop production.[9]

[33] Walter Lozan was also employed as a boner at the facility. He was not working on the morning of 19 March 2012. He confirmed the meat on a Monday morning shift was harder, making it more difficult to keep up with the speed of the chain. The boner would also have to sharpen the knife more often. Mr Lozan agreed there was always a supervisor on the floor, although not one within your vision at all times. Boners were instructed not to throw the meat, but it was a "pretty regular occurrence".[10]

Relevant law

[34] Relevantly, s 305B of the *Workers' Compensation and Rehabilitation Act* 2003 (Qld) ('the Act') provides:

> "(1) A person does not breach a duty to take precautions against a risk of injury to a worker unless—
>
> (a) the risk was foreseeable (that is, it is a risk of which the person knew or ought reasonably to have known); and
>
> (b) the risk was not insignificant; and
>
> (c) in the circumstances, a reasonable person in the position of the person would have taken the precautions.
>
> (2) In deciding whether a reasonable person would have taken precautions against a risk of injury, the court is to consider the following (among other relevant things)—
>
> (a) the probability that the injury would occur if care were not taken;
>
> (b) the likely seriousness of the injury; [and]
>
> (c) the burden of taking precautions to avoid the risk of injury."

[35] At s 305C, the Act further provides:

> "In a proceeding relating to liability for a breach of duty—

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[9] T.2-51/13.
[10] T.3-12/25.

(a) the burden of taking precautions to avoid a risk of injury includes the burden of taking precautions to avoid similar risks of injury for which the person may be responsible; and

(b) the fact that a risk of injury could have been avoided by doing something in a different way does not of itself give rise to or affect liability for the way in which the thing was done; and

(c) the subsequent taking of action that would (had the action been taken earlier) have avoided a risk of injury does not of itself give rise to or affect liability in relation to the risk and does not of itself constitute an admission of liability in connection with the risk."

[36] Finally, s 305H provides:

"(1) A court may make a finding of contributory negligence if the worker relevantly—

(a) failed to comply, so far as was practicable, with instructions given by the worker's employer for the health and safety of the worker or other persons; or

(b) failed at the material time to use, so far as was practicable, protective clothing and equipment provided, or provided for, by the worker's employer, in a way in which the worker had been properly instructed to use them; or

(c) failed at the material time to use, so far as was practicable, anything provided that was designed to reduce the worker's exposure to risk of injury; or

(d) inappropriately interfered with or misused something provided that was designed to reduce the worker's exposure to risk of injury; or

(e) was adversely affected by the intentional consumption of a substance that induces impairment; or

(f) undertook an activity involving obvious risk or failed, at the material time, so far as was practicable, to take account of obvious risk; or

(g) failed, without reasonable excuse, to attend safety training organised by the worker's employer that was conducted during normal working hours at which the information given would probably have enabled the worker to avoid, or minimise the effects of, the event resulting in the worker's injury.

(2) Subsection (1) does not limit the discretion of a court to make a finding of contributory negligence in any other circumstances.

(3) Without limiting subsection (2), subsection (1)(f) does not limit the discretion of a court to make a finding of contributory negligence if the worker—

(a) undertook an activity involving risk that was less than obvious; or

(b) failed, at the material time, so far as was practicable, to take account of risk that was less than obvious."

Submissions

[37] The plaintiff submits the Court should find the incident on the morning of 19 March 2012 occurred as a consequence of the plaintiff being required to work out of his usual position following a back up of carcasses in the context of the hardness of meat on a Monday morning shift. These circumstances meant the plaintiff was not able to drop the cut of meat onto the conveyor belt directly. When he was attempting to get the meat onto the conveyor belt, it caught in his metal glove causing him to suffer an injury.

[38] The plaintiff submits the risk of injury was foreseeable and not insignificant. It arose as a consequence of the system adopted by the defendant. The plaintiff was required to throw the meat onto the conveyor belt when placed in a position different to the normal position. Whilst employees were not encouraged to throw meat, the defendant was aware employees did so from time to time. The defendant adduced no documentary evidence of a system of training of the employees, nor of toolbox talks, nor of sanctions imposed for non-compliance with the defendant's system.

