Attachment 14:

Staff
Information Bulletin

24 August 2009

Looking after our employees - Australia Post's Workplace Injury Management Program endorsed

An independent review has endorsed Australia Post's workplace injury management system and rejected claims by the CEPU.

The review, by the Federal agency Comcare, found the system, based around using independent doctors familiar with the Australia Post workplace, "performed well".

For over 10 years Australia Post has been providing a free scheme to assist injured workers called the Injury Management (Early Intervention) Program (IMP).

Under the program employees who are injured at work have free immediate access to:

- Up to 4 free treatments from an independent medical practitioner located near major workplaces.
- Up to 4 free treatments from an independent physiotherapist.
- Costs for other expenses such as x-rays, tetanus injections and basic medications.

Australia Post is committed to continuing this free service even in the current economic climate.

The review by Comcare, which is responsible for licensing insurers under the Commonwealth Safety, Rehabilitation and Compensation Act (SRC Act), was requested by the CEPU last November. The CEPU claimed Australia Post was breaching the law in the manner it uses doctors in workers' compensation cases.

The review report said: *"Comcare can conclude that Australia Post's IMP (injury management program) has been established as a mechanism to effectively manage employees injured at work by adopting the best practice approach of making available through an FND (facility nominated doctor), early diagnosis and treatment of injuries with an emphasis on matching an employee's current functioning to available duties in the workplace."*

In dismissing the CEPU's claims, Comcare said:"It is Comcare's view that Australia Post's injury management system performs well in conformance with its conditions of licence and in compliance with the SRC Act."

The program is also in line with injury management schemes being used by a wide range of Australian companies.

Rod McDonald
Group Manager, Human Resources

Attachment 15:

sent in mail by Express Post

GEN 09/103
4.6-009

14th October, 2009.

CEPU

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PLUMBING
UNION

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The Chief Executive Officer,
Comcare,
GPO Box 9905,
CANBERRA. ACT. 2600.

Dear Sir,

RE: AUSTRALIA POST'S INJURY MANAGEMENT PROGRAM AND USE OF COMPANY DOCTORS FOR INJURED EMPLOYEES

We refer to the above matter and your letter of 11 August 2009.

We are astounded at the findings of your "discussion" team. To find nothing, and naively accept the Post line that it is only a few rogue managers have abused injured workers leaves us wondering if these safety concerns are being given serious consideration by your organisation.

We note your comments that your discussion team did not have the benefit of the findings of an investigation, and that an "external audit" will soon be carried out. Thus your team was limited to doing no more than chat to Australia Post. But to then conclude:

> *In summary without the benefit of auditing Australia Post's claims and case files, but after detailed discussions..., including examining IMP documentation, Comcare can conclude that Australia Post's IMP has been established as a mechanism to effectively manage employees at work*

This is an extraordinary shift in emphasis and is a tribute to the manipulative skills of Australia Post in their dealings with Comcare.

It has also come to light that you have performed nothing more than a "desktop" examination into the grave concerns that our members have regarding the use of these FNDs in Post. No employee was questioned or asked about their experiences. Comcare merely examined the written material put before it, had conversations with ourselves and Post and then put forward an opinion that it thought things were largely satisfactory with the system – but that it would conduct a proper audit next year, leaving current employees at the mercy of a system that may or may not pose a threat to their well-being.

We are now advised that this audit is occurring this year, despite advice to the contrary. The CEPU and its members would like to make submissions as part of this process and would like to be informed as to whether Comcare intends to open this matter to public scrutiny.

Your discussion team seem to gloss over a few matters. Your team noted at pages 5 and 6:

> *Australia Post admits there have been instances where employees have:*
>
> - *unfortunately been mis-diagnosed by one of its FNDs (ed. note one was potentially fatal) or*
> - *where employees have been returned too early or*
> - *on duties which have proved too ambitious*
> - *had pressure exerted on them by line managers to "voluntarily' (Comcare's emphasis) attend an FND for treatment*

and

> *Australia Post has admitted to a number of instances where there have been shortcomings*

Despite this, Australia Post is publicly championing extracts from your letter as proof that not only have they been totally cleared of any wrongdoing, Comcare unreservedly supports their system.

