South Australian Industrial Relations Court

[Index] [Search] [Download] [Context] [Help]

Loizidis v SA Sawmilling Pty Ltd [2001] SAIRC 31 (20 August 2001)

Last Updated: 6 November 2001

Loizidis v ***SA Sawmilling*** *Pty Ltd* **[2001] SAIRC 31**

INDUSTRIAL RELATIONS COURT (SA)

LOIZIDIS, Vasilios

v

SA SAWMILLING PTY LTD

JURISDICTION: Prosecution

FILE NO/S: AMC 00-9036

HEARING DATES: 20 September, 22 November and 18 December 2000, and 15 March, 22 March, 8 May and 17 May 2001

JUDGMENT OF: Industrial Magistrate RE Hardy

DELIVERED ON: 13 July 2001 - Published 20 August 2001.

CATCHWORDS:

Prosecution - Guilty Plea - Three charges - Occupation Health, Safety and Welfare Act, 1986 - Timber processing plant.

S 19(1) - Failure to ensure so far as was reasonably practicable that employees were safe from injury and in particular that failure to provide and maintain a safe system of work and plant in a safe condition - Failure to protect the access areas to waste conveyor and tail roller of waste conveyor - Failure to guard chains and sprockets beneath jack ladder - Failure to guard the area below the jack ladder - Failure to have a lock-out system sufficient to isolate conveyor - Failure to guard the access points to debarking unit - Failure to have a lock-out system on jack ladder.

S 20(1)(a) and (b) - Failure to provide information, instruction, training and supervision - Failure to warn employees of the fact that the conveyor was not guarded and of the dangers involved in working near the conveyor whilst operating - Failure to warn employees that debarker was not effectively guarded - Failure to prepare and maintain policies relating to occupational health - Failure to keep up to date a written statement of arrangements, practices and procedures of several kinds to protect employees.

S 61 - Failure to appoint one or more responsible officers for the purposes of the Act.

Defendant carried on business of ***sawmilling*** *and processing of timber, including the mechanical peeling and debarking of softwood logs - Deceased employee engaged as a debarking operator which entailed sweeping waste bark from the bays of the jack ladder into the operating waste conveyor of the debarking operation - Plant was unguarded allowing access to the waste conveyor of the machine - Jack ladder bay surface slippery and inclined downward to the access point of the waste conveyor - Employee entangled in conveyor resulting in death.*

Convictions recorded:

Penalties: Count 1.) $33500.00

combined with Count 2.)

Count 3. 1500.00

Count 4. 1000.00

Counsel fee 1500.00

Court costs 105.50

Levy ($28x3) 84.00

$37689.50

Sentencing factors: contrition, effect of evidence relating to subsequent removal of guards installed after accident - whether removal of guards and substitution of administrative controls satisfied legislative requirement to "ensure so far as is reasonably practicable'.

Consideration of factors relevant to application for compensation for grief suffered by widow and son of deceased.

Order pursuant to ***s 53*** ***of the*** ***Criminal Law (Sentencing) Act 1988*** *that the defendant company pay compensation to each of the deceased's widow, EDITH LOGAN and the deceased's son, KEITH LOGAN, the sum of $4200.*

Stevenson v CSR Limited T/as CSR Wood Panels (M31/19992)

Stevenson v CSR Limited T/as CSR Wood Panels (M32/1992)

REPRESENTATION:

Counsel:

Applicant: Ms J Lee-Justine

Respondent: Mr RJ Baxter with Mrs S Emmett and later Mr A Martin

Solicitors:

Applicant: Crown Solicitor's Office

Respondent: Johnson Winter & Slattery

1 The defendant company ("**SA Sawmilling** Pty Ltd") has pleaded guilty to three charges laid under s 19(1) of the Occupational Health Safety and Welfare Act 1986. The company is charged on complaint that:-

"(1) On the 22nd day of November 1999, at the premises of **SA** **Sawmilling** Pty Ltd situated at Wickhams Hill Road, Meadows in the said State, the first defendant, being an employer failed to ensure so far as was reasonably practicable that its employees, including MAXWELL JOHN LOGAN were, whilst at work, safe from injury and risk to health and, in particular:

