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The Impact of Mediation on Workplace Relationship Conflict and Return to Work Outcomes: A Snapshot Review

Institute for Safety, Compensation & Recovery
Research

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31 May 2012

Research report#: 22-014

Commissioned by: Danielle Jacobs, Project Manager, Return to Work Division,
WorkSafe Victoria

Accompanying documents to this report

Title: The Impact of Mediation on Workplace Relationship Conflict and Return to Work Outcomes: A Snapshot Review - One Page Summary

Report number: 22-014

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Executive Summary

Purpose

Stress triggered by workplace-based interpersonal conflict can result in damaged relationships, loss of productivity, diminished job satisfaction (Kidder, 2007) and increasingly, claims for psychological injury. While the cost and prevalence of claims for stress-related conditions in Australia varies between States, nationally the numbers are rising (Guthrie, Ciccarelli, & Babic, 2010). These claims are also likely to be difficult to manage and disproportionately costly (Haines, Williams, & Carson, 2006). Research and best practice suggests that mediation, conducted by an independent third party, may help resolve claims caused by a breakdown in workplace relationships and assist claimants in returning to work (Bingham, 2004; Bingham & Novac, 2001; Brett, Barsness, & Goldberg, 1996). Due to the subjective and emotional aspects of workplace interpersonal conflict, this review considers, in a return to work context, the relational rather than settlement-based features of mediation models.

Method

A systematic search of various health and social science databases was conducted to identify relevant literature published between 1990 and 2012. Limited Australian material was found so that findings are based largely on North American research.

Summary of Findings

Due to the the relational and emotional aspects of intractable conflict often found in psychological injury claims (Retzinger & Scheff, 2000), the facilitative and transformative models of mediation were found to be more appropriate in resolving interpersonal conflict in the workplace (Bingham, 2004). This is illustrated using a case study of REDRESSTM, a successful workplace mediation program designed and implemented by the United States Postal Service.

Conclusions/Recommendations

The process of mediation has the potential to be an effective method of resolving psychological injury claims due to workplace relationship breakdown, especially when supported by organizational commitment to Alternative Dispute Resolution strategies, policies and processes, and conducted by independent, skilled mediators. However, since there is a lack of literature on mediation in the occupational rehabilitation and return to work contexts, it is recommended that further research be undertaken, from both employee and employer perspectives, to determine its effectiveness in Australian settings.

Background

In Australia, workers experiencing stress to which their workplace or employment has significantly contributed are entitled to submit a claim for workers' compensation. While the cost and prevalence of stress claims as well as the relevant legislation varies between States, nationally the number of claims continues to rise (Dollard & Knott, 2004). They are also expensive due to the often lengthy periods of absence and complicated medical care characteristic of this type of claim (Cotton, 2008; Guthrie, et al., 2010). Such is the increasing number of psychological injury claims in Australia, a range of legislative amendments have been implemented in all jurisdictions (Cotton, 2008; Guthrie, et al., 2010). Yet, as Cotton (2008:8) notes, the situation has not been able to be legislated away and compensable stress-related claims continue to grow, along with their associated costs (Guthrie, et al., 2010). Research also suggests that available statistics under-estimate the extent of workplace stress, as many people neither report it nor file a compensation claim (Caulfield, Chang, Dollard, & Elshaug, 2004:149). This finding, although concerning, is not unexpected since, as Dollard and Knott (2004:355) remark, "workers typically regret making a claim, find the process very stressful, and experience it as a form of social suicide".

Workplace interpersonal conflict is frequently identified as a source of stress and can lead to a claim for psychological injury. This can result in damaged relationships and loss of productivity and job satisfaction (Kidder, 2007). Claims involving workplace relationships have costs for both individuals and organisations. Elshaug, Knott and Mellington (2004) maintain that these costs need to be examined in different contexts: individually (in terms of individual psychological and physical wellbeing); at the organizational level (in terms of costs associated with loss of productivity and absenteeism); and at a societal level (in terms of costs associated with mental health and family wellbeing).