Audits

Your audit is only as good as your "audit tools". It goes without saying that your customers will very deliberately (and properly) arrange their affairs to meet the requirements of your "audit tools". What they do outside the scope of your "audit tools" is another thing - clearly Comcare will not care, as Comcare does not audit it.

Lost Time Injury, we understand, is one of your key measures. Lost time Injury measurements can be reduced by two methods:

- by reducing the number of injured workers, or
- by manipulating the figure.

Our complaint is that Australia Post deliberately and systematically manipulates these figures.

You suggest that Comcare will study "*randomly selected claim files*" during the audit. If only you stood back to assess the real problem, you will realise that the audit will reveal little. The phone calls, visits to homes, advice to the FND, threats and intimidation will not be on the files. And in most cases, the injury will be converted to sick leave, as in the case of Mr Kahmann (see reference in attachment), and this will mean no lost time injury at all.

We further note that Post has distributed to its employees a Staff Information Bulletin (SIB) regarding the audit process. In that SIB Post suggests that employees submit information concerning the licence application via Post's own Corporate Human Resources group. This will require employees who have criticisms of Post's approach to its licence obligations lodging their complaints with the very arm of management who may be responsible for that criticism.

You will recall that employees critical of this system have had have their faces masked when conducting media interviews. This was precisely because those brave Post employees feared reprisals for speaking up.

Later in this report we refer to HR direct involvement in the threatening of injured employees. It should be noted that as part of the Comcare on line audit tools there is provision for respect of confidentiality and reference to the Privacy Act.

Individual responses will not – and should not – be made available to the licensee. It is our view that Post's actions are clearly in breach of these Comcare requirements by Post distributing this bulletin. How will Comcare guarantee the protection of employees who wish to be involved in the audit?

"Rogue" Managers

We dismiss suggestions that our complaints are just about a few "rogue" managers. See our attached references in the Kahmann case. The whole state administration was involved. The local manager acted at the direction of the state HR manager. The examples are spread across Australia. They are supported by evidence and documentation, not assertion. Our documentation provided five detailed examples, and details from a number of other cases. Even your discussion team told us of an example where a manager (must have been an ex FND) sent an ambulance away after a postman recovered from unconsciousness, after being hit by a car. Because he seemed OK, he continued his mail delivery on the motorbike. No LTI. They must be tough these postmen.

Conclusion

Our complaint has nothing to do with the management of injured workers at work, or rehabilitation of injured workers. It is about a scheme devised by Post under its "Principal Determination" to:

- under the guise of "fitness for duty", gather evidence that the injured worker is fit for work even if the duties are non-existent, inappropriate or menial.
- use the evidence in breach of the Privacy Act (and Comcare's specific jurisdictional advice) to eliminate lost time injury by converting the injured workers leave from compensation leave to sick leave, reducing Post's balance sheet contingent liability and impressing Comcare.
- encourage and enriching line managers, HR managers and senior managers through a pay bonus scheme directly linked to LTI.

We regard it as grossly immoral for "motivated" managers to take advantage of the most vulnerable persons in the workforce – injured workers. And then wave your letter as justification for its debased system. This is particularly appalling when their targets are a large number of new Australian employees who need advice, a large number of persons in low paid jobs and a large number of persons in precarious jobs. These are people who cannot afford to object when threatened that they might lose pay or hours if they do not get back to work and reduce LTIs.

Worse still: using an FND fitness assessment to deny workers compensation liability today will help the corporation side step its responsibilities to cover medical costs that may arise as our members retire and potentially experience a deterioration of their condition. Post will merely cost shift to the public system, because of the failure to properly acknowledge their liability now.

We have attached a number of comments relating to specific matters raised in your letter.

Yours faithfully,

Ed Husic,
DIVISIONAL SECRETARY.

Enc.