(a) failed to provide and maintain so far as was reasonably practicable a safe system of work, specifically the in-feed system comprising the log deck, the waste conveyor and the jack ladder conveyor; and

[incorporating Count (2)] the debarking system comprising the debarking unit, the operator's console and the out-feed conveyor

(b) failed to provide and maintain so far as was reasonably practicable plant in a safe condition, specifically the waste conveyor and the jack ladder conveyor; and

[incorporating Count (2)] the debarking unit

(c) failed to provide such information, instruction, training and supervision as were reasonably necessary to ensure that the employees were safe from injury and risk to health.

Contrary to **section 19(1) of the Occupational Health, Safety and Welfare Act, 1986**.

Particulars

1.1 Between April 1997 and 22 November 1999 (inclusive) the first defendant carried on the business at its premises situated at Wickhams Hill Road, Meadows, of saw-milling and processing of timber, including the mechanical peeling and debarking of softwood logs.

1.2 On and before 22 November 1999, the first defendant, engaged a number of employees, including WAYNE FRANCIS EDWARDS, GARY MARSTON CANDY and RICHARD GLEN CHRISTISON, to perform the task of debarking operator.

1.3 On and before 22 November 1999 the employee, MAXWELL JOHN LOGAN, was employed as a debarking operator by the first defendant.

1.4 On and before 22 November 1999, the said employee was engaged in sweeping waste bark from the bays of the jack ladder into the operating waste conveyor (`the plant') of the debarking operation.

1.5 On 22 November 1999, the first defendant failed to provide and maintain so far as was reasonably practicable a safe system of work in respect of its employees in that it:

(a) required the employee to work on a plan which was unguarded, allowing access to the waste conveyor of the machine;

(b) required the employee to sweep bays from a jack ladder the surface of which was slippery and inclined downwards to the access point of the waste conveyor, placing the employee in an unsafe position.

1.6 On 22 November 1999, the first defendant failed to provide and maintain so far as was reasonably practicable plant in a safe condition in respect of its employees in that it:

(a) failed to place guards around the access points to the waste conveyor and the tail roller of the waste conveyor, and

(b) failed to prevent access to unguarded chains and sprockets beneath the jack ladder and the area to the rear of the jack ladder where rejected logs were ejected from the top of the jack ladder to the ground.

Contrary to AS (Australian Standard) ´755-1986, `Conveyors - Design, construction, installation and operation - Safety requirements', in particular `section 5: Guarding'.

(c) failed to have a lock-out system in place.

Contrary to AS (Australian Standard) 4024.1-1996, `Safeguarding of machinery', `part 1: General principles', in particular `Section 14: Isolation & Energy Dissipation' and Contrary to AS (Australian Standard 1755-1986, `Conveyors - Design, construction, installation and operation - Safety requirements, in particular `Section 4.8: Conveyor Control'.

[and incorporated those particulars from Count (2) relevant to the debarking unit]

(a) failed to place guards around the access points to the debarking unit, in accordance with AS (Australian Standard) 4024.1-1996, "Safeguarding of machinery", "Part 1: General principles", in particular "Section 8: Physical Barriers - Design & Construction", and

(b) failed to have a lock-out system in place in accordance with AS (Australian Standard) 4024.1-1996, "Safeguarding of machinery", "Part 1: General principles", in particular "Section 14: Isolation & Energy Dissipation".

1.7 On 22 November 1999, the first defendant failed to provide such information, instruction, training and supervision as was reasonably necessary to ensure that its employees were safe from injury and risks to health in that it:

(a) failed to warn its employees that the waste conveyor was not effectively guarded;

(b) failed to warn its employees of the dangers of working in the vicinity of the unguarded waste conveyor while it was operating; and

(c) failed to supervise its employees during the operation of the waste conveyor while it was not effectively guarded.

