

LIABILITY IN STRESS CASES

Sutherland (Chairman of the Governors of St Thomas Becket RC High School) -v- Hatton, Somerset County Council -v- Barber, Sandwell Metropolitan Council -v- Jones and Baker Refractories Ltd -v- Bishop, 2002, IRLR 263

The main factors the courts will consider in determining liability in “stress” cases are:-

- There are no special control mechanisms for “stress” – ordinary employer liability applies;
- The employer will be liable if the harm was reasonably foreseeable;
- Subject to causation, there must be an identifiable injury to health (ie, a diagnosed illness);
- Causation must be established; any diagnosed illness must be attributable to stress at work;
- The court will look at what the employer knew or ought to have known about the alleged stress factors;
- Foreseeability depends on what the employer knows or ought to have known about the individual. It may be harder to foresee mental disorders than physical, unless other factors pertain, such as known vulnerability;
- The test applies whatever the occupation;
- Risk assessments should cover objective and subjective criteria (that is covering the perspective of employer and employee);
- A full risk assessment will take note of external factors that might increase the employee’s vulnerability to stress, including domestic and social factors, so that these may be excluded from litigation;
- Employers who take steps to reduce stress and offer confidential advice services, such as occupational health and counselling services to employees, are less likely to be found to be in breach of the duty of care.