EH:kr

ATTACHMENT 1

1. Comcare erred in its understanding of the "arbitrator's determination"

Your letter makes two references (at page 2 and 4) to the "determination":

> *"Should Australia Post feel an employee's fitness/unfitness for duties status warrant it, it might seek to arrange a fitness for duties medical assessment under the terms of its "arbitrators determination".*

The term has no meaning. We presume that you mean the Award of the Australian Industrial Relations Commission (AIRC) and the decision of SDP Drake. The AIRC did hear this matter. The AIRC found that the Award provision relating to fitness for duty has no application when workers are injured at work. Our submission to you makes this clear. The Senate Estimates Committee inquired into this. Post agreed that it had been defeated on this point. Post even appealed the decision of the AIRC, but subsequently abandoned the appeal.

2. Comcare erred in its knowledge of the "arbitrator's determination"

Alternatively, Comcare understood the AIRC decision and conveniently ignored the "Principal Determination" of Australia Post. When Post was defeated in the AIRC, it decided that it could unilaterally create a new right for itself using s89 of the Australian Postal Corporation Act, 1989. This is also explained in our submission to Comcare, yet your letter does not even mention that this alleged authority is used exclusively now to coerce and bully injured workers to attend a company doctor for a "fitness for duty" assessment. See Attachment 2.

Note that before the AIRC Decision, it unlawfully used the Award provision to force injured workers to see a company FND.

3. Comcare erred in its understanding of the "arbitrator's determination"

Alternatively, Comcare understood the AIRC decision and the (unmentioned) Principal Determination, and chose to ignore our allegation that Post was operating outside the law. The Principal Determination is styled "fitness for duty." The Award has a fitness for duty clause as well, covering the same ground. The Award has another important clause, which we pointed out. The Award says:

> *6.2 Inconsistency with Determinations*
> *This award will be read in conjunction with determinations made from time to time under s. 89 of the Australian Postal Corporation Act 1989.*
> *6.2.1 Where a determination is inconsistent with the provisions of this award, the latter will prevail.*

The Principal Determination is ineffective. The Award clause prevails over the Principal Determination as the Award clause not only deals directly with the same matter; the Award also covers the field. Post knows that they made a mistake (blaming poor legal advice) here but are toughing it out. Your advisors appear to ignore this unlawful use of the Principal Determination in compensation matters.

4. Comcare fails to recognise the distinction between fitness for duty and a medical opinion

Your letter states:

> *Australia Post is entitled to weigh up the two medical opinions.*

True. If there were two medical opinions, one from the treating doctor and one obtained pursuant to section 57 of the Act, then the statement is correct.

However, your advisors avoid the facts. There are not two medical opinions. The Post scheme relies on a contest between an independent treating doctor's medical opinion, and a fitness for duty assessment by a company FND (GP).

5. Comcare ignores its own policy, and supports unlawful activity.

Your letter states:

> *Australia Post is entitled to weigh up the two medical opinions.*

Your advisors are well aware that there are not two medical opinions. The company doctor provides a "fitness for duty" assessment. Your own policy is unambiguous. See Policy 330/4/1028.

> *Para 5: If information regarding an employee's medical condition is collected for an employment related purpose (for example... to assess their fitness for duty) it should not in principle be used for a compensation related purpose (for example to support a decision to continue or cease liability).*

Your policy indicates that a fitness for duty assessment could only be used where

- There is written permission by the injured worker
- There is alleged fraud
- Comcare itself has a reason

No written permission has ever been sought, nor has there been an allegation of fraud. Your advisors know and were clearly informed of this breach. Thus your letter constitutes ongoing encouragement for Post to breach your own policy.

Did Comcare advise Post of their breach of the law and the Comcare policy by routinely using fitness for duty assessments for compensation purposes?

We reserve our position on legal action under the Privacy Act. Clearly your policy is devastating evidence against Post. You position may become an embarrassment, but that is the effect of your unqualified support for Post.