[and incorporated those particulars from Count (2) relevant to the debarking unit]

(a) failed to warn its employees that the debarking unit was not effectively guarded;

(b) failed to warn its employees of the dangers of working in the vicinity of the unguarded debarking unit and log conveyor while they were in operation;

and

(c) failed to supervise its employees during the operation of the debarking unit and log conveyor while they were not effectively guarded.

(3) On the 22nd day of November 1999, the first defendant, being an employer, failed to prepare and maintain, in consultation with health and safety committees and its employees and any health and safety representative of those employees, polices (sic) relating to occupational health, safety and welfare at the workplace; and failed to prepare and keep up to date a written statement setting out with reasonably particularity the arrangements, practices and procedures at the workplace protecting the health and safety of its employees at the workplace; and take reasonable steps to bring the contents of that statement to the notice of those employees.

Contrary to section 20(1)(a) and (b) of the Occupational Health, Safety and Welfare Act, 1986.

Particulars

3.1. Between April 1997 and 22 November 1999 (inclusive), the first defendant failed to undertake consultation in order to prepare and maintain policies relating to occupational health, safety and welfare. The first defendant purported to adopt the policies and procedures of CSR Timber Products on and from April 1997 when the first defendant purchased the site.

3.2. Between April 1997 and 22 November 1999 (inclusive), the first defendant failed to prepare and maintain policies relating to occupational health, safety and welfare, specifically policies relating to:

Manual Handling Procedure; First Aid; Electrical Safety; Plant Isolation and Lockout; Footwear and Clothing; Job Safety Analysis; Reporting of Fires Procedure and Hot Work Permit\Notice.

3.3 Between April 1997 and 22 November 1999 (inclusive), the first defendant failed to provide a written up to date statement setting out arrangements, practices and procedures at the workplace and as a consequence failed to bring the contents of that statement to the notice of its employees.

(4) On the 22nd day of November 1999, the first defendant, being a body corporate carrying on business in the said State, failed to appoint one or more responsible officers for the purposes of **section 61 of the Occupational Health, Safety and Welfare Act, 1986**.

Contrary to **section 61 of the Occupational Health, Safety and Welfare Act, 1986**."

2 These charges have arisen out of an accident which occurred on 22 November 1999 when the employee named in the combined complaint Maxwell John Logan was killed as a result of his entanglement in the conveyer machinery mentioned above. A prohibition notice was issued the same day as the accident and removed on 3 December when the relevant Inspector was satisfied that appropriate guarding and procedures had been put in place.

3 The defendant carries on business at its premises at Meadows of saw-milling and processing of timber including the mechanical peeling and debarking of softwood logs. The process conducted for the purposes of these charges is the latter. The constituent units mentioned above are all part of the de-barking plant.

4 The plant as it was at the time of the commission of the offences on 22 November 1999 is well depicted in the photographic evidence. Logs for processing were placed in bulk upon a flat area called the log deck and by means of moving chain surfaces were moved on towards the conveyor and jack ladder. At the far end of the log deck is a unit termed a "kicker", the function of which is to separately feed logs from the bulk supply to the machinery. The speed of the operation is basically determined at that point by the operation of the kicker to sent the log or logs on their way up an inclined surface termed the jack ladder, another parallel chain surface, for further processing. Between the log deck and the jack-ladder lies the waste conveyor. This comprises a motor driven system of paddles on a continuous chain which scoops away the bark which has fallen from the logs

at the end of the log deck and also that displaced by the kicker. The conveyor paddles operate below the level of the log deck and the jack ladder. The bark falls to the bottom of the conveyor chute and is scraped/carried away from the site, up an incline where it falls into a bin placed beneath an opening in the upper end of the chute. Viewed from above it is possible to see the paddles returning to the far end of the chute where they round a large chain sprocket (the "tail roller") and then pass back in the opposite direction carrying the waste bark. The deceased fell into the waste conveyor machinery so that, like the bark, the conveyor carried, his body was ultimately carried along the bottom of the chute to the point where it emptied into the bin.

