

A CASE OF WORKPLACE BULLYING (or not)?

Recently, I was asked to conduct an independent investigation into 3 allegations of workplace bullying in a small office of 6 staff in a provincial town.

Bullying – Definition

Bullying is a form of aggressive or threatening behaviour.

Bullying usually:

- is deliberate — the bully intends to cause pain or discomfort
- involves a power imbalance — this could be based on status, physical size, age, or gender
- is a pattern of behaviour over time that leads to fear and anxiety — it's not usually a one-off thing
- causes short or long-term physical or psychological harm.

Bullying in the workplace

Bullying behaviours can include:

- constant put-downs, especially when it's done in public
- frequent nit-picking and fault-finding, always discounting what the other person says
- using threatening language
- refusal to acknowledge the target's contributions and achievements
- refusing to allow an employee to take the breaks they are entitled to
- frequent embarrassing comments about an individual's appearance
- being singled out and treated differently (worse) from work colleagues
- being overloaded with work, or having most of it taken away
- making threats about job security

The Background:

1. John was employed as the organization's CEO in June 2018. The mandate from his Board of Directors, was to "clean up" the operations of the organization, with view to developing a culture of accountability.
2. Jack had been employed in 2016 and in 2018 parts of his role were changed to reflect the needs of the organization's policy of accountability. Under the previous CEO, with whom Jack had developed a close personal friendship, Jack had been allowed to do fairly much as he pleased. He focussed principally on doing the "small" part of his role that he "really enjoyed".
3. Mary had been employed for 22 years with the organization as an administrator.

The Problem:

John had grave concerns regarding Jack's work outputs and his ability to do his job. Accordingly, John commenced a performance improvement plan for Jack late in 2018.

Mary was continually frustrated with Jack's tardiness and his refusal to provide information necessary for her to do her job. At times Mary made her frustrations apparent.

Jack did not respond well to the performance improvement plan and an employment problem quickly arose between John and Jack.

John chose mediation (MBIE) as a way forward to settle their differences. The meeting was set for 16th May 2019. John had followed due process correctly and fairly.

The Bullying complaints:

Three complaints of bullying were presented:

1. Jack asserted that John was bullying him, and a formal notification of his claim was received at 8.34 a.m. on 13th May (just prior to my first investigative meeting with Jack) from his lawyer in what appeared to be a hastily prepared one-page letter.
2. Jack claimed that Mary had bullied him through being constantly overly demanding and, after an argument in the office between the two on 2 May, had humiliated and belittled him. The issue which caused a "raised voiced" argument was the whereabouts of a set of keys which Jack said he gave back to Mary. My investigation revealed that Jack had actually given the set of keys to another staff member some days prior to the argument.
3. Mary claimed that Jack had bullied her through his intimidating body language during the argument and at other times.

My investigation

1. Jack had settled a personal grievance with a previous employer prior to his employment at the organization.
2. Jack and his wife were well regarded members of the community.
3. Jack was trying to construct an allegation of bullying from a properly and fairly conducted performance improvement process. ***I found no evidence of bullying***
4. Jack didn't like being asked questions by Mary and didn't want to provide information, which he should have reasonably provided, to Mary as part of his job and which would enable Mary to complete her role effectively. This does not meet the bullying threshold. ***No bullying was evident.***
5. Jack and Mary both raised their voices during an argument over the keys which Jack had forgotten he gave to another staff member. ***I did not find any evidence that Mary had bullied Jack.***

Findings:

The Health and Safety Act and the Employment Relations Act require employers to create a safe and secure working environment for their employees (as well as any contractors, sub-contractors or visitors to the workplace) and take all reasonable and practicable steps to avoid exposing employees to unnecessary risk of physical or psychological harm.

None of the three allegations of bullying was found to be supported by the facts nor satisfied the generally accepted definition of bullying.

The CEO was meticulous in his dealings with health and safety issues and he also recorded meetings well. He was very well regarded by all other staff members including the Chairman of the Board of Directors and other Directors. He was doing his job well according to those I interviewed.

Of interest:

Jack was employed without being subjected to a rigorous assessment process. After all, he was a close friend of the previous CEO who was removed in a confidential settlement from his role at the organization.

As a rough guide 80% of employees fail because of poor recruitment processes and /or poor leadership. When the new CEO was appointed Jack was exposed.

Conclusion:

At mediation on 16th May 2019, Jack resigned with immediate effect. The details of any settlement are subject to confidentiality clauses and will not be divulged.

The mood of the office has improved 200%. Jack's role will not be replaced for some time to come. His workload has been reallocated amongst the remaining 5 staff members.

Lessons learned:

1. Robust recruitment processes are critical. Be sure to check referees thoroughly. Always have candidates complete a formal application form which covers all aspects of the role including personal employment background details.
2. Hold staff accountable for their performance
3. Do not be afraid to hold the "hard conversation". Avoiding talking directly to employees about their poor performance or behaviours will end in tears.
4. Be sure your policies/procedures and house rules are current, and all employees are always fully informed/trained.
5. Make sure you record accurately, meetings and conversations you have with your team and be transparent by sharing with staff, if necessary.

In this case recruitment processes were poor and became the issue. Points 2, 3 & 4 were covered very well.

Dr Steven A Saunders deals with cases like this often. He assists both employers and employees in difficult employment relations situations. He has represented both employers and employees through the mediation process and at ERA level.