

FOSTERS
LAWYERS

21 July 2009

Dirk Nierop


Dear Dirk,

YOUR VICTIMS COMPENSATION CLAIM

I regret to advise you that the Tribunal has not awarded compensation for your claim.

As you will see from the enclosed VCT Letter and 'Reasons for Determination', your claim was unsuccessful.

The fact that your claim has failed does not mean that the incident did not occur. Nor does it mean that you have not been affected. It simply means that your claim did not meet the strict requirements of the Tribunal. Claims for psychological injury are very rarely successful. This is because the scheme has been designed to make it very difficult to obtain compensation for psychological injury. The threshold of impairment is very high. Unfortunately you have been affected, but in the view of the Tribunal, not sufficiently to receive compensation.

It is important for you to understand the Tribunal accepted that there was violence toward you and that you were harmed; however not to a degree sufficient to receive compensation.

Unfortunately for you, the scheme has also been designed so that many physical injuries fall below the threshold. We expect this will be very disappointing for you and does not reflect the harm you have suffered.

We have also enclosed a Tax Invoice indicating the professional costs and disbursements paid by the Tribunal. It is legal requirement that we provide this to you. **You do not have to pay us any money** – we have been paid by the Tribunal.

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YOUR RIGHT TO APPEAL

If you are dissatisfied with the decision of the Tribunal you have the right to appeal. It is a matter for you if you wish to appeal. However, we do not think it will change the result. The Assessor is given power to decide whether they are satisfied that the level of impairment reaches the threshold. As long as they have considered all the available evidence and not taken any irrelevant considerations into account, there is no error. In your claim the Assessor appears to have read all the evidence and unfortunately was not satisfied that it was more likely than not that the impairment was severe.

In the circumstances we do not think that the Chairperson would make a different decision on appeal. This is because your jaw injury and your psychological impairment fell below the level of severity required to get compensation. This is a difficult thing for you to accept, no doubt.

We are hopeful that you will feel vindicated somewhat by the decision, namely that you were not the aggressor and that you were subjected to violence and sustained injury on the night in question.

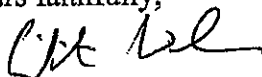
Any appeal should be lodged before **29 September 2009**.

We will **not** lodge any appeal **unless you contact us and tell us you wish us to lodge an appeal for you. If you wish to appeal, you must contact us by 7 August 2009.**

We certainly wish you well in the future, and thank you again for allowing us to assist you.

Please let us know if you have any queries.

Yours faithfully,



Jemima Brewer
FOSTERS LAWYERS

Victims Support and Rehabilitation Act 1996
NOTICE OF DETERMINATION (s29)



Name of applicant: Dirk Nierop
File ref: 136517

REASONS FOR DISMISSAL

Dirk Nierop has lodged a claim for victims compensation as a primary victim of an act of violence. The application was lodged on 2 November 2007. Mr Nierop is legally represented by Fosters, Lawyers.

The applicant alleges that in the course of his employment as a security officer at the Surf Rock Hotel in Collaroy, he was assaulted by an intoxicated male person on the evening of 8 April 2006.

I have read/perused the entire contents of the file, which includes the application form and attachments, report received from N.S.W Police, the transcript of the Judge's decision in the criminal proceedings against Mr Nierop, the ARW report of Kerrie Powell, clinical psychologist, counselling treatment report of Eija Stewart, letters of support/declarations and correspondence submitted by the applicant and his solicitors.

Firstly, I am prepared to find an act of violence appears to have been established in this matter, pertaining to the actions of the intoxicated male person whilst this male was on the landing with the applicant and another employee of the hotel. The evidence suggests the male became enraged when he was informed that his wife had been asked to leave the premises after her argumentative behaviour towards another female patron. He approached the applicant and told him to essentially leave his wife alone then became very aggressive, both verbally and physically. I accept the applicant was struck by the alleged offender. Thereafter, it seems the second 'transaction' in the incident occurred where a barman attempted to intervene and somehow fell down the stairs with the alleged offender. The alleged offender then apparently began striking the barman, and it appears this is when Mr Nierop intervened and struck the male, using what the Judge has described was excessive force. I accept though that no injuries appear to have been occasioned to this male person as a result of Mr Nierop's 'strikes'. Conversely, Mr Nierop asserts he sustained a jaw injury and psychological injury as a result of this matter. I note no charges were laid against the alleged offender for his actions on the night in question, and of course I am cognisant of the fact that Mr Nierop was found criminally responsible under s.10 of the Crimes (Sentencing Procedure) Act for his actions.

In terms of applying s.30(1) to the matter, after reading the evidence before me as to how the Judge accepted the incident to have unfolded, I do not propose making any 'contributory behaviour' reductions against Mr Nierop in this matter.

Mr Nierop seeks an award of compensation for the compensable injury of a chronic psychological/psychiatric disorder that is severely disabling and an injury similar to a jaw dislocation. I have read the evidence and ARW Report on file in this regard.

Firstly, I note no medical evidence has been provided by the applicant attesting to any injury to his jaw being established. The solicitors refer to the evidence given by a Dr Moss in the criminal proceedings as establishing an injury to the jaw. Whilst I have read the relevant evidence given by the doctor, in the absence of a medical report specifically addressing the injury sustained, detailing to me what the applicant's premorbid jaw functioning was etc, I am not prepared to accept the evidence establishes a compensable injury to the jaw of Mr Nierop. Consequently, I cannot find any physical compensable injury established on the material before me.

With respect to the psychological injury suffered, I have read Ms Powell's report.

To establish a 'chronic psychological/psychiatric disorder that is severely disabling' requires the applicant to firstly establish the presence of a recognized psychological or psychiatric disorder arising directly out of the claimed act of violence. Secondly, the evidence must demonstrate that the disorder suffered has persisted for a lengthy period of time (hence the term 'chronic', which I interpret to mean 'long term' in accordance with the Chairperson's Guidelines under s.65 relating to the interpretation of what 'chronic' means in psychological injuries under the Act). Lastly, the applicant must establish that the lengthy disorder has rendered him 'severely disabled'.

Looking at the ARW report, it is clear that Ms Powell does not diagnose Mr Nierop with suffering a recognised psychological or psychiatric disorder. Consequently, the applicant cannot claim to have suffered a long term disorder that resulted in him being severely disabled. I accept the applicant has suffered psychologically, but clearly the ARW's assessment does not extend to diagnosing the applicant with a psychological or psychiatric disorder. Unfortunately that means that in the absence of being able to establish all elements of the claimed compensable psychological injury, the applicant is not eligible to receive an award of compensation as the victim of an act of violence.

What this means for Mr Nierop is that whilst the evidence establishes he has suffered ongoing trauma associated with the physical incident, with his perceived injustice at the actions of the alleged offender in this matter and the subsequent involvement of Police and the charge against him, unfortunately, the evidence has failed to establish that he has suffered a compensable injury as a result of being the victim of an act of violence on the night in question. This means I have little choice but to dismiss Mr Nierop's claim for victims compensation.

Costs (s35)