5 There is a substantial build up of bark at the junction of the log deck and the jack ladder and its presence clearly presents an impediment to the continuous operation of the plant. Despite the conveyor system intended to remove it, the bark also accumulates on the jack ladder surfaces and at the tail roller end of the conveyor previously described where it reverses direction via an exposed sprocket. That sprocket and the attendant pair of chains were completely unguarded. The build up of bark around it tended to conceal but in my view only minimally protect it. Assuming that the conveyor was operating, the exposed and heavy chains and paddles presented a danger to any worker in the vicinity. Should a worker be required to go under the log deck or conveyer area there was further sprocket and chain exposure. It was certainly necessary for workers to approach the tail roller for the build up to be cleared from time to time and shovelled into the chute where it could be carried away by the conveyor.

6 However, the major and relevant accumulation was on the jack ladder. It required sweeping many times daily because it interfered with the operation of and carriage of the logs up the jack ladder. The deceased was engaged in such a sweeping operation when he fell into the conveyor. At the time he was standing on the lower jack ladder surface itself which is inclined overall at about 30 degrees from horizontal but at the foot of which is a small, less inclined, but not horizontal surface. There were slip marks on that surface. They were in all probability made by the deceased before or as he fell. The surface having regard to the video and photographs was work-polished by the passage of logs over it and generally rust free. It is a smooth surface which poses no obvious impediment to slippage. It is the surface which had apparently just been swept of bark debris.

7 At the top of the jack ladder the logs change direction from being lifted laterally to travelling longitudinally into the debarker itself. At that point logs which are skewed or unsuitable are ejected to the ground from a height which I estimate to be between two and three metres. There was no means of protection, such as a fence, which could prevent employees or other persons from walking into the falling impact area. In evidence there was mention of some of the logs weighing more than one tonne. Some appeared to be much less than this but in any event they posed a substantial hazard to any person in the vicinity beneath.

8 The conveyor system was operated continuously. It was switched on and reversed by controls located at the side of the conveyor chute. Those controls were quite inaccessible to anyone standing on the jack ladder. There was no means by which an operator in difficulty could halt it nor any means by which the conveyor was stopped by an interlock system when an employee entered the area for cleaning purposes. There is no reason apparent to me why the sweeping operation could not have been just as effectively achieved without the conveyor in operation. There was no need to keep it running.

9 The logs at the top of the jack ladder travel longitudinally into the debarker. The debarker rollers themselves and the sprockets and drive chains are not protected from human access. It is fair to say that access would not have been easy to all points of danger and as I understand matters, not generally required, but there were no guards and there was no automatic interlock cut out systems should a person draw near to the operating and very dangerous machinery. It is difficult to imagine a more dangerous item than the debarker depicted in the video.

10 Further and finally the logs were transported longitudinally along a further raised conveyor where they were graded and "kicked" into the appropriate bins. The tail roller sprocket at the end of this continuous chain was again unfenced and unguarded by an interlock device.

11 Clearly this plant system was extremely dangerous for many reasons and the site of the accident which befell Mr Logan did not stand out as the most obviously so. The duty to make the plant safe was breached in many ways. The defendant company was operating machinery which posed obvious dangers to its workmen. It comprised heavy equipment with several danger points and had the capacity to handle heavy items which in themselves were dangerous, particularly when elevated and ejected. Although they were not the subject of the complaint, there were other areas of danger and risk which were subsequently corrected after the accident such as the exposed motor drive to the conveyor and the potential for logs to fall onto the jack ladder over the kicker which were clearly poised at times to do so, higher than the kicker, and which could endanger an employee sweeping in the manner of Mr Logan. There was also the potential for access by untrained employees to an electrical power board. The entire plant was in my view long overdue for a comprehensive risk assessment and remedial action on occupational safety grounds. There was an obvious and pronounced failure to observe the statutory standards. It is a matter of concern to me and a factor in culpability that the dangers posed by the plant were not those sometimes seen of one off or temporary risk but part of a continuous industry in a daily operation where the risks were omnipresent. Whilst accepting that the charges relate only to one particular day there can be no discount for the element often seen in this jurisdiction of unusualness or temporariness of the risks posed to the workmen.