[39] The plaintiff further submits the plaintiff was required to perform his duties under a system that did not work. Carcasses were allowed to back up, causing the plaintiff to be displaced from his normal position and supervisors were either not available or not paying attention. It was the defendant's failure to properly supervise the plaintiff, and the system to ensure that carcasses did not back up, that placed the plaintiff in the position whereby he sustained the injury. There was a simple solution to alleviate that condition: slowing or stopping the chain.

[40] The plaintiff submits the Court will find the defendant breached its duty of care and that the plaintiff was not contributorily negligent. The plaintiff's actions did not constitute a failure to take care for his own safety.

[41] The defendant submits the Court will not accept the plaintiff's version of the incident. There are significant discrepancies between the statutory declaration provided by the plaintiff, the particulars in his pleaded case, his evidence in Court, and the versions given to various doctors. These differences affect the mechanism by which an injury is said to have occurred.

[42] The defendant further submits there is no evidence a reasonable employer would have done anything differently in the circumstances. The defendant had a work system in place that was a reasonable response to the risk of injury. The particular injury occurred in circumstances that the plaintiff knew were contrary to that system, and in respect of

which he had previously been given warnings. There was no breach of duty by the defendant. The plaintiff also did not suffer any permanent injury as a consequence of the incident. Alternatively, the plaintiff's injury was caused by his own negligence in throwing the cut of meat onto the conveyor belt, contrary to the defendant's specific instructions.

Findings

[43] There is no doubt there are differences in the accounts given by the plaintiff at various times. However, those differences are explicable having regard to the circumstances in which the various versions were given, and the natural human frailty associated with the recollection of events.

[44] It would be surprising if a person in the plaintiff's position gave a uniformly consistent account on multiple occasions. Honest witnesses vary in their recollection. Each of the versions given has had a core consistency, namely, as a consequence of a back up of carcasses the plaintiff was required to adopt a stance out of his usual position, necessitating he carry or throw the cut of meat a distance onto the conveyor belt. Whilst doing so, he felt a sensation consistent with a part of the meat hooking onto his glove. In that process, he sustained the injury.

[45] I accept the precise mechanism of the injury is relevant to a consideration of whether it caused the injuries alleged by the plaintiff. However, again, the differences in account do not raise a reasonable basis to conclude the plaintiff did not suffer an injury as a consequence of the incident on the morning of 19 March 2012. Whether the mechanism of that injury was as a consequence of a twisting, jarring or pulling does not affect the credibility of the core circumstances of the incident. Importantly, the defendant considered the plaintiff suffered an injury at that time. He was sent for medical treatment that day. His claim for compensation was accepted by the defendant. He was given a return-to-work program.

[46] The true issue in the case is whether the injury sustained by the plaintiff was caused by the defendant's breach of duty. On this aspect, whilst the plaintiff pleaded a large number of particulars of negligence, the primary focus is on the system of work adopted by the defendant. Central to that consideration is the defendant's production line processes and supervision.

[47] It is clear, from the evidence of Mr Cusson, the defendant was aware meat processed during a Monday morning shift was harder than the meat on other days of the week. This meant it could take longer for a boner to perform the individual tasks during that Monday morning shift. That being so, it was important there be proper supervision of the chain to observe and address any back up of carcasses during a Monday morning shift.

[48] The defendant's work system provided for a supervisor to be present in the boning area. That supervisor had authority to slow down or stop the chain in the event of a back up of carcasses. I accept such a system was reasonable and, if properly implemented, was not likely to increase the risk of injury to a worker in the event of the back up of

carcasses. The difficulty for the defendant is that the system as devised differed from the system operating on the day in question.

[49] First, there was a time during the shift when the supervisor of the boning area left the floor to attend to administrative matters. Whilst there were other supervisors on the floor at that time, they had to attend to their own area as well as respond to any requests of boners. It was not a reasonable system of work to place the onus on the boner to attract a supervisor's attention. A boner could receive a verbal or written warning for falling behind in production, thereby creating a backlog of carcasses. The risk of receiving such a warning was likely to place the boner in a position where he or she is reticent to attract the attention of the supervisor, rather than try to personally address the backlog by adopting other work practices to catch up.

