IN THE DISTRICT COURT
AT TAURANGA

I TE KŌTI-Ā-ROHE
KI TAURANGA MOANA

CRI-2024-070-000597
[2024] NZDC 21758

WORKSAFE NEW ZEALAND
Prosecutor

v

TRANZIT GROUP LIMITED
Defendant

Hearing: 6 September 2024

Appearances: T Braden for the Prosecutor
S Marin for the Defendant

Judgment: 6 September 2024

NOTES OF JUDGE M M MASON ON SENTENCING

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[1] Tranzit Group Limited was charged with and pled guilty to contravening s 36(2), s 49(1) and s 49(2)(c) of the Health and Safety at Work Act 2015, which has a maximum penalty of a fine not exceeding $500,000.

[2] The defendant was charged with being a PCBU having a duty to ensure, so far as is reasonably practical, the health and safety of other persons, including [redacted], [redacted], were not put at risk from work carried out as part of the conduct of the business or undertaking, namely providing a school bus, failed to comply with that duty. The particulars are it was reasonably practical for the defendant to have carried out an adequate risk assessment of the modification to the internal heater line and ensured the risk of the temporary join was adequately managed.

[3] The sentencing criteria, the way that we must do sentencings when we are dealing with this Act, is firstly we need to have regard to ss 7 to 10 of the Health and Safety at Work Act, the purpose of the Health and Safety at Work Act, the risk of and potential for illness, injury or death that could have occurred, whether death, serious injury or serious illness occurred or could reasonably have been expected to have occurred, the safety record of the person, including, without limitation, any warning, infringement notice or improvement notice issued to the person or enforceable undertaking agreed to by the person to the extent it shows whether any aggravating feature is present, the degree of departure from the prevailing standards in the person's sector or industry as an aggravating factor and the offender's financial capacity or ability to pay any fine to the extent that it has the effect of increasing the amount of fine.

[4] We also need to take into account s 7 of the Sentencing Act 2002, holding the defendant accountable for the harm done by the offending, promoting in the defendant a sense of responsibility for that harm, providing for the interests of the victim, denouncing the conduct in which the defendant was involved, and deterrence both in relation to the defendant and more generally, as well as the s 8 factors, the gravity of the offending, including the degree of culpability, the seriousness of the type of offence as indicated by the maximum prescribed penalty.

[5] The focus of the Health and Safety at Work Act is as follows:

> (1) The main purpose of this Act is to provide for a balanced framework to secure the health and safety of workers and workplaces by—
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> (a) protecting workers and other persons against harm to their health, safety, and welfare by eliminating or minimising risks arising from work or from prescribed high-risk plant; and
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> (b) providing for fair and effective workplace representation, consultation, co-operation, and resolution of issues in relation to work health and safety; and
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> (c) encouraging unions and employer organisations to take a constructive role in promoting improvements in work health and safety practices, and assisting PCBUs and workers to achieve a healthier and safer working environment; and
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> (d) promoting the provision of advice, information, education, and training in relation to work health and safety; and

(e) securing compliance with this Act through effective and appropriate compliance and enforcement measures; and

(f) ensuring appropriate scrutiny and review of actions taken by persons performing functions or exercising powers under this Act; and

(g) providing a framework for continuous improvement and progressively higher standards of work health and safety.

[6] The approach to sentencing is as directed by *Stumpmaster v WorkSafe New Zealand*.[1] We need to firstly assess the amount of reparation, secondly fix the amount of the fine by reference to the guideline bands and then having regard to the aggravating and mitigating factors determine what further orders should be made under ss 152 to 158 and then make an overall assessment of the proportionality and appropriateness of the sanctions imposed by the first three steps.

[7] So firstly, the assessment of the amount of reparation. I am going to go through each of the steps addressing both submissions from each side.

[8] In terms of the WorkSafe position, they have referred me to *WorkSafe New Zealand v Taranaki Sawmills Limited*[2] and also to *WorkSafe New Zealand v New Zealand Defence Force*,[3] where similar type injuries were suffered by the people impacted in those accidents. Against that the defence have referred me to *WorkSafe New Zealand v Beach Energy Resources NZ (Kupe) Ltd & Ors*,[4] and also to *WorkSafe New Zealand v Asurequality Ltd & Anor*,[5] which also had some applicable factors. In addition to that I have been addressed about the way that the defence seeks me to treat the third victim, who has not filed a victim impact report.

[9] I have heard the victim impact statements read out today, but also in addition to that I have read the remainder of [redacted] victim impact statement written by her mother and I have taken that into account as well. It is quite clear that both [redacted] and [redacted] and [redacted] sister have suffered trauma from this event. They have suffered quite significant pain throughout and since and have both suffered scarring, which has

1 *Stumpmaster v WorkSafe New Zealand* [2018] NZHC 2020.
2 *WorkSafe New Zealand v Taranaki Sawmills Limited* [2021] NZDC 18112.
3 *WorkSafe New Zealand v New Zealand Defence Force* [2022] NZDC 5429.
4 *WorkSafe New Zealand v Beach Energy Resources NZ (Kupe) Ltd & Ors* [2019] NZDC 2822.
5 *WorkSafe New Zealand v Asurequality Ltd & Anor* [2020] NZDC 23107.

affected their day-to-day self-esteem and their ability to take on tasks that they once would have done without question, and I certainly acknowledge that ██████ is here today. ████ is not, but her parents are, and I acknowledge ████ as well.

