Diffuse RSI

***Denton Hall Legal Services v Kathryn H Fifield* [2006] EWCA Civ 169**

The claimant succeeded in demonstrating a relevant breach of duty. The causal relevance of breech of the Display Screen Equipment Regulations is bolstered by this judgement. Scientific support for this judgement is far from clear.

Mrs Fifield had developed a debilitating non-specific chronic pain condition in the upper limbs. The appeal centred on whether or not it had been proper for the trial judge to find that the symptoms were caused or made worse by work and, if they were work-related it was asserted there had been no breach of civil or statutory duty, and if there had been a breach of statutory duty [the Display Screen Equipment Regulations (1992) (DSE)] it was asserted that this was not causal.

The assessment of work-relatedness centred on temporality. It was accepted by the witnesses that for work to have been causal the work or a change in that work would have to precede the symptoms, or worsening of those symptoms. There was some consensus that the gap between change of work and change of symptoms should not exceed around three months; any longer would lead to doubt as to the relevance of the work change. Although there was some evidence that symptoms of some sort preceded the significant change in workload there was no lack of clarity in the evidence of there being worsening of symptoms [or perhaps the ability to cope with them] soon thereafter; perhaps six weeks later. It was therefore proper for the judge to conclude that the symptoms were work-related. There was no dispute as to prognosis; it was uncontested that the debility would be permanent.

In deciding whether or not there had been a breach of statutory duty, the judge seems to have been swayed by the observation that had there been sufficient training and had there been a suitable and sufficient risk assessment then the workstation and work organisation would have been different. These differences would have been material. Evidence for the materiality of these changes is paragraph 19 of the Guidance to the DSE regulations:

> *"Possible risks which have been associated with display screen equipment work are summarised at Annex B. The principal risks relate to physical (musculoskeletal) problems, visual fatigue and mental stress. These are not unique to display screen work nor an inevitable consequence of it, and indeed research shows that the risks of the individual user from typical display screen work is low. However, in display screen work as in other types of work, ill-health can result from poor work organisation, work environment, job design and posture and from inappropriate working methods".*

A written risk assessment had been made 5 years before the problem emerged. It recorded that Mrs Fifield was taking medication for wrist pains. The employer did not act on the information. This information was of assistance in deciding that harm was foreseeable.

The court here points out that a more appropriate regime would have ensured that typing was spread throughout the working day and was not concentrated in the morning and early afternoon; there would have been regular breaks from typing in every hour; those breaks would not have involved pressured manual tasks; Mrs Fifield would have told Dentons of the intermittent symptoms she experienced during 1998; and the risk of injury from the increase in work load would have been identified and her workload would have been managed so as to reduce the quantity of typing and the ensuing document collation that was required. Further, in the knowledge of her wrist pains, it is more likely than not that other secretarial help would have been enlisted to deal with the increased work-load.

However,

> *"The ergonomic experts had been in agreement that, with one minor exception, the design and disposition of Mrs. Fifield's workstation were satisfactory and did not present her with a risk of injury."*

Perhaps by accident, the physical ergonomic aspects of the work were probably suitable.

<u>Comment</u>
To find that working practices would have been different if the statutory duty had been fully complied with is not the same as finding that there is a causal link between the breach of duty and the harm done. Such a deduction would require either evidence, or an assumption, about the efficacy and accuracy of the statutory duty. The guidance itself explains that the risks from a typical workstation are real but low. The efficacy and accuracy of the DSE regulations per se have, to our knowledge, never been quantified

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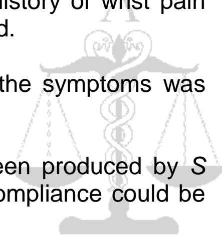
in science. Perhaps the regulator intended that the courts assume a causal link whenever there is evidence of a breach of duty?

The actual link between work and outcome was not specifically stated. More there was a general sense that the court was unimpressed by the dismissive approach taken by the defendant to the DSE regulations.

Temporality is just one test of causation that expert scientists call upon, yet it seems to have satisfied the courts in this case. No evidence was recorded as to the likelihood of a long history of wrist pain leading naturally and spontaneously to debility or at what age that should be expected.



There was no diagnosable injury in this case. It was accepted that the effect of the symptoms was sufficient to preclude work of the same nature.

[A review of the effectiveness of various elements of the DSE regulations has been produced by *S Brewer et al. J Occup Rehabil. (2006) Vol. 16 p 325 – 358;* no clear benefits of compliance could be found]

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