[50] The deficiency in that system of work assumes particular significance having regard to the consequences of a back up of carcasses. It created a known safety issue. A back up of carcasses resulted in boners having to work in closer proximity with each other and out of their usual position. Mr Cusson candidly admitted the consequence of a back up of carcasses was to place the boner at risk of being out of the normal position. As a consequence, the boner was a further distance away from the conveyor belt and could be required to carry the meat a distance to that conveyor belt. I accept that was the consequence of the back up of carcasses on Monday, 19 March 2012.

[51] Had a supervisor been undertaking his or her duties of employment, that supervisor ought to have recognised the back up of carcasses and that the plaintiff had been placed in that position. That supervisor ought to have taken steps to slow or stop the chain to address that situation. The failure to have a supervisor in place on the boning floor on the morning in question placed the plaintiff in a position where he was at risk of injury. I am satisfied that risk was not insignificant. I am also satisfied the defendant was aware of the risk of injury to a boner placed in the plaintiff's position.

[52] Whilst the defendant did not encourage boners to throw pieces of meat when placed in a position a distance away from the conveyor belt, the defendant was aware that boners did so from time to time. There was no need for them to do so if the system was being properly supervised, such that a back up of carcasses was immediately addressed and did not place the boner in a position a distance from the conveyor belt. I am satisfied the defendant was aware that carrying or throwing cuts of meat onto the conveyor belt placed boners at risk of injury. That risk was significant. It was easily addressed by enforcement of the system of supervision of the boning floor process. Enforcement would have protected the plaintiff from the risk of injury.[11]

[53] The plaintiff has established that the incident on 19 March 2012 arose as a consequence of the defendant's failure to properly implement its system of work. That failure was a breach of the duty of care owed by the defendant to the plaintiff. The plaintiff has also established that the injury sustained by him as a consequence of that incident was caused by the defendant's breach of duty.

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[11] *Woolworths Ltd v Perrins* [2015] QCA 207 at [173].

[54] Whilst the incident, and the consequent injuries, arose as a consequence of the plaintiff adopting a process of throwing the meat, which was contrary to the defendant's instructions, I am satisfied there is no basis for a finding of contributory negligence. The defendant placed the plaintiff in a position where he was at risk of injury. That position necessitated that the plaintiff, if he was to keep pace with the production line, adopt the stance of throwing the meat onto the conveyor belt. That action was not of such a nature as to constitute a failure to take reasonable care for his own safety. It was, at best, misjudgement.[12]

Quantum

Pleadings

[55] The plaintiff claims as a consequence of the incident on 19 March 2012, he sustained injuries to his spine and, subsequently, a psychological injury. He alleges he was unable to continue his employment as a boner. His ongoing pain and disability also prevents him from pursuing his long-term goal of a career in architecture. He alleges he suffered loss and damage as a consequence of ongoing disabilities.

[56] The defendant denies the plaintiff sustained any long-term injury as a consequence of the incident. Any personal injury was a minor muscle strain to the lower back, which did not include any injury to the cervical spine and did not cause any secondary consequence or psychiatric illness. The defendant pleads the injury resolved completely within six weeks, causing no impairment, symptoms of loss or damage since that time. The defendant submits the plaintiff voluntarily left his employment as a boner, in circumstances where he was physically able to perform the duties of employment.

Plaintiff's evidence

[57] The plaintiff attended his general practitioner on the day of the incident. He then underwent physiotherapy and graduated a return-to-work program. However, the pain did not settle. He was referred for radiological assessment, which revealed no lumbosacral spine or pelvis deficits.

[58] The plaintiff gave evidence he had experienced back pain even when doing lighter duties, such as slicing, as part of his return-to-work program. These difficulties meant he was slower in performing duties. As a consequence, he received a warning. The plaintiff considered this step unfair and that he could not fulfil his future duties as a boner. He resigned his employment with the defendant.

[59] The plaintiff, after leaving the defendant's employment, unsuccessfully sought employment through an employment agency. He became depressed because he could not obtain employment. He suffered financial difficulties, which placed stress upon his relationship with his partner. He was prescribed antidepressants and sent to a psychologist on a mental health care plan.

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[12] *Kennedy v Queensland Alumina Limited* [2015] QSC 317 at [86]-[88].