[10] We have not heard so much about the impact on ██████, except we do have in the summary of facts the reference to her having the injury, having a swollen hand, and the fact that her arm was in a sling. Both her and ████ missed their school camp and the impact of that obviously is quite significant given, as ██████ parents have referred to, that is really when you create your social relationships at school, which are incredibly important for children this age. In addition to that she has suffered from that ongoing issue because she has not been able to create relationships, although has created a relationship with ██████ given their common issue.

[11] I do also acknowledge that this is an ongoing trauma for both ██████ and ████ with their scarring that they are going to have to live with and that this was a very long road of recovery, which really in essence is not over. I have to take that into account when I set the reparation amounts.

[12] I do consider that the authorities that have been referred to by WorkSafe are more relevant in terms of the types of injuries and the types of trauma suffered, and that for both ██████ and ████ I set the reparation at $10,000.

[13] We do not have the impact of the ongoing trauma available to us without the victim impact report for ██████ but we do know that she suffered and did miss camp. I acknowledge that without that information that could have been provided to us I am less able to assess her ongoing needs and so I will direct that she get $7,500 to acknowledge that we are absent of any ongoing issues.

[14] Then I go to fixing the amount of the fine. WorkSafe New Zealand submit that the culpability is medium. They make that submission on the basis that they say what was done was inadequate, that the system itself was not necessarily inadequate but the material used must have been perished for this to have occurred, and in that respect they say a medium level of culpability applies. In addition to that there was no casing around the hose and they say that elevates it to a level of medium culpability.

[15] The defence say well actually the method used was acceptable and there is nothing to suggest that it was not the right thing to do, however acknowledge that something has gone wrong because the method did not work; the hose failed and this occurred. In addition to that they have gone through and undertaken remedial steps.

[16] It is acknowledged that there was not a wilful or reckless element involved here because the leak was noticed, it was repaired, the bus was taken off the road. They did all the checks that they thought were appropriate and put it back onto the road after a safety test that was passed. Obviously, that was insufficient because then the hose burst.

[17] I am willing to accept that the culpability is just under medium and set the starting point at $70,000, and then we need to go through what the mitigating factors are.

[18] In relation to the mitigating factors, it is accepted by WorkSafe that co-operation with the investigation is appropriate as a discount of five per cent. The fact that the defendant will be paying reparation of a significant amount is also valid, so that is five per cent. There has been an indication of remorse. There was an offer to go to a restorative justice conference. That did not occur, but I acknowledge that the offer was there, so that must be minimal but still available at five per cent. The fact that there is previous good character. The defendant has not previously had any health and safety convictions, and that is accepted as well by WorkSafe, so that is a further five per cent. An early guilty plea discount of 25 per cent is available and also the remedial works discount of five per cent. So that comes down to 50 per cent from that initial amount of $70,000, which brings us down to $35,000.

[19] Then we consider whether further orders are necessary, and it is conceded and accepted by Tranzit that an order for costs of $2,672.37 is an appropriate order to be made in favour of WorkSafe.

[20] As I have said, I am not going to read out the summary of facts, but I am happy for it to be released with the appropriate redactions made for the suppression orders, and Ms Bartlett from the media has conceded that anyway.

[21] The last step is the proportionality assessment. It must be proportionate to the offending and the offender and also the ability to pay needs to be considered. There are no submissions regarding the ability to pay so no adjustment will be made in that respect.

[22] The final issue is that the defendant has offered to enter into a s 155 order, and I have that joint memorandum with the proposed order attached. That is under s 155 of the Health and Safety at Work Act. The order is going to be that the specified project order requires Transit Group Limited to the fullest extent, reasonably possible, to prepare and present to the Bus and Coach Association Technical & Regulatory Committee relating to the incident that formed the basis of the conviction and the lessons to be learned from it.

[23] The presentation will focus on heater systems, the risks they present and the various ways in which to minimise those risks, the learnings in respect to modifications and repairs and the need for further risk assessments, and learnings in respect to new build bus suppliers for the New Zealand market. The condition that will be imposed will be to provide WorkSafe New Zealand with a copy of the presentation materials following the presentation. Following completion of the above, file confirmation in affidavit form that the project order has been complied with.

[24] The consequences of non-compliance will be a failure to comply without reasonable excuse may result in a charge under s 159 of the Health and Safety at Work Act, which is punishable by a fine not exceeding $250,000.

[25] In Court today I am aware that the defendant's representatives are present and are actively managing and working on that project. That is an important aspect indeed, particularly when it seems that there is not a lot of work done on this type of issue, so that is going to be incredibly helpful to the community and to the industry. I will acknowledge that with a further 20 per cent discount.

[26] That is a fine of $21,000, reparation of $10,000 for [redacted] $10,000 for [redacted] and $7,500 for [redacted]

[27] I am ordering costs of $2,672.37.

[28] I am granting the order pursuant to s 155 of the Health and Safety at Work Act as I have just read.

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Judge MM Mason
District Court Judge | Kaiwhakawā o te Kōti ā-Rohe
Date of authentication | Rā motuhēhēnga: 12/09/2024