Comcare cannot conclude that the FND is a voluntary policy

Your letter states:

- At Page 3 that the visit to the FND is "*on a voluntary or "opt-in" basis*".
- At Page 4 "*the FND assessment is not mandatory*".

This is simply untrue.

We repeat the Post Principal Determination:

> *(d) An employee to whom a direction is given under clause 10(a) or 10(b) must comply with the direction (to go the company doctor).*
> *(e) Where an employee fails to comply with a direction under clause 10(e) or 10(b) without reasonable cause, the employee may be subject to the Employee Counselling and Discipline Process and the fees payable for the examination may be charged against the employee and deducted from salary.*

Perhaps Comcare could point out where the opt-in provision exists.

Comcare cannot conclude that the FND is a voluntary process

Your letter states:

- At Page 3 that the visit to the FND is "*on a voluntary or "opt-in" basis*".
- At Page 4 "*the FND assessment is not mandatory*".

This is simply untrue.

The Australia Post Manager in Kahmann's Case in her signed statement about the FND said:

- *"I advised Ron that it was compulsory to attend... and that he would face disciplinary action if he chose to not attend and advised it may jeopardise the determination of his claim. (sic somewhere)...*
- *I also mentioned that any decision to not attend would only have ramifications for him...*
- *I mentioned that his non acceptance could jeopardise his compensation claim and that his claim may only be accepted for medical costs and that the time may have to be deducted from his sick leave. In this case he would not get averaged overtime or shift payments... "*

A Sydney example: a statutory declaration (provided to Comcare)

- *I saw my doctor again on Monday 8th September. I told him of continual pain. He arranged for a CT scan to be done that day (Monday). He told me to stay off work until Wednesday 10 September.*
- *On Tuesday 9 September at about 2.00pm, my Manager arrived at my home with a letter directing me to attend an FND. The appointment was for 2.45pm at St Leonards. He told me that Post does not like Lost Time Injuries (LTIs)*

This is simply implementation of the policy above. And this might explain why your discussion team found that "*employee participation in the IMP is high and that it is well supported by its employees*". (at p 3)

We even have an incident where a manager was given a warning because he did not direct an injured worker to attend an FND.

An extraordinary admission #1

Comcare records at page 4 of the letter:

> *Australia Post admits that while it might prefer the medical opinion from an FND in terms of an employees capability of achieving an early return to work over that of an employees local doctor who continues to certify incapacity, it stresses that its employees are free to follow the advice on the employees local doctor under the IMP*

This is an admission that:

- Post directs the compensation delegate – there is no independent decision by the delegate
- Post prefers the company FND (just a hired GP) over the independent treating Doctor
- Post breaches Comcare Policy by using fitness for duty assessment in compensation
- Post punishes injured workers by preferring the company FND if the worker elects to follow the treating Doctor's advice (Post force them to take sick leave)
- Post does not see the obvious conflict of interest of the paid company FND.

An extraordinary admission #2

Comcare records at page 5 of the letter:

> *Australia post acknowledges its IMP links to workers' compensation and it confirms that, once an employee's claim is accepted, the injury is managed under the SRC Act.*

CEPU is well aware of this practice. Thus, for Post, it is important to pressure staff to get to an FND as soon as possible, usually within 24 hours of the actual injury, no matter how traumatic, so that they can get company FND evidence that the injured worker is fit for work.

And the FND delivers as per contract. 95% of injured workers referred to an FND are fit for duty. Independent treating Doctors only average 6%.

But when is a claim "accepted"? In discussions during litigation, Post preferred that accepted meant when the compare delegate determined the claim. Thus this is delayed until Post has its evidence.

A look at the scheme – Kahmann

In Ron Kahmann's case, the scheme is unambiguous. Ron, a postman, sustained a serious cut to his hand requiring stitches. His treating Doctor determined four days leave, then a reassessment. Everyone knows (Post Statistics prove it) that in 19 out of 20 cases, the company FND will find an injured person fit for work. So too with Ron. This explains what follows.