[60] After approximately six months of looking for work, the plaintiff obtained employment selling Foxtel door-to-door. The plaintiff, who worked on a commission basis, found the work difficult due to ongoing back pain. By the end of each day, his back was "really sore".[13] He found it difficult to concentrate because of the pain. The plaintiff said he became crankier. He felt his financial situation was hopeless, which had a large impact upon him emotionally. He was also not able to undertake recreational pursuits and gained significant weight.

[61] After approximately two years, his employment ceased because the company lost the contract to sell Foxtel. His financial circumstances deteriorated to the point where he was evicted from his home. His relationship with his partner broke down. He returned home to his parents. He felt terrible and went back to the place where "it just felt like nothing would ever be right".[14] For a time he could not get out of bed. He was emotionally drained and doing nothing physically.

[62] After some months, he obtained employment with Flight Centre as a travel agent. He commenced work on 20 April 2015. He enjoys the duties, but experiences pain throughout the day. This impacts on his concentration. He has to stand for periods. At times, he finds it difficult to get through the day. The employment is, however, secure.

[63] The plaintiff said he suffers back pain two or three days each week and regularly takes pain medication. He undertook pilates and self-physiotherapy at home. He finds certain activities exacerbate his back pain, such as sitting down for long periods or driving long distances. Simple things, like doing housework, can be unbearable at times. He would not be able to undertake gardening chores.

[64] The plaintiff said, although he had not pursued his goal of tertiary education, he did have ambitions of one day returning to university and studying architecture. However, the pain is such that he does not believe he could withstand hours of sitting at a table, hunched over with drawings, as would be required for design and architecture.

Medical Evidence

[65] The plaintiff complained his pain did not settle. He was referred by his general practitioner to Dr Bruce Jones. Examination revealed normal and pain-free flexion and extension movements, but some reproduction of right para-lumbar spine and gluteal pain with left lateral flexion. There was significant tenderness of the right-sided erector-spinae muscular at the thoraso-lumbar junction. Dr Jones opined the plaintiff's signs and symptoms were consistent with a regional myofascial pain syndrome involving the stated muscles. Soft tissue injections into the affected areas resulted in a modest overall reduction in symptoms.

[66] The plaintiff's then general practitioner, Dr Paul Patterson, opined soft tissue exercise, rehabilitation and exercises were the best option for management of that ongoing pain and ability. In his opinion, strenuous work and prolonged sitting or standing would be

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[13] T1-39/25.
[14] T1-41/10.

likely to worsen the severity of that back pain. The plaintiff had also experienced stress and anxiety due to persistent moderately severe back pain, his failure to return to full-time work and consequential financial problems.

[67] Dr Arthur, a consulting psychiatrist, assessed the plaintiff on 22 June 2012. He noted the plaintiff had no history of psychological complaints or a family history of illness. There also did not appear to be any abnormal illness behaviour. Dr Arthur recorded the plaintiff's ongoing complaints as continued back pain. He noted it was exacerbated by numerous factors. These included an escalation in his workplace duties and the development of a number of mild anxiety-type symptoms. Those symptoms were associated with concerns about his ability to work as a boner, uncertainty regarding his occupational future and financial stressors.

[68] Dr Arthur opined the plaintiff developed an adjustment disorder, with anxiety mild in severity. It was reasonable to draw a causal relationship between the evolution of this adjustment disorder and the ongoing symptoms of back pain. He recommended ongoing sessions with a clinical psychologist to address his anxiety symptoms.

[69] Associate Professor Richard Williams, an orthopaedic surgeon, assessed the plaintiff on 5 July 2012. He recorded the plaintiff's ongoing complaints as persistent lumbar spinal pain with no leg pain. The pain was present everyday and woke the plaintiff at night.

[70] The plaintiff was equally uncomfortable sitting and standing and regularly took pain medication. Examination revealed free movement throughout the examination, with a full range of extension and no pain on flexion or extension. The plaintiff was able to heel and toe walk normally, and straight leg raise bilaterally at eighty degrees with a negative sciatic stress test. He had normal lower limb power sensation and reflexes.