Scholars of organizational behaviour and industrial relations have long recognised the importance of a procedure for resolving employment disputes. Most draw on theories such as procedural justice and social accounts theory that suggest opportunities for people to have their concerns heard and taken seriously, and perceptions of fairness, will be associated with positive organizational outcomes (Bingham & Novac, 2001). Research and best practice suggests that mediation, conducted by an independent third party, can help resolve workplace relationship conflict and assist claimants in returning to the workplace.

This paper firstly explores the issue of workplace stress and relationship conflict. This is followed by a discussion of the mediation process and different models of mediation in resolving interpersonal conflict, as well as potential impediments to engaging in mediation. Finally, a case study of a workplace mediation model from the USA is described along with a suggested framework for assessing successful mediation. Recommendations for future research conclude this report.

Research Question

WorkSafe Victoria reports that in recent years the volume of psychological injury claims has increased across all industries and that many of these relate to workplace relationship conflict. In response to this, WorkSafe initiated a pilot project, Workplace Support Service, in which a selection of Occupational Rehabilitation consultants were asked to trial a mediation-type service with psychological injury claimants. The aim was to support the parties involved in claims in which interpersonal conflict or communication was the main issue, to re-establish working relationships and assist the claimant in returning to work.

ISCRR has now been commissioned to undertake a Snapshot Review of relevant literature to explore the research question: “for individuals with psychological injuries, the primary cause of which was workplace-based relationship breakdown or conflict, is mediation between the parties involved an effective method of getting the individual back to work sooner”? This review therefore focuses on the aspects and models of mediation that are relational rather than directive in nature, to explore their usefulness in an occupational rehabilitation/return to work context.

Method

A systematic search of health and social science databases was conducted to identify relevant peer-reviewed literature published between 1990 and 2012. Databases consulted were Expanded Academic, PsychInfo, PubMed, Medline, CINAHL, ABI/Inform Complete, Current Contents, Proquest and SCIRUS. Further literature was identified using Google Scholar and reference lists in papers reviewed as well as one other paper referred to the author from a journal that does not appear in the databases searched. Search terms used were combinations of: mediation; workplace mediation; psychological injury; stress; workplace stress; workplace relationships; and return to work.

Initial searches revealed more than 1,000 potential references. After assessment for relevance, 49 papers were found that addressed issues contained in the research question, but only 29 did so sufficiently for inclusion in this review.

Workplace Relationship Conflict

The literature defines a psychologically healthy and safe workplace as one in which organizational support exists for the physical, social, personal and developmental need of employees (Kelloway & Day, 2005). Regrettably, the modern workplace is increasingly characterised by stress. A number of theories exist for why workers experience stress in the workplace; most recognizing that it is to do with either the work environment or job factors rather than individual personalities (Dollard & Knott, 2004).

The emotional dimension of work relationships is important. Workplace or professional behaviour is often very different from customary, societal, forms of

emotional behaviour. Emotions such as distress may have to be disguised, attraction suppressed, or annoyance left unspoken (Fineman, 2000:2). As Lutgen-Sandvik (2006:426) notes, “..communication at work...is always social and public”. Co-worker relationships are increasingly recognised as one of the most meaningful interpersonal relationships people will have at work (Struthers, Dupuis, & Eaton, 2005:305) but require a particular kind of “emotional labour”. Waldron (2000) argues that the experience of emotion at work is influenced by the unique contextual features of work relationships and is an integral part of relational conflict. Moreover, the role of emotion and feelings of alienation in protracted workplace conflict impairs communication by producing intense emotions, especially shame and anger (Retzinger & Scheff, 2000).

Poor interpersonal relationships in the workplace are frequently identified as a source (as opposed to a predictor) of stress. There are some indicators (such as taking frequent leave or absenteeism) that point to workers suffering from workplace stress. When taken together, high levels of distress and low job satisfaction have been identified as precursors to stress claims (Dollard & Knott, 2004:350). Conflict, as an emotional experience, has psychological and physical consequences; psychological injury claims are therefore likely to also have medical outcomes (Dollard & Knott, 2004; Elshaug, et al., 2004). Dollard and Knott (2004:353) point out that psychological injury resulting from chronic work stressors (including interpersonal conflict) “...tends to have a poor prognosis in terms of claim duration [and] return to work outcomes”. The authors argue that organizational culture and support for injured workers, as well as beliefs and attitudes about psychological injury, impact negatively on these outcomes.