The Manager in her signed statement about the FND said:

- *"I advised Ron that it was compulsory to attend <u>after discussing it with</u> Kirk Ashwood (A/State HR Manager) and that he would face disciplinary action if he chose to not attend and advised it may jeopardise the determination of his claim. (sic somewhere)...*
- *I also mentioned that any decision to not attend would only <u>have ramifications for him</u>...*
- *I spoke to Luc-Anne Ottaway (State HR manager) and she <u>advised that I was to</u> contact Ron and advise him of the duties available and that <u>his claim may be effected</u> (sic) <u>if he refused to came to work</u> (contrary to his treating Doctor's advice)*
- *I mentioned that his non acceptance could jeopardise his compensation claim and that his claim may only be accepted for medical costs and that the time may have to be deducted from his sick leave. In this case <u>he would not get averaged overtime or shift payments</u>... "*

This was all the day filling the injury! Within 24 hours of the injury!

The ("rogue" in Post opinion) manager, who was specifically directed and supported by the highest levels of ("non-rogue" in Post opinion) Managers in the State was able to give that detailed advice, because that is the scheme in Post - financial threats, and disciplinary threats. And that is exactly what happened to him despite the Australia Post Policy (which Comcare enthusiastically endorses). You will see it at para 4 of the IMP policy:

> *"The results of a fitness for duty assessment do not override a treating Doctor's opinion.... It is for the employee to choose which medical advice to follow."*

Despite your suspicions, this is not a "rogue" State, the scheme works in every State.

There was a happy ending. While this went to the AAT, you should note that the Manager, the state HR managers and the higher level Melbourne Managers all kept (on a technicality) the pay bonus earned from this case. There was no LTI as the FND backdated the certificate saying that Kahmann was never unfit for work, even while bleeding!

They know that their staff do not have the legal skills or the money to challenge the decisions, so there is no risk. And if a staff member did, then the staff member fears retribution. Unfortunately for Post, they did not expect CEPU to support an appeal by Mr Kahmann to the AAT for return of his five days of sick leave and some $300 in average pay lost.

ATTACHMENT 2

PRINCIPAL DETERMINATION EXTRACT

CLAUSE 10 FITNESS FOR DUTY

(a) Australia Post may direct an employee to:

(i) obtain and furnish to Australia Post a report from a registered medical practitioner concerning a medical assessment of the employee's fitness to perform all or part of his or her duties; and/or

(ii) submit to a medical examination by a registered medical practitioner determined by Australia Post, for the purpose of a medical assessment and a report to Australia Post concerning the employee's fitness to perform all or part of his or her duties.

(b) If Australia Post considers that an employee is incapable of performing duty or constitutes a danger to other employees or the public due to the employee's state of health, Australia Post may direct the employee to:

(i) obtain and furnish to Australia Post a report from a registered medical practitioner; or

(ii) submit to a medical examination by a registered medical practitioner determined by Australia Post.

(c) On receipt of the medical report provided in accordance with clause 10(b), the employee may be directed to take sick leave for a specified period, or, if already on sick leave, or other leave, the employee may be directed to continue on leave for a specified period, and the absence shall be regarded as sick leave.

(d) An employee to whom a direction is given under clause 10(a) or 10(b) must comply with the direction.

(e) Where an employee fails to comply with a direction under clause 10(e) or 10(b) without reasonable cause, the employee may be subject to the Employee Counselling and Discipline Process and the fees payable for the examination may be charged against the employee and deducted from salary.

Attachment 16:

Australian Government
Comcare
Chief Executive Officer
02 6275 0001

Mr Ed Husic
Divisional Secretary
CEPU Communications Division
PO Box 472
CARLTON SOUTH VIC 3053

Dear Mr Husic,

RE: AUSTRALIA POST'S INJURY MANAGEMENT PROGRAM AND USE OF COMPANY DOCTORS FOR INJURED EMPLOYEES

Thank you for your letter of 14 October 2009 in which you expressed concern regarding the findings of Comcare's 'desk top' examination of Australia Post's management systems in dealing with its injured workers.