[71] Associate Professor Williams diagnosed a musculoligamentous injury lumbar spine which had resolved by the time of his examination. In his opinion, the plaintiff required no further treatment by way of physical therapy or by operative procedure. The plaintiff may, however, require ongoing treatment for an anxiety disorder and/or depression. Associate Professor Williams considered psycho-social factors were having an impact on his treatment recovery and return to work.

[72] Associate Professor Williams confirmed those opinions in evidence. He accepted the mechanism of injury described by the plaintiff was reasonable in the evolution of a musculoligamentous strain of the spine. He also accepted the plaintiff indicated, at his examination, a level of pain on certain types of activities which required medication. However, Associate Professor Williams considered the persistence of the plaintiff's symptoms was out of proportion to the described mechanism. He also considered it was out of keeping with the normal natural history of resolution of lower back symptoms in relation to a musculoligamentous strain.

[73] Associate Professor Williams opined, because there was little radiological evidence or other evidence suggestive of any structural abnormality of the spine as a result of the injury, any ongoing symptoms resulted from psycho-social influences superimposed upon a previous work event. This combination of symptoms and signs were magnifying

the plaintiff's perception of pain and quite possibly prolonging his experience with pain beyond the normal cessation of any pathological process associated with injury.

[74] Associate Professor Williams observed that whilst he had no way of detecting whether the complainant experienced pain, his examination revealed the plaintiff moved freely without any external evidence of suffering pain. There was little to suggest he experienced a structural abnormality of his spine as a result of the injury. If the plaintiff experienced persistent symptoms, those symptoms related to the intercurrent influences rather than any mechanistic injury that occurred to his spine.

[75] The plaintiff's ability to heel to toe walk normally excluded signs of neurological deficit. Further, being able to straight leg raise bilaterally implied there was no evidence of neuro-compression or no basis for neuro-irritation in the ongoing nature of the pain. A negative sciatic stress test was a further manifestation there was no clinical evidence of nerve compression as a potential cause of pain. Normal limb power sensation reflexes also were suggestive of no evidence of neurological abnormality in the lower back causing manifestations in the lower limbs.

[76] In Associate Professor Williams' opinion, these findings were inconsistent with the structural abnormality of the spine. Further, he was not able to reproduce any of the described pain with the usual mechanisms of examination implying there was an external influence on the causation of the symptoms outside the spine itself.

[77] Dr De Leacy, a consultant psychiatrist, assessed the plaintiff on 28 March 2013. He recorded the plaintiff's ongoing complaints as feeling depressed, anxious and restlessness with ongoing sleep disturbance. His social life declined and his relationship suffered with irritability and loss of libido. He had ongoing problems with concentration and felt his short-term memory could be affected by ongoing distress. The plaintiff also reported ongoing pain, fatigue and headaches.

[78] In Dr De Leacy's opinion, the plaintiff's reported psychological symptoms were due to pain he experienced as a consequence of the incident, and were likely to continue for as long as the physical problems. The plaintiff would benefit from more sessions of psychological and psychiatric treatment over a six month period. His ongoing injuries and disabilities likely affected his employment and were likely to continue to affect his employment. He would not be able to return to duties as a boner, and would have difficulty studying with distraction and poor concentration due to pain.

[79] Dr De Leacy opined the plaintiff suffered a mild adjustment disorder, with anxiety and depressed mood. The plaintiff had some residual impairment, which Dr De Leacy assessed at four per cent. His condition could deteriorate, particularly if he had a period of unemployment or increased pain. In that event, he would definitely need psychiatric care.

[80] Professor Whiteford, a consultant psychiatrist, examined the plaintiff on 14 January 2014. The plaintiff reported ongoing pain and disability, requiring regular pain medication. The plaintiff also reported having become depressed when he was unable to continue at work. He was in more pain and less active in that period of his life. He

gained substantial weight due to inactivity and was unable to resume his normal recreational pursuits. He also experienced financial difficulties. As a consequence, a property was repossessed and sold at a loss. He was still repaying the debt owed to the bank. He experienced conflict in his relationship with his partner.