Workplace psychological injury is then both individual and collective since it occurs within the context of an organization. There also tends to be a higher degree of reporting delay with psychological injuries than with other workplace injuries (Elshaug, et al., 2004:529), often exacerbated by the stress of the claim process itself (Winefield, Saebel, & Winefield, 2010). But why some people go on to submit a workers’ compensation claim for psychological injury whilst others do not, is not able to be accurately predicted (Haines, Williams, & Carson, 2004; Haines, et al., 2006; Winefield, et al., 2010). Only one study reviewed suggested that psychological injury claims could be predicted; the indicator being worker perceptions of workplace unfairness (Winefield, et al., 2010).

Occupational Health and Safety (OHS) models often treat stress as an individual reaction to external conditions (Kelloway, Teed, & Kelley, 2008). OHS strategies and interventions relating to work stress occur at three possible levels: primary, secondary and tertiary. Most stress management interventions occur at either the secondary level (individual/organizational interface) that focuses on altering the way that individuals respond to stressors at work and improving their coping mechanisms; or the tertiary (individually-focussed) level that aims to minimise the effects of stress-related problems once they have occurred (Elshaug, et al., 2004; Lamontagne, Keegel, Louie, Ostry, & Landsbergis, 2007). Workplace dispute

resolution procedures are likely to be tertiary level interventions. In the USA (where it is more common for workers' compensation claims to be contested through litigation) the use of Alternative Dispute Resolution (ADR) mechanisms to resolve workplace conflict are becoming more widespread, although little is known about the effects of different types of ADR. ADR mechanisms do not result in a legally binding resolution and include strategies such as: open door policies; Ombuds; peer review; employment arbitration; and mediation (Bingham, 2004; Mahony & Klaas, 2008; Vickers, 2006).

Mediation

In general, mediation is understood to rely largely on facilitating negotiation among the parties to a dispute to bring about a successful outcome (Harkavy, 1999; Lewicki, Weiss, & Lewin, 1992). Research suggests that mediation produces better organizational outcomes than either no intervention or one involving judgement, such as arbitration, as it is often less expensive and more satisfactory to the parties involved (Bingham, 2004). Harkavy (1999:156) suggests that "mediation provides a comfortable forum for all parties and thus is more likely to facilitate a workable resolution to a dispute than a more adversarial process involving rights adjudicated in a formal setting under a fixed set of rules".

Generally, there are three types of mediation (Bingham, 2004; Nabatchi, Bingham, & Good, 2007):

- *Evaluative* – in which the mediator offers an expert opinion to assess the legal and substantive merits of a claim in order to give the parties information about the strengths and weaknesses of their case;
- *Facilitative* – whereby the mediator structures the process for the parties and engages in problem-solving techniques to move the parties toward settlement; and
- *Transformative* – less directive than the other approaches, the mediator provides opportunities for parties to clarify their own interests, goals and choices to reach a better understanding or acknowledgement of the other's perspective and to resolve their own conflict.

Mediation is becoming a progressively more significant aspect of organizational integrated conflict management systems. Considered to be effective in disputes involving strong emotions, mediation is increasingly popular as a means to resolve discrimination and harassment complaints. Mediation may help resolve the relational and emotional aspects of intractable conflict found in psychological injury claims (Retzinger & Scheff, 2000). It has been found that employees involved in an interpersonal dispute often simply want cessation and reconciliation rather than retribution (Harlos, 2004). For example, the possibility of an apology is possible in mediation but not in litigation, as it may be considered an admission against interest or evidence of liability (Bingham, 2004).

One key reason why mediation has been found to work in cases of interpersonal conflict is the mediation process itself. When people feel that a process is fair, they are significantly more satisfied with the outcome. Restorative justice (although this most often occurs in the context of victim/offender), fits well with the principles of transformative mediation; the goal being to heal relationships rather than balance hurt with hurt (Kidder, 2007). The three values of restorative justice are:

- *Participation* - by participating, it may be found that simple misunderstandings are at the heart of a dispute;
- *Reparation* - one of the most powerful forms of reparation is an apology (research on apologies at work has found them to be effective); and
- *Reintegration* – restoration of balance through forgiveness as parties are reintegrated back into the original “community” (Kidder, 2007).

