

9 February  
1987

(Reasoned Judgment)

IN THE ROYAL COURT OF THE ISLAND OF JERSEY  
(INFERIOR NUMBER)

28

Before Mr. Commissioner T. A. Dorey  
Jurat M. G. Lucas  
Jurat C. L. Gruffy

Her Majesty's Attorney General

- v -

Resources Recovery Board, Christopher Ronald Fritot and Richard John Luce

Advocate W. J. Bailhache for the Board  
Advocate C. M. B. Thacker for Fritot and Luce

The Resources Recovery Board was charged with an infraction of Regulation 8 of the Electricity at Work Regulations 1983, in that conductors in a system to which these Regulations apply were not (a) suitably covered with insulating material; or (b) suitably placed and such other precautions taken so as to prevent danger.

These Regulations were made pursuant to Article 2 of the Safeguarding of Workers (Jersey) Law, 1956, which says "The States may make regulations providing for the safeguarding of the health, safety and welfare of workers." This, therefore, is the prime purpose of the "Electricity at Work Regulations".

In its defence the Board relied to a large extent on the argument that its equipment complied with the current British Standards, as set out in BS 5486. Evidence was given on this point by two defence witnesses, Mr. Hayward and Mr. Kurn, both of whom stated that as regards Cubicle No. 3, where the accident occurred, air was a suitable insulating material, and that the conductors were further suitably protected by means of a steel door or panel.

The Court accepts that in general the equipment of the Board complies with British Standards, in particular BS 5486 - 7.4.5.2 and 7.4.5.3. It also complies with 7.4.1.1.3(a)(removal of door by use of key or tool) but not it seems, with 7.4.1.1.3(b) (disconnection of live parts which can accidentally be touched after the door is opened) or 7.4.1.1.3(c) (internal barrier or shutter shielding all live parts in such a manner that they cannot accidentally be touched when the door is open). Nor did the Board follow the guidance "it may be necessary to provide warning labels". To satisfy British Standards only one of (a) (b) or (c) was a necessary requirement. For reasons given below, the Court finds that this does not satisfy the Jersey Statutory Regulations.

In his evidence for the Board Mr. Hayward admitted that although air insulates terminals from each other it does not give any protection from inadvertent contact. He also admitted that if a spanner had been dropped into the conductors' cubicle from the bus-bar chamber above, the effect could have been serious. This was a point that was accepted by most other witnesses. Mr. Hayward also conceded that the British Standards are basically guide-lines to construction, but that they have their own built-in safe-guards. However the Court cannot accept the view that compliance with British Standards must imply compliance with the Jersey Statutory Regulations.

The first point for the Court to decide was whether under Regulation 8(a), air is an insulating "material" in context with the words "suitably covered with". Apart from the significance of "suitably covered", the plain ordinary meaning of "material" is, also, something tangible, or, as Mr. Symes said in his evidence for the Second Defendant, "manufactured". This is in accordance with the authority of Lord Chief Justice Hewart in *Long - v - Kirk* [1938] 1 All ER 142, who not only held that the 1908 Regulations for the Generation, Transformation, Distribution and Use of Electrical Energy were imperative, but that "covered with insulating material" meant "adequately covered with insulating material of such quality and thickness that there is no danger". Moreover it is a well established principle in interpreting a statute that the Court must give effect to the intention of the legislature as elicited from the actual words of the statute. This principle was clearly enunciated in *Jersey Maincrop Potato Marketing Board - v - de Gruchy* (JJ 1819). As has been said, the purpose of these Regulations was to provide for the safe-guarding of the health, safety and welfare of workers. Bearing this in mind the Court has no doubt that the "insulating material" required must be some tangible material, that is, some form of shrouding that gives protection to workers from inadvertent contact with conductors.

As we find that the Board did not comply with Regulation 8(a) it is now necessary to decide whether it complied with 8(b). The conductors were placed in a cubicle, the door of which could only be removed by a tool, the whole system being placed in a locked chamber to which only authorised persons had keys. However, it is the purpose of the Regulations to prevent danger befalling workers, and the tool by which the door of the cubicle could be removed was an ordinary spanner readily available even to a newly joined apprentice.

The Court therefore finds that other precautions should have been taken so as to prevent danger. These precautions should at least have included affixing warning notices to the door of the cubicle indicating that the cubicle contained live conductors and making easily available a proper circuit diagram from which the electricians could have properly informed themselves of where the terminals would be. The Board submitted that the First Tower pumping station in which the equipment is installed was a controlled area as defined in Regulation 9. The Court finds that there was little evidence to indicate that this was so, and in any case agrees with the prosecution that both Regulation 8 and Regulation 9 stand on their own and should not be taken together. For the above reasons we find the Board guilty as charged.

The second defendants, Mr. C. R. Fritot and Mr. R. J. Luce, were charged with a breach of Article 4(a) of the Regulations in that they did not conduct their work in accordance with Regulation 16, in that they allowed an apprentice under their supervision, Mr. R. Watts, who was not competent to avoid danger, to come into contact with live conductors forming part of an electrical system. Late in the hearing it was accepted that, although both Mr. Fritot and Mr. Luce had been jointly supervising Mr. Watts, at the time of the accident Mr. Luce was not directly supervising him, and so he was discharged.

Advocate Thacker, for Mr. Fritot, argued that "allowing" should be equated with "permitting" and that "mens rea" was necessary to support a finding of guilt. But Mr. Fritot was not charged with "permitting", which has a special technical meaning. He was charged with failing to conduct his work in accordance with the Regulations. Part of his work on the day of the accident was the supervision of the young apprentice, Mr. Watts, who had started work only the day before. It was Mr. Fritot's duty to ensure that Mr. Watts, who was clearly not competent to avoid danger from the system on which he was working, did not put himself in peril. Mr. Fritot was in clear breach of this duty. By telling Mr. Watts to open the back panel of Cubicle No. 3 without giving him his close personal supervision he was not conducting his work in accordance with Regulation 16. It was his duty, on being asked by Mr. Watts if he should open the panel, to have got down from the ladder on which he was and stood by Mr. Watts, and when the panel had been removed to have himself tested the conductors and ensured that they were not live before allowing Mr. Watts to look for a bolt that had dropped into the cubicle from the bus-bar chamber above, or, preferably, to have carried out the whole operation himself. We therefore find Mr. Fritot guilty as charged.