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(Samedi Division)

16th December, 1992

226.

P.R. Le Cras, Esq., Lieutenant Bailiff,
and Jurats Orchard and Herbert

The Attorney General

- v -

Charles Le Quesne (1956) Limited

1 infraction of Article 21(1)(a) of the Health and Safety at work (Jersey) Law, 1989.

PLEA: Facts admitted.

DETAILS OF OFFENCE:

Site Agent permitted employee to work on Benford Paddle Mixer owned by sub-contractor when he knew the mixer had no safety locks and APD had given notice it should not be used. Employee foolishly put hand in when engine was running - had trapped for 20 minutes whilst paddle cut free - extreme pain - but full recovery. Newton hearing findings against Defendant on all facts in dispute.

DETAILS OF MITIGATION:

Large Company with positive attitude to safety. Safety booklet given to all employees.

PREVIOUS CONVICTIONS:

8th November, 1991, Health and Safety Law Article 3: £6,000 plus costs £500.
1987 Safeguarding of Workers Law: 2 Counts £1,500 plus costs.
1980 Construction Safety Regulations: 2 Counts £200 plus costs.
1973 Construction Safety Regulations: 17 Counts £1,155 plus costs.

CONCLUSIONS:

A fine of £4,000 plus £1,500 costs.

SENTENCE AND OBSERVATIONS OF THE COURT:

£4,000 fine. Costs reduced to £250. Despite Newton hearing Court not prepared to increase fine by large costs order. Defendants should not be deterred from putting forward robust defence by fear of costs order.

J.A. Clyde-Smith, Esq., Crown Advocate.

Advocate M. St. J. O'Connell, for the Defendant Company.

JUDGMENT

THE LIEUTENANT BAILIFF: The accident occurred when an employee of the Defendant Company placed his hand in a Benford paddle mixer.

We found yesterday on the facts relevant to the R. -v- Newton 77 Cr.App.R.13 case for the defence put forward by the Company and do not propose to repeat our findings.

There is a clear and heavy duty which lies upon employers in these cases. This is not relieved in this instance by the carelessness of their employee. Although we accept, as did Mr. Myers, that it might, in hindsight, have been better had the Defendant Company received a copy of the letter to Mr. Tindall, this does not, in our view, relieve them of responsibility. Mr. McCormick was in fact advised of the danger; there had just been an accident on a site elsewhere which was, we heard, generally known in the trade; and there had been a notice in the Gazette which, in our view, ought in these circumstances to have caused

the management to make enquiry of their foreman as to what was on their sites and to have warned their foreman.

We have been referred to the past record of the Company. We accept that in general they are careful; but the battle is an unending one and here, in our view, they have failed. Their situation is not, in our view, on all fours with that of Mr. Tindall.

We accept the conclusions of the Attorney General and impose a fine of £4,000.

As to costs, these are, of course, in the discretion of the Court. Mr. Clyde-Smith has, quite properly, conceded that they ought not to be used as an indirect fine. I have to balance, it seems to me, the desirability of ensuring that the time of the Court is not wasted by specious defences against the desirability of ensuring that Defendants are not prevented from coming to Court to speak freely without the fear of costs being added to any criminal penalty to which they may be liable. In the instant case I propose to make an order of £250 for costs in favour of the Crown.

Authorities

A.G. -v- Tindall and Unicorn Plasterers (10th July, 1992) Jersey
Unreported.

A.G. -v- S.G.B. (Channel Islands) Ltd. (5th June, 1992) Jersey
Unreported.