Kidder (2007) argues that the concept of restorative justice, like mediation, has implications for organizations and especially for managers of teams in which conflict can be a barrier to effective performance. Restorative justice meetings can be used as a tool for the team to address issues such as poorly performing members and build interpersonal skills. Kidder (2007:15) maintains that this process may even mitigate future conflict situations by establishing strong group norms of trust and teamwork as well as perceptions of effective organizational justice. However, she cautions that this process is not appropriate for all situations, can be time consuming, and has to be carefully handled so that it may be prudent for an organization to engage an independent mediator to facilitate.

Although there is scant literature on the effectiveness of mediation in the Australian context, one paper discussed the effectiveness of combining facilitative and transformative mediation models in resolving workplace-based conflict (Manning, 2006). Manning suggests that using both models allows for behavioural changes in workplace interactions desired by employees and employers. In contrast, settlement-based mediation is less suited to workplace conflict as it does not address the underlying tensions between the parties. If not resolved, “...tensions and differences are likely to flare up again in future contexts such as meetings, lunch rooms, corridor interactions, functions, etc.” (Manning, 2006:87). The paper examines a series of 20 cases referred to independent mediation; 17 of which resulted in an agreement formulated at the time of mediation. At one month follow-up, 12 of these agreements were still operational.

A workplace employment mediation model that is successfully using a transformative mediation model is the United States Postal Service’s (USPS); “Resolve Employment Disputes, Reach Equitable Solutions Swiftly” (REDRESS™) program (Bingham, 2004; Bingham & Novac, 2001). This program reports having had a positive impact by significantly reducing caseloads of formal complaints to the US Equal Employment Opportunity Commission and is discussed further in the following section.

REDRESS™ – A Case Study

The USPS, with more than 800,000 employees, is one of the largest civilian employers in the world and the REDRESS™ program is now the largest employment dispute resolution program in the world. It is a nationwide program, designed as a non-adversarial process to improve USPS workplace relationships. The program involves an outside, neutral third party who serves as a mediator for complainant employees and respondent supervisors involved in discrimination disputes. Mediators are independent contractors, not USPS employees. The program is entirely voluntary for the employee complainant; the respondent supervisor is required to attend the mediation but not required to enter into any agreement. In most cases the mediation session is scheduled within 2 to 3 weeks of a complaint being registered.

A pilot phase began in 1994 using a facilitative form of mediation for which early results were promising. This led to a period of experimentation with various models during which time mediation was implemented in more than 27 cities throughout the USA. In 1997, the USPS management decided to implement the REDRESS™ program nationwide, selecting Bush & Folger's transformative mediation model. The goal of this model is to give both disputants an opportunity for their concerns to be heard and for informed decision-making; settlement is a by-product of the process.

During the 1999 fiscal year, more than 9,000 cases were mediated under this program with an overall closure rate of 81%. This figure includes cases where: full settlement was reached at the table during mediations; settlement was finalised within 30 days after the close of mediation; the complainant unilaterally withdrew their complaint after mediation; and cases where, after mediation, the complainant declined to pursue the case to the formal complaint level. Exit surveys (which did not include activity on the case after the mediation session) showed an average of between 60-65% of participants reporting full or partial settlement.

Examining the REDRESS™ program, Bingham and Novac (2001:324) concluded that "...outside neutral mediation can have a significant positive effect on an organization by resolving employment disputes at an earlier step in the administrative process". At the time, the authors noted that limitations of their findings concerned the relative newness of the program and that their study did not examine what happens in the mediation session itself, only the systemic evidence of what implementing the program did to formal EEO complaint filing in the organization as a whole. Furthermore, "it is impossible in this analysis to tease out the independent effects of [the] three salient design choices, that is, the transformative model, early intervention, and the high participation rate as a goal" (Bingham & Novac, 2001:327).