12 Further, associated with the risks to its employees, there was no attempt of any significance to acquaint employees with the dangers involved in the operation of the plant. To require employees to operate plant which was essentially unsafe is one thing, but even accepting those risks, to fail to warn the employees is quite another. There was no information, training, instruction or supervision. There can be no argument that the risks were not obvious but it is my view that they were not appreciated by management. In all, the breaches detailed in counts one and two combined are very serious indeed and potentially place the defendant on the higher end of the scale of culpability for risk.

13 The further charges relate firstly to the defendant's failure to prepare and maintain policies relating to occupational health and safety at the workplace and failure to prepare and maintain a written statement setting out arrangements practices and procedures protecting the health and safety of its employees and bringing the contents to the notice of those employees. The defendant had inherited and operated the plant from the previous owner CSR Limited some two and a half years before the accident involving Mr Logan. In that time it did virtually nothing to identify and nullify the risks involved in the operation of the machinery. It did not create the necessary practices and procedures let alone communicate them to its employees. I will return to this aspect. The best that can be said for the respondent is that it relied upon the procedures of its predecessor and the experience of its workforce.

14 Finally the defendant is charged that it failed to appoint a responsible officer under **s 61 of the Act**. This charge is clearly made out. Whilst the newly appointed manager Mr Spaulding might have had included in his job description that he was responsible for occupational health and safety he was not so appointed under **the Act**.

15 I turn to the evidence and submissions of the defendant in mitigation of the offences. The defendant company has admitted its guilt and has accepted that its own administrative procedures were inadequate at the time of the accident. It was admitted that there had been a complete breakdown of the OH and S system but it was maintained that the accident was caused by an employee operating the debarker in a manner which was not in accordance with the procedures which existed for the operation of the sawmill which was in part that employees performing

maintenance or cleaning were not to do so when it was operating.

16 The respondent called to give evidence Mr Pratt, the respondent's production manager who said that he had commenced to work for the respondent, which has another operation site at Wingfield, in about September 1998, about fourteen months prior to the accident. Although he had previous occupational health experience and training he had not been instructed to conduct a comprehensive review of occupational health and safety of the plants until only two months before the accident. He said that well before that time, on 19 March 1998, about one year after the defendant took over the business, the **SA** Operations Manager had advised all employees that all existing safety policies and procedures implemented by its predecessor CSR were to be used until further notice. The operations manager also indicated that **SA Sawmilling** would have its own policies and procedures in due course but the implication was that the CSR policies and procedures were to apply in the mean time. Among those policies was a general stipulation that all machinery be turned off for cleaning and maintenance but there was no specific reference to any part of the plant. Mr Pratt said that the defendant company had taken over the business as a going concern including most if not all of the workforce. It was submitted on behalf of the defendant company that all of those employees had been trained by CSR and that the defendant having sighted certain training documents were entitled to assume that all employees had been inducted and trained appropriately and would continue to apply CSR policies. To my mind this is an assumption that the defendant company was not entitled to make. The defendant was not entitled to substitute CSR's risk assessment and training for its own or to assume that because CSR was a multinational company that sophisticated procedures were in place. The act imposes a duty upon the defendant to ensure, so far as is reasonably practicable, the safety of its employees by such measures and the defendant's actions fell far short of this standard. The argument might have some efficacy for a short immediate period after the business was taken over but in this case a period of more than two and a half years had passed. The defendant company simply did not place a sufficiently high priority on its safety obligations. It had plenty of time to conduct its own risk assessment and training and although it possessed certain documentation from CSR which indicated that safety issues had been addressed, procedures put in place and training effected, it had no way of properly quantifying and assessing those actions, particularly as it was aware that any training that had taken place was effected years before.

17 I note however, that between the time of the takeover of the business and the date of the accident there were no less than four different managers of the business and that least two attempts to review the occupational health and safety policies of the defendant were frustrated by such changes. The last appointed manager had appointed Mr Pratt to perform that function only two months before the accident and indeed some training had already commenced by the date of the offences. I therefore do not lay blame at the feet of Mr Pratt but rather elsewhere upon management. Mr Pratt had not had sufficient time to do what was required of him. He had acquired certain documentation but his evidence was that he had not yet conducted an examination of the plant. This factor cannot assist the defendant greatly because regardless of administrative difficulties and the frustrated initiatives, the defendant ought to have within a span of two and a half years made occupational health a sufficient priority to have performed the review well before the time of the accident.