[81] Professor Whiteford opined the plaintiff developed adjustment disorder symptoms around the time he ceased employment at the facility, and as a result of inter-personal conflict, pain, financial difficulties and conflict with his partner. However, at the time of the mental state examination conducted by Professor Whiteford, there was no clinically significant abnormality and no mental disorder. The plaintiff's mental state examination was completely normal, with no mood disturbance, clinical significant anxiety or other signs of psychopathology.

[82] Professor Whiteford further opined the plaintiff's ongoing symptoms of frustration at his lower income and concerns about interpersonal conflict and frustration at intermittent lower back pain could not be considered to arise from a mental disorder. They were understandable reactions to specific life stressors. The symptoms of the adjustment disorder had long resolved and any ongoing symptoms were not those of a mental disorder.

[83] Professor Whiteford opined the plaintiff's adjustment disorder resolved when the plaintiff secured employment. The plaintiff's difficulty in securing employment, and the financial difficulties from being unemployed, were significant stressors and the reasons why the adjustment disorder symptoms persisted for that long. The plaintiff's psychiatric prognosis was good.

[84] Professor Whiteford and Dr De Leacy produced a joint report dated 26 September 2014. Both agreed the plaintiff's adjustment disorder developed in 2012 and improved with psychological treatment, but had not fully remitted at the time of Dr De Leacy's examination in March 2013. Dr De Leacy accepted, given there were only mild symptoms present when he examined the plaintiff in March 2013, a resolution of the adjustment disorder by January 2014 was not unexpected.

[85] Dr Campbell, a neurosurgeon, examined the plaintiff on 28 March 2013. The plaintiff gave a history of ongoing lower back pain on a daily basis, rating up to nine out of ten and radiating up to the flanks and across both buttocks. This lower back pain was aggravated by lying flat, getting out of bed, sitting for extended periods, driving a car long distances, computer work, standing for long periods, jogging, gym work, cycling and house duties.

[86] Dr Campbell opined the plaintiff developed a chronic soft tissue musculoligamentous injury to the lumbar spine as a consequence of the work incident. This impairment caused disability on a daily basis and affected the plaintiff's social functioning, ability to work and psychological wellbeing. The impairment was likely to be permanent, but was not stable and stationary. Dr Campbell assessed the whole person impairment at seven per cent. Dr Campbell noted a review on 24 November 2015 revealed a continued reduced range of movement as well as asymmetry of movement and some tenderness and guarding.

[87] Dr Campbell confirmed that assessment in evidence. He also confirmed the stated mechanism of injury was consistent with the ongoing symptoms. He accepted it was uncommon for a person carrying a load of five to ten kilograms to suffer such an injury from a simple jarring of the spine, but did not consider it to be unusual. If a different mechanism of injury was involved, namely that the plaintiff jerked forward as a consequence of the bone catching in the mesh glove, this would involve potentially greater forces than the mechanism of injury described by the plaintiff in evidence. Even that mechanism could result in injury if there was a transfer of weight unexpectedly. That type of manoeuvre could cause injury to some people in the population. The loading on the lumbar spine in such a manoeuvre arises from a sudden exposure of the taking of weight on one side and putting pressure on the core strength that goes straight to the lumbar spine.

[88] Dr Campbell agreed if the plaintiff had been using both hands to manoeuvre the meat, that would lessen the loading and not expose the body to unsafe loading. In the vast majority of cases, it would be unusual to develop a soft tissue lumbar spine injury out of that manoeuvre. However, any unexpected loading or sudden movements make an individual more susceptible to injury. The act of twisting would increase the load on the lumbar spine, as would crouching whilst attempting to transfer any weight increase or propelling the weight whilst performing those two activities. Whilst the majority of workers would not receive an injury in such circumstances, there was a not insignificant risk a worker would receive such an injury.

[89] Dr Campbell agreed the difference between his opinion and that of Associate Professor Williams was that he did not accept the plaintiff's symptoms had resolved, as the plaintiff was complaining of ongoing lower back pain. The issue was whether the plaintiff had ongoing pain.

