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IN THE DISTRICT COURT
HELD AT CHRISTCHURCH

30090032904-5

DEPARTMENT OF LABOUR

v

Waste Management N.Z. LTD

Before: Judge M J Green
Date of Sentence: 18 April 1994
Counsel: Mr Lange for Informant
Mr McVeigh for Respondent

REMARKS ON SENTENCE

The defendant company has pleaded guilty to a breach of the Health & Safety & Employment Act 1992, it being charged that it failed to comply with s16 of that Act in that being the owner of plant in a place of work, failed to take all practicable steps to ensure that people in that place of work were not harmed by a hazard that arose at the place of work, by failing to ensure that the machinery was adequately guarded.

I commence by describing the nature of the machinery as submitted to me by Mr McVeigh and not challenged by Mr Lange for the prosecution.

It is a waste compactor, the compaction being carried out by a hydraulic ram. Obviously to compact waste, waste has to be fed into the area where the hydraulic ram operates where there is any such opening or aperture where material is fed in. Finally, there must be an opportunity for individuals to place the whole or any part of their bodies within that aperture. That no doubt, as the plea of guilty accepts, creates a hazard. Here there was no guard whatsoever so that the compacting ram could not be operated except at a distance remote from the ram, thus the operator of the switch causing the ram to work could not be injured. That of course does not take into account the possible or potential presence of other people. Ultimately the guarding that was adopted was to place a cage around the area in which the ram operates. To have an opening at the top through which waste could be fed, the opening at the top having a gate which could be closed and indeed closure of that gate was a necessary act before the electric switch operating the ram could operate. Thus no hazard arises with that particular guarding mechanism in place.

It would seem to me that a company which operates undoubtedly a variety of different waste compactors and hires them out to other organisations should have the skill and ability to recognise a hazard and the skill and ability also to remedy the hazard. The defendant company failed to do this, hence its plea of guilty. The failure to do so is said to be by way of oversight in that it was amongst other machines taken over by this company from another company earlier and that the defendant company, I accept, was not aware that this was an unguarded machine. That of course is no excuse, its obligation is to know the state of all the machinery which it uses or hires out and to ensure that it complies with

the provisions of the Act. Therefore there is an element of failure by the defendant which warrants a penalty.

The nature of the penalty, or the extent of the penalty, is very much in contention before me. This particular machine was hired to Canterbury Frozen Meat Company, was operated by Canterbury Frozen Meat Company employees. It is common ground that some 12 months before this offence arose that the Canterbury Frozen Meat Company was served with a compliance notice. It was equally obvious that that company did absolutely nothing about complying and indeed failed completely to inform the defendant company of the receipt of the compliance notice. When, in the fullness of time, the Labour Department again inspected the machine, found it to be non-complying, a further notice was issued prohibiting the use of the machine, the defendant company was informed and took the appropriate steps, as I have indicated, to guard the machine properly. The Department decided, in its wisdom, to prosecute the defendant company but not to prosecute Canterbury Frozen Meat Company.

On the material before me it seems to me that while the defendant company is culpable and that it is appropriate for me to conclude for the purpose of sentencing, without making binding statements relating to CFM, that the culpability level of this defendant seems to me to be less than Canterbury Frozen Meat Company's culpability. However, I expressly state that I have not heard from the Canterbury Frozen Meat Company and what I have to say is not a finding of culpability by them and I find it quite surprising that only one of two apparent defendants was prosecuted. Mr Lange has explained that it was a decision made by the Department and in any event as is not uncommon it may well have

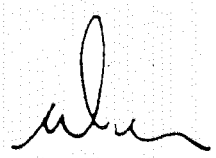
been that to prove an offence against one would need the co-operation of the other and therefore a choice is made as to which is prosecuted in order to secure evidence which may lead to a conviction. I cannot see that principle being of particular relevance here. It is a large company with many employees, none of whom would be incriminating themselves if they gave evidence, and therefore it does seem to me to be an adequate reason for not prosecuting.

Had this failure to prosecute the other not been a factor it would seem to me, having regard to the guidance recently given this court by a full court of the High Court on the level of penalties, that a substantial penalty should have been imposed rather less than the penalty actually imposed on the hearing of that appeal because, to use Mr McVeigh's colourful expression, the ram moves, he says, with 'glacial slowness'. These days it seems that some glaciers move at a metre per day. I suspect this is somewhat faster than that, but it is perhaps at such a speed as to enable anybody who was in danger of the compaction process of having adequate opportunity to ensure any inadvertent lapse of concentration which led to their being in danger. In other words, the speed of the process was not such as to deprive anybody in potential danger of adequate opportunity to remove him or herself from that danger, therefore the penalty should take that into account. However, having regard to the matter that concerns me already mentioned ,even-handedness amongst those who are similarly or even more culpable, I feel that there should be a further reduction in what would otherwise be an appropriate penalty.

I am not prepared to do as Mr McVeigh suggests, discharge the company without conviction, indeed the defendant should suffer a penalty but for

the reasons which I have already given the penalty which I now impose is substantially less than might appear appropriate in other circumstances.

The company will be convicted and fined $1,000.00, costs $95.00, ordered to pay solicitor's fee of $75.00.



M J Green
District Court Judge