18 I take into account that the defendant company acted speedily and to the satisfaction of the Inspectorate after the accident occurred. As I have indicated, within a span of eleven days the plant was again operational with ostensibly satisfactory guarding after the prohibition notice was lifted. This factor cuts two ways. It shows what might have been achieved by the defendant had it directed its mind to issues of safety at an earlier juncture (when productivity was not threatened), but it also must receive some credit for the measures taken after the risks were illustrated to it.

19 I reject any argument to the effect that the defendant believed that the mill was appropriately guarded because it was consistent with other mills in this industry. Should that be the case the purpose of the legislation would be avoided. It is for each employer to make its own assessment and put in place its own safety measures in response to its individual obligations and not the practices in

any industry.

20 Additionally I accept that the defendant has embarked upon a comprehensive safety programme as a result of the accident. I note that it has approached safety in a variety of ways since that time. I note the presence of safe working instructions, and training in these new instructions and their updates. Hazard audit checklists have been instituted. The defendant has also prepared policy documents which define the roles of directors and senior employees in matters of occupational safety. It has prepared a safety programme with further drafted updates for ensuing years. It now has a properly functioning safety committee which has *inter alia* regard to injury statistics and local and WorkCover data. It has identified hazards in conjunction and cooperation with Workplace Services and has complied with all improvement notices and recommendations made for improvements. It has recruited an occupational therapist for individual risk assessment of employees. The defendant has also engaged an OH and S consultant to develop a manual of policies and procedures: most of which have been implemented. This document includes policies relating to such matters as to how to deal with contractors and strangers on site and factors such as pre-start-up checks, maintenance and repair of guards etc. The company now has full training records. It has proper supervision and maintains a policy of continual improvement. It had previously not been aware of a hazard in the electrical system which had enabled untrained workers to access power panels. It has as a result implemented a system whereby a level 2 qualified electrician is the only employee with access to the panel. Mr Pratt said that he was satisfied that he had done what he could and though the improvement is not complete it has improved as part of the company policy of continuous improvement.

21 The company has spent a substantial sum upon OH and S expenses since the accident. It has seen a cultural and attitudinal change towards safety in its workforce as a result of the accident and its initiatives. It has seen and tolerated a reduction in production levels in order to achieve safer work practices.

22 Mr Pratt related how the accident to Mr Logan had had a profound affect upon the company and its employees. He said that morale had suffered and stress leave had increased as a result of it. The company and the workforce had observed the anniversary of Mr Logan's death.

23 I accept that the defendant company has indeed shown that it is genuinely sorry that the accident occurred and that it has demonstrated its willingness to comply with all statutory safety requirements. I think that it has worked hard to make the sawmill safe. I take into account that it pleaded guilty at a relatively early stage and that these are its first time before a court on such matters. I propose to discount the fine by 10 per cent that I would otherwise have imposed because of the guilty pleas.

24 Considerable evidence was given, ostensibly in respect of the defendant's attitude to occupational health and safety about its subsequent removal of guards and fences which were installed by 3 December 1999 as a direct consequence of the accident and the prohibition notice. That attitude was said to reflect upon the defendant company's level of contrition for the offences. I do not propose to canvass all of this evidence but I do indicate that much of it related to the complete removal of the checkerplate guards which had been installed over the open waste conveyor chute and to the partial removal of the end sprocket guard. I also understand that fencing around the reject log drop area had also been removed. Although I permitted the evidence to be given I am now of the view that it is not relevant to the defendant's contrition and that in particular I ought not to draw the conclusion that the defendant has deliberately or defiantly removed the guarding or that it has a cavalier attitude to occupational health.