I note that you acknowledge that Comcare will conduct external audits of Australia Post as a self insured licensee. These audits are currently being undertaken, and will not be undertaken next year as reported. As previously advised, Comcare undertakes such audits using the Safety, Rehabilitation and Compensation Commission's methodology and audit tools . Therefore these audits will look at a broad range of compliance issues, including the role of facility nominated doctors, as would be expected by the Commission and other stakeholders.

The audits are not able to examine the fitness-for-duty scheme devised by Australia Post under its 'Principal Determination' which you claim inappropriately gathers evidence, breaches privacy and encourages abuses by line managers through the payment of bonuses. However, where such a scheme operates to intersect or bring it under the OHS Act and SRC Act requirements of Australia Post as a self insurer, then it will be within scope of the current audit program to consider those issues.

Yours sincerely

Paul O'Connor

Attachment 17:

Attachment 17.1:

AUSTRALIA POST GENERAL CONDITIONS OF EMPLOYMENT AWARD 1999

6.2 **Inconsistency with Determinations**
This award will be read in conjunction with determinations made from time to time under s. 89 of the Australian Postal Corporation Act 1989.

6.2.1 Where a determination is inconsistent with the provisions of this award, the latter will prevail.

26.12 **Employee to provide medical report**

26.12.1 Australia Post may require an employee to furnish a medical report or undergo an examination by a medical practitioner nominated by Australia Post where the employee:

26.12.1(a) may be unfit or incapable of discharging duties;

26.12.1(b) may be a danger to other employees or members of the public due to state of health;

26.12.1(c) has been absent through illness for a continuous period exceeding 13 weeks;

26.12.1(d) has been absent through illness and the authorised employee believes that the employee is not fit to resume duty.

26.12.2 An employee who is required to furnish a medical report or undergo a medical examination under 26.12 must do so as soon as practicable.

26.13 **Maximum period**
The maximum period of absence which may be approved with pay in respect of a continuous absence through illness is 52 weeks.

26.14 **Sick leave without pay**
An employee who has exhausted all leave allowable with pay may be granted leave without pay, provided that:

26.14.1 in respect of the first year of continuous employment, the aggregate period of any sick leave without pay must not exceed 20 days; and

26.14.2 in respect of any continuous period of absence thereafter, leave with and without pay must not exceed 78 weeks.

Attachment 17.2:

EBA6 – Australia Post Enterprise Agreement 2004-2006

Sick Leave:

8.6 Australia Post agrees to discontinue the Attendance Improvement Management System ("AIMS").

In the context of any replacement program for AIMS Australia Post will not:

(a) identify individual employees for attendance improvement management based on specified trigger points in an arbitrary or automatic manner which does not have regard to circumstances of individual employees;

(b) direct employees to attend Australia Post nominated doctors for same day medical assessments;

(c) an employee can only be directed to attend a nominated doctors for medical assessments in accordance with the relevant award.

8.7 For the term of this Agreement the parties agree not to seek a variation to the Award in relation to fitness for duty examinations (Clause 26.5.10 of the General Conditions of Employment Award 1999).

Attachment 17.3:

[OLD] CLAUSE 10, AUSTRALIA POST GENERAL CONDITIONS OF EMPLOYMENT AWARD 1999 - HEALTH OF EMPLOYEE DANGEROUS TO OTHERS

(a) If it is believed that an employee is incapable of performing duty or constitutes a danger to other staff or the public due to the employee's state of health, the employee may be required to:
   (i) obtain and furnish a report from a qualified medical practitioner; or
   (ii) attend a medical examination conducted by the CMO or a medical practitioner named by Australia Post.

(b) On receipt of the medical report, the employee may be directed to take sick leave for a specified period, or, if already on sick leave, or other leave, the employee may be directed to continue on leave for a specified period, and the absence shall be regarded as sick leave.

(c) Where an employee is required to furnish a medical report or undergo a medical examination and the report of the medical practitioner is not favourable to the employee or the employee fails to attend for the examination without reasonable cause, the fee payable for the examination or visit shall be charged against the employee and deducted from salary.