

ROYAL COURT
(Samedi Division)

9

11th January, 1991

Before: The Deputy Bailiff, and
Jurats Bonn and Le Ruez

The Attorney General

- v -

S.G. Benest & Son, Limited.

Infraction of Article 3 of the
Health and Safety at Work (Jersey)
Law, 1989.

PLEA: Guilty.

DETAILS OF OFFENCE: A 15 year old Saturday employee, while cutting meat on a food slicer which did not have a safety device, caught his finger on the slicer. On the prosecution version, he lost the tip of the finger. There had been a similar accident with a 14 year old four months earlier, after which the Accident Prevention Officer had advised the company (1) to install a safety device, and (2) only to allow full time established mature staff to use the machine. This was treated as the most significant aggravating factor.

DETAILS OF MITIGATION: The company had ordered a safety device but had not yet installed it. They had had a meeting prior to the APO's letter, and thought that they had been given to understand that they could use 16 year olds. The victim told them (falsely) that he was 16. He had not lost the top of his finger, only a sliver of flesh. He was still working for them.

PREVIOUS CONVICTIONS: None.

CONCLUSIONS: £8,000 fine and £500 costs.

SENTENCE AND OBSERVATIONS OF THE COURT: The prosecution had not supplied the Court with the assistance which it should have had. The prosecution had laid stress on the fact that there had been an earlier

accident and that the company had disregarded the advice then given it, but the Court now knew that this was not so. The case of SGB was quite different. The defence had cast doubt on the applicability of AG -v- Young. Fine reduced to £1,500, costs £250.

The Attorney General.
Advocate C.M.B. Thacker for the defendant company.

JUDGMENT

DEPUTY BAILLIFF: The Court finds itself in some difficulty. But with regret, we have to say that the prosecution is the author of its own misfortunes because the Court has not received the degree of relevant assistance which it feels entitled to expect.

In view of the submissions of Advocate Thacker, the Court has doubts whether the case of A.G. -v- Young applies. It may be that it does, but Mr. Thacker has cast doubt on the proposition which we are unable to resolve without further detailed submissions. In the circumstances the benefit of the doubt must be given to the defendant company.

The Court cannot accept the submission of the Attorney General that the case of A.G. -v- S.G.B. (C.I.) Ltd (23rd November, 1990) is comparable. That case involved the collapse of a substantial scaffold. We are told that nine persons were employed at the top of the scaffold - presumably all of them fell, or could have fallen to the ground below; also there were forty-four persons beneath the scaffold; mercifully only three persons were slightly injured but, on the very sparse facts put before us, there must have been the potential for fatal or very serious injury.

The Attorney General accepted that in the present case there was danger to a single employee rather than a group. But he claimed here a wanton failure to take advice after an identical accident two months earlier. The duty of care to young people is correspondingly higher he

said - with which we agree - but he said that permanent injury to a 15 year old was the result - that is not borne out by the information put before us by the defence; the youth accepted replacement occupation, was back at work in two weeks, takes a relaxed view of the incident and his hand seems to show complete recovery. Again the benefit of the doubt must go to the defence - in default of a medical report which should have been available to the Court. The prosecution claimed that the victim had lost the tip or top of his index finger. We are told and have to accept that the blade removed only a sliver of flesh from the tip of the finger.

The prosecution very much relied on the previous accident and the alleged failure to take advice after that identical accident only two months before. But we now know that within one week of the advice the defendant had ordered the recommended attachment.

Therefore, we cannot agree that one factor - the group danger - and the alleged failure to comply with advice - balance each other out.

This case, in our view, is wholly different and must be dealt with on its own merits.

The defendant company understood that it had been told that sixteen was the minimum age for employees to use the machine in question and adopted a policy of checking the age of temporary workers. They were assured by Lee Morley that he was sixteen.

Having said all that we must make it clear that the defendant company remains responsible and properly admitted the infractions. An understanding as to age is not enough - they should have made certain. After the previous accident, quite apart from ordering an attachment, the defendant company should immediately have established a programme of training for its staff. This it failed to do.

The company therefore remains culpable for the offence. The Court considers an appropriate fine to be £1,500 which we hereby impose. And the company will pay costs of £250.

Authorities

A.G. -v- Young (1980) JJ 281.

A.G. -v- S.G.B. (Channel Islands) Limited (23rd November, 1990) Jersey
Unreported.