In 2006 Nabatchi, et al. (2007) "field tested" the REDRESS™ program to examine organizational justice in a workplace mediation setting. The authors noted that in general, studies of organizational justice models explain perceptions of fairness in a two-way relationship where one decision maker holds authority and control over

some kind of subordinate. In mediation, on the other hand, there is at least a three-way interaction of interest and a reduced power imbalance among participants. The aim of the study was to capture all possible interactions and outcomes of transformative mediation in the context of the workplace. A model comprised of six factors was proposed to assess the program's effectiveness:

1. *Distributive justice*: an emphasis on fairness in the distribution and allocation of outcomes whereby satisfaction is a function of outcome;
2. *Procedural justice - process component*: participants' perceptions of the fairness of the process itself;
3. *Procedural justice - mediator component*: objective assessment of the mediator's performance as a professional;
4. *Informational justice*: a focus on the enactment and explanation of decision-making procedures;
5. *Disputant-disputant interpersonal justice*: interaction between disputants and acts as a measure of how the employer/employee relationship has been repaired; and
6. *Disputant-mediator interpersonal justice*: assessing the disputants' interactions with the mediator.

The authors concluded that the model was a useful tool to assess the effectiveness of mediation. They also suggested that when structuring a workplace mediation process and training mediators, employers should emphasise opportunities for respectful exchange that contribute to perceptions of interpersonal justice between all parties, including the mediator.

However, due to the emotional nature of workplace disputes, simply having a model is insufficient, it is the interaction and interventions of the mediator as well as those which occur between the parties that creates opportunities for change (Manning, 2006:88). In her study on mediation, diversity and justice in the workplace, Catherine Shivers Powell (2009) found Nabatchi et al's model to be an effective analytical tool to investigate the degree to which mediators were able to show an appreciation and understanding of diversity in their practice.

Impediments to mediation

It is not a mediator's role to force or persuade people into a settlement. Sometimes, despite their best efforts, it may not be possible for mediators to help people to overcome their differences and resolve the problem. As Maxwell (1992:357) notes, "the parties must negotiate not just a settlement but a settlement they can live with".

A requirement of most mediation is that participation is voluntary so it is possible that one or both parties may refuse to engage. By the time mediation occurs, parties to a workplace conflict may have become involved in a situation marked by intense emotional experiences and developed assumptions about others' beliefs and

behaviour (Harlos, 2004). In such situations it is possible that an offer of mediation may be rejected by one or both parties.

Other reasons for non-participation include when more powerful parties have stronger rights of refusal. Or, a worker may feel they are being forced to take part in mediation, especially if loss of eligibility to compensation is a consequence of not participating. Claimants may even regard mediators as authority figures and see them as being more favourably inclined towards an employer (Harlos, 2004). Mediators must not only possess the skill to determine the type of mediation appropriate for each case but also to negotiate any barriers to the mediation process.

Nevertheless, it has been found that mediation can succeed even if parties to a dispute do not willingly agree to engage in the process. In a study of 449 cases handled by four major ADR service providers in the USA that proceeded to mediation, 78% were settled whether or not the parties had voluntarily participated (Brett, et al., 1996). Unfortunately this study did not state which type of mediation was employed in these cases, nor whether access to compensation for claimants was contingent upon participation.

Conclusions/Recommendations

Due to the subjective and emotional aspects of workplace interpersonal conflict, this review considers, in a return to work context, the relational rather than settlement-based features of mediation models. Notwithstanding that the majority of literature in this review refers to the North American context, mediation has been found to be an effective tool with which to resolve workplace-based interpersonal relationship conflict, particularly when supported by organizational commitment through ADR strategies, policies and processes. The role of an independent mediator is crucial in the mediation process; to be successful, it requires a suitably qualified and/or skilled practitioner to negotiate the often tricky emotional situations involved in workplace relationship conflict and to judge which mediation model best suits each case.

As there is currently little evidence in the Australian context for the role of mediation in resolving psychological injury claims due to workplace relationship conflict from an employee or employer perspective, and especially in the occupational rehabilitation and return to work contexts, this review recommends that further research be undertaken in this regard.

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