25 Having heard the evidence of Mr Pratt I am satisfied that it is at least arguable that each of those guards in question was unsuitable for the purpose for which it was designed and that the plant could not be operated to any satisfactory level with them in place. The plant is old and not designed with such considerations in mind. I accept that the defendant has in effect substituted administrative

controls for what was a mechanical system of prevention of risk but it does not thereby necessarily follow that merely because the measures were administrative and lower on the hierarchy of risk prevention that they do not satisfy the requirements of the legislation to ensure **so far as was reasonably practicable** the safety of workers. It was submitted by Mrs Emmett who appeared for the defendant that the period after the accident was a "trial and error" and a "testing" time for the defendant. I accept this and I see no reason why in the circumstances I should not accept that the original measures which were put in place hurriedly (within eleven days) might not have proven to be impracticable. In other words it has not been proven to me that the altered condition of the guarding was not the highest level of reasonable practicability available to the defendant. It seems to me that such an issue could possibly form the basis of a further prosecution but it would require something of that level of proof for me to be satisfied that the defendant had not even then done all that was reasonably practicable to ensure the safety of its workers.

26 Overall I have reached the conclusion that the offences, particularly the combined offence were very serious indeed. The defendant has clearly been negligent in its attitude and priorities given to occupational health and safety. I cannot ignore the fact that for more than two and a half years the defendant had not even conducted an appropriate examination of its Kuitpo plant nor that the dangers of the plant were not appreciated and rectified at an earlier time. It concerns me that on the evidence no responsible person had examined the Kuitpo plant and equipment with a view to safety or had looked at work practices over that period. As was illustrated by the death of Mr Logan the open conveyor chute was potentially lethal. At the very least one could have expected severe injury to a worker falling into it from a slippery surface. The potential for persons being struck by falling logs from the reject end of the jack ladder was also quite apparent to an observer, not to mention the dangers posed by unshielded chains and sprockets which I would have thought by now were well publicised in industrial circles.

27 I accept that there is a degree of overlap between the above offence and that embodied in count three but the failure to prepare and maintain occupational health policies is a different thing from securing premises even if implementation of those policies might have had the same result. The fact is that the defendant did not even get to the point of properly assessing the workplace premises let alone producing a policy. In fact the defendant company did not comply with an even earlier step, namely the appointment of a responsible officer.

28 On count one there will therefore be a conviction and a fine of $33500.

29 With respect to count three the maximum penalty is a division six fine of $5000. I record a conviction and impose a fine of $1500.

30 With respect to count four the maximum penalty is a division six fine of $5000. I record a conviction on count four and impose a fine of $1000.

31 The prosecution has sought its costs in the matter in the amount of $1500. They comprise a most reasonable claim of $500 for the costs in respect of the guilty pleas and the necessary attendances over four days and a further sum of $1000 incurred in the successful defence of an application for further and better particulars by the defendant. There was no dispute as to the quantum of this claim and no order for costs was sought or made at the time of my determination refusing the application for particulars. Had I been asked to order costs at that stage I do not doubt that I would have awarded them to the successful party.

32 Although Mrs Emmett has argued that the costs of that application should be costs in the cause and therefore confined to the $500 sought, I am of the view that firstly there is no impediment to my consideration of costs at this stage and allowing them. The application was heard and determined by me and I remain in as good a position as I was then to do so. It therefore makes no difference to me whether Ms Lee-Justine reserved her right privately to Mrs Emmett to seek costs at a later juncture.

33 Secondly, if costs on the application are indeed to be considered to be included as costs in the cause then it would be inequitable to confine the prosecution to an amount it has agreed upon a different basis for work which excludes the application.

34 Finally as it is my function in fixing costs at this stage to allow a reasonable amount to cover the costs of the whole carriage of the prosecution I consider the proper discharge of that function is to now allow an appropriate overall amount and I do so in the sum of $1500. There were three charges remaining out of the original larger number: court costs, $105.50; Criminal Injuries Compensation Act levy, $28 for each conviction - $84. It is a total of $37689.50.

35 Finally I am to consider an application made by the prosecution for an award of compensation for grief to each of the deceased's widow Edith Logan (dob 11 August 1952 and his son Keith Logan (dob 15 August 1971) pursuant to s 53 of the *Criminal Law (Sentencing) Act 1988*. The prosecution seeks an award totalling the maximum I am able to award under s 53(5)(c) of $20000 without recommendation or interest in the manner in which that amount is to be divided between them.