[90] Mark Scalia, an occupational therapist, undertook a detailed assessment of the plaintiff's capacities on 13 December 2013 and an updated assessment shortly prior to the hearing. He opined the plaintiff was no longer suited to his pre-injury employment or other labour intensive employment as a consequence of the plaintiff's ongoing pain and the associated psychological sequelae. The plaintiff is also likely to face discrimination on an open job market because of his history of injury and ongoing symptomology. He would benefit from ongoing re-training courses, ergonomic equipment and aids for home and work life. He will also require ongoing care and treatment, at a considerable cost. The updated assessment did not change Mr Scalia's assessment of the plaintiff's limitations in respect of future employment.

[91] Wayne Johanson, who operates a job placement service, conducted a telephone interview with the plaintiff on 21 July 2014. He opined the plaintiff is likely to be at a considerable disadvantage in the open work place as a consequence of the plaintiff's ongoing injuries. His ongoing injuries render his future employment uncertain. Had he remained at the meat works and progressed up to the position of manager, he would likely have earned an annual salary in the range of $76,000 to $80,000 gross and/or $65,000 net. If he had undertaken further education and obtained qualifications as an architect, he is likely to have ultimately received a significantly higher salary.

Other evidence

[92] The plaintiff's mother gave evidence that the plaintiff significantly changed following the incident. He became less active and more withdrawn. Over time he settled into a depression. For a short time he returned home.

[93] The plaintiff's partner gave evidence that the plaintiff continued to complain of constant pain and limitation of movement. It affected his concentration and emotional wellbeing. He was moody and lacked motivation. As a consequence, they separated for a time. He was also limited in the activities he could assist in around the house. These activities were not services they paid for previously.

[94] A work colleague during the plaintiff's period with Foxtel confirmed the plaintiff had ongoing difficulties with pain. A current work colleague also confirmed the plaintiff was not participating in various work activities, apparently due to pain. The plaintiff also frequently left his desk to walk around, apparently due to back pain.

Conclusions

Generally

[95] There is no doubt the plaintiff, as a consequence of a back injury sustained on the morning of 19 March 2012, developed significant pain and disability in the months following that incident. I accept that as a consequence of that ongoing pain and financial difficulties resulting from his inability to obtain other employment, the plaintiff developed significant psychological sequelae.

[96] However, I do not accept the plaintiff has a significant ongoing permanent back injury as a consequence of that incident. The plaintiff withstood the rigors of giving evidence without obvious difficulty. This evidence as to his ongoing difficulties impressed me as arising more from a concern to avoid activities in case they caused pain.

[97] Subject to one aspect, I accept Associate Professor Williams' opinion that the plaintiff has no ongoing restriction due to a physical injury to his back. The tests undertaken by Associate Professor Williams revealed objective results inconsistent with ongoing restriction of the magnitude identified by the plaintiff. The explanation as to the significance of those objective findings was highly persuasive.

[98] I did not find Dr Campbell's evidence persuasive. His findings at the time of his examination, many months after the incident and Associate Professor Williams' examination, likely reflected the impact of the psychological condition that the plaintiff developed in the months after the incident, which was still operative at the time of Dr Campbell's examination. Dr Campbell accepted the mechanism of injury would not have caused any long-term disability for many individuals. Whilst he gave evidence that it is not unusual for an individual to suffer long-term injury from such a mechanism, I do not accept the plaintiff is such an individual.

[99] In coming to this conclusion, I have had regard to Dr Campbell's evidence as to his findings at the examination shortly prior to the hearing. That examination does not appear to have been as thorough as the examination undertaken by Associate Professor Williams. Dr Campbell largely accepted as accurate the history of ongoing symptoms provided by the plaintiff, whereas I do not accept the plaintiff has ongoing pain and restriction of that magnitude. I have also had regard to Mr Scalia's evidence. Again, his evidence was largely premised on an acceptance of the plaintiff's complaints of significant ongoing pain and disability.

[100] That said, there is no doubt the plaintiff developed significant psychological sequelae as a consequence of the pain he suffered following the incident and ensuing financial difficulties. Whilst it is the considered opinion of the experts that that psychological sequelae has now resolved, the plaintiff obviously continues to harbour significant concerns as to his ability to undertake various forms of activities on a day-to-day basis. Those concerns manifest in a reticence to undertake activities which may cause pain.

