

4 pages.

ROYAL COURT

184

6th December, 1991.

Before: the Bailiff, assisted by
Jurats Vint and Rumfitt.

Attorney General

- v -

Flaherty and Company Limited

OFFENCE:

Art. 18 of Safeguarding of Workers (Electricity at Work) (Jersey) Regulations, 1983; Art. 21(1)(C) of Health & Safety at Work (Jersey) Law, 1989.

PLEA:

Guilty.

DETAILS OF OFFENCE:

In digging trench across main road at Route Orange, St. Brelade, employee struck 11,000 volt cable with jack hammer spike. Cable automatically tripped and current earthed without injury to employee. Report from JEC indicated employee very lucky not to have been killed. Failed to follow accepted industry safety procedures set out in safety pamphlet - did not obtain plans from JEC or use detector.

DETAILS MITIGATION:

Large turnover. 150 trenches dug a year mainly without incident. Hammer necessary to remove rock - it slipped unfortunately. Men always looking for cables - employee 30 years experience.

PREVIOUS CONVICTIONS:

1989 Construction (Safety Provisions) Regulations: £1500.
1971 Construction (Safety Provisions) Regulations: £110.

CONCLUSIONS:

£6000 + costs £500.

SENTENCE AND OBSERVATIONS OF THE COURT:

£6000 and £500 costs.

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

Advocate M. M. G. Voisin for company.

JUDGMENT

BAILIFF: By the regulations, under which this prosecution is brought, it is clear that the defendant company did not, in the words of the summons, "so far as is practicable take all such steps as were sufficient to avoid the danger arising from the said workers or worker, striking and damaging an 11,000 volt electricity cable". That infraction is admitted. We accept that a jack hammer was used at a level where it was not expected to find the cable.

On the other hand the booklet issued by the Jersey Council for Health and Safety at Work, in January, 1990, with particular reference to underground electric cables and the avoidance of danger on construction sites, lays down in paragraph 1/1(5), four measures which are recommended to be taken and are accepted in the trade. Two of these measures require the obtaining of plans and drawings from the appropriate authority and the use of a suitable cable-locating device during the

excavation work. Neither or these two steps were taken by the defendant company. It appeared to rely on its experienced ganger or experienced men, working in the trench expecting to find the cables; but there is a great deal of difference between men who get into trenches expecting to find cables and knowing where those cables are. Had they had a sight of the JEC plan they would have been alerted more accurately to the location of the cable and indeed had the company used a suitable cable-locating device, which they had available, and the men to use it, it would have at least located the cable, if not absolutely accurately, at least to within a certain amount of tolerance. It would have warned workers of the proximity of the cable far more accurately than just hoping they might find it, by good luck.

Under the circumstances we are quite satisfied that the company failed in its duty which it has to its workmen. Both men were extremely fortunate, but as Mr. Clyde-Smith has said, that is no reason to allow the company to benefit from the good fortune of their employees and under the circumstances and having had explained to us what might have happened and taking into account the previous record, even the good record, of the company we cannot say that the fine is excessive and the conclusions are therefore granted.

Authorities

A.G. v. G. Hopkins & Sons Ltd. (29th September, 1989) Jersey
Unreported.

A.G. v. Charles Le Quesne (1956) Limited (8th November, 1989)
Jersey Unreported.

A.G. v. Ready Plant Limited (4th October, 1991) Jersey Unreported.

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