36 I am of the view that such an approach would be contrary to the intention of the provision. S 53 is designed to provide a summary and inexpensive way of compensating a person for injury (including grief) without recourse to separate proceedings to establish civil liability. It seems to me that my function under that provision if I am to exercise it is to award an appropriate amount of compensation and not regard the maximum as an amount for division between the victims.

37 Certain objections were raised by counsel for the defendant to an award for grief to the deceased's widow. As I understand submissions, there was no objection to that relating to the son.

38 The principle of these objections was that the widow having already received a lump sum, presumably as a cohabiting spouse, pursuant to the *Workers Rehabilitation and Compensation Act 1986*, was barred from an award for compensation by the application of s 53(5)(b)(ii) as a sum awarded against an employer in favour of an employee or former employee where the injury loss or damage was compensable under that Act.

39 I do not agree. In my view that provision is applicable only to an employee of the employer defendant. The widow was not an employee. Although she was the widow of a worker for the purposes of the Act itself and thereby eligible for certain payments, the Sentencing Act uses different terminology which I assume to be deliberate. Whilst an employee might be debarred from the benefits of s 53 it appears to me that the intent was not to debar those who were not employees but eligible for benefits under the *Workers Rehabilitation and Compensation Act* such as cohabiting spouses. Mr Martin submitted that that was an unusual result but that is not to say that it was not the legislative intention. Had the legislature intended to debar all victims who were in receipt of benefits under the *Workers Rehabilitation and Compensation Act* it would have been a simple thing to say so.

40 Even if I am wrong in this, it seems to me that the injury, loss or damage, resulting from the offence(s) within the meaning of s 53, being grief, is not a compensable disability under the *Workers Rehabilitation and Compensation Act* anyway. That Act does not include in the definition of disability any reference to grief.

41 Mr Martin relied upon the application of s 54 of that Act which provides that no liability attaches to an employer in respect of a compensable disability arising from employment by that employer except a liability under the Act. **It is my view therefore that** s 54 can have no application. Grief is not so compensable.

42 The deceased's widow has been paid a presumably Div 6 lump sum under that Act as previously

indicated. It was just that - a lump sum payable as compensation on death which might otherwise be equated to the proceeds of a life insurance policy. It is not categorised in any other way so that it not possible to rule out an element of payment of solatium and it may be possible to infer that historically. However, such a payment is a formulaic approach to compensation to all spouses and a simply calculable amount payable in certain set circumstances. The widow's application before me goes further than that because she is also the victim of a statutory breach by the employer and her grief was suffered in unusual circumstances which were sudden, harrowing and preventable. It is my view that the **Workers Rehabilitation and Compensation Act** does not seek to address such circumstances but the Sentencing Act clearly does.

43 I therefore order pursuant to **s 53** that the defendant company pay compensation to each of the deceased's widow Edith Logan and the deceased's son Keith Logan in the sum of $4200. I regard that as the appropriate sum in this case having regard to awards of solatium made in this state by civil tribunals. No such award can of course properly compensate for the grief incurred over the loss of a loved one but such an award is some recognition of that fact.

44 I observe the reluctance of those tribunals to enter into a comparative analysis of the quantum of solatium awards.

45 In making those awards I indicate that I have had full regard to both of the decisions of *Stevenson v CSR Limited T/as CSR Wood Panels* (M31/1992) and *Stevenson v CSR Limited T/as CSR Wood Panels* (M32/1992) in both the first instance and appellate jurisdictions. I am not of the view that there is double compensation. I consider that the issue can be simply determined. I accept that there has been no cross examination upon the material provided in the Victim Impact statement but neither was it sought. Those statements were not marked as exhibits but there was no objection to them being handed up. The issue of grief is essentially a simple one and there is no reason to doubt its presence in the measure described on the statements.

46 The total of fines, costs, compensation and levy is $46089.50. I allow 28 days for that to be paid.