[101] The plaintiff's evidence of ongoing difficulties, supported by his partner and mother, is consistent with the plaintiff continuing to suffer a level of restriction as a consequence of his back injury. Whilst I do not accept those ongoing symptoms are as extensive as the plaintiff suggested, or as Dr Campbell and Mr Scalia opined, I accept they impact, to an extent, on the plaintiff's ability to undertake various day-to-day activities. I also accept they impact on his ability to undertake certain activities during his employment. To that extent, it cannot be said the plaintiff's musculoligamentous injury to his spine has resolved completely, as opined by Associate Professor Williams.

Assessment

General damages

[102] Whilst the plaintiff has some lingering pain and disability, it is minor with no significant clinical findings or objective evidence of impairment. The relevant ISV range is set out in Item 93 in Schedule 9 to the *Workers' Compensation and Rehabilitation Regulation 2014* (Qld). The appropriate ISV is four. General damages are assessed at $4,880.

Past economic loss

[103] The defendant reasonably provided a return-to-work program. There is no evidence the defendant was intending to require the plaintiff to undertake activities which were beyond his capacity at that time. I am satisfied the plaintiff chose to terminate his employment with the defendant. Significantly, the plaintiff adopted a similar attitude to another employer after having suffered an injury. On that occasion, the plaintiff felt his employment was not being valued by the employer.

[104] The fact the plaintiff voluntarily terminated his employment with the defendant means the plaintiff is not entitled to recover all of the claimed past loss of income. He placed himself in a position where he was unemployed, and usual market forces mean there would have been a time where he would have been unemployed in any event. However,

his pain, and the associated psychological impact, limited the avenues of available employment. It is appropriate to assess the past loss of income on a global basis.

[105] Had the plaintiff not voluntarily terminated his employment with the defendant, it is likely his overall loss would not have been as significant as that claimed by the plaintiff. However, the psychological impact of his injury meant the plaintiff would have practically been unable to continue for an extended period in his employment with the defendant. It also meant that he would have been placed in a situation where he had limited avenues for other employment. Allowing for these factors, the economic loss, assessed on a global basis and allowing for components of lost superannuation benefits on past economic loss and interest, is $37,500.

Future economic loss

[106] I do not accept the plaintiff genuinely was intending to pursue a career in architecture or some design related industry. The plaintiff made a decision not to pursue the necessary qualifications. I do not accept his evidence that he harboured continued desires to undertake those qualifications in the future. The plaintiff is properly to be compensated for future loss of income on the basis his residual symptoms place him at a disadvantage on the open labour market for employment opportunities similar to those pursued to date.

[107] Whilst the plaintiff's lumbar symptoms have largely resolved and there is presently no feature of an adjustment disorder, the plaintiff's inability to undertake certain forms of activities limits the scope for future employment. He is entitled to a component on a global basis to allow for this limitation. Having regard to his relative youth, I assess the future economic loss, on a global basis, at $50,000. The future loss of superannuation is $5,650.

Fox v Wood

[108] The *Fox v Wood* component is agreed at $1,077.

Past special damages

[109] Past special damages are agreed at $10,000.

Future special damages

[110] The finding that the plaintiff's lumbar condition has largely resolved, as has the adjustment disorder, renders the claim for significant future medical and allied health treatment unsustainable. However, it is appropriate to award a small component on a global basis. Having regard to his age, $15,000 is appropriate in all the circumstances.

Future care

[111] The plaintiff claimed certain future services on the basis he will be unable to perform them in the future, even though he has not performed them to date or had them performed for him. Such a claim is not compensable as the requirement for it, namely, that he usually performed those services prior to the injury, is not met in the present circumstances.[15]

[112] Furthermore, even if I be wrong in that conclusion, the plaintiff has not established his ongoing pain and disability is of such a magnitude he would be unable to perform these types of duties in the future. I do not accept the plaintiff has ongoing disability of a magnitude that will require the provision of these services in the future on a paid or gratuitous basis.

Orders

[113] The plaintiff is entitled to judgment against the defendant. His assessed damages total $124,107. After subtracting the WorkCover refund of $11,622, his assessed quantum is $112,485.

[114] I give judgment for the plaintiff against the defendant in the sum of $112,485.

[115] I shall hear the parties as to any other orders and costs.

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[15] *Workers' Compensation and Rehabilitation Act* 2003 (Qld) s 306F.