

ROYAL COURT
(Samedi Division)

225

15th December, 1992

Before: P.R. Le Cras, Esq., Lieutenant Bailiff,
and Jurats Orchard and Herbert

The Attorney General

- v -

Charles Le Quesne (1956) Limited

Infraction of Article 21(1)(a) of the Health and Safety at Work (Jersey) Law, 1989.
Infraction admitted, but the defendant company put forward a version of the facts significantly different from
that put forward by the prosecution.
(See: R. -v- Newton, 77 Cr.App.R.13).

J.A. Clyde-Smith, Esq., Crown Advocate.
Advocate M. St. J. O'Connell for the Defendant Company.

JUDGMENT

THE LIEUTENANT BAILIFF: The Defendant Company has pleaded guilty to a charge brought under sub-paragraph (a) of paragraph (1) of Article 21 of the Health and Safety at Work (Jersey) Law, 1989. This concerns the use of a Benford paddle mixer owned by Unicorn Plasterers Limited, but which was being operated by an employee of

the Defendant Company. There is no question but that the machine was not fitted with a necessary key lock arrangement.

There is a conflict of evidence as to whether the Site Foreman and Safety Officer of the Defendant Company, Mr. G. McCormick, knew of the requirement for this safety lock.

Counsel for the prosecution referred the Court to R. -v- Newton 77 Cr.App.R.13 reported in Archbold (1993 Ed'n): para. 5-43. We propose to follow the procedure there outlined and to hear evidence as to the disputed facts. These cover three areas:

(a) whether Mr. Cousins of S.G.B (Channel Islands) Ltd called at the end of November, 1991, and gave a demonstration of the safety locks;

(b) whether on the 25th November, 1991, Mr. McCormick informed Mr. Tindall of Unicorn Plasterers that the machine was defective and should not be used;

(c) as to Mr. McCormick's involvement in placing Mr. Putnam, the injured man, on the machine on 23rd December, 1991, the date on which the accident occurred.

Counsel for the Crown accepted that the standard of proof was the ordinary standard of proof in criminal cases.

We do not propose to rehearse the evidence at length.

We are quite satisfied that, following a bad accident on the Boots' site, Mr. E. Cousins of S.G.B (Channel Islands) Ltd did call on the site at the end of November, did see the Unicorn machine running on the site, did make a comment to Mr. McCormick

that it was unsafe and unsatisfactory, and that the latter had said that it was a complicated but clever system.

Equally we are quite sure that, after the machines were photographed on 25th November, Mr. McCormick did indeed advise Mr. G. Tindall and Mr. Le Corre, his employee, that the machine was unsafe and should not be used.

As to 23rd December, when the accident occurred, we are quite clear that Mr. McCormick as the Safety Officer on the site knew or ought to have known the machine was not to be used and must bear the responsibility of placing Mr. Putnam, or allowing Mr. Putnam to be placed on the machine.

In every case where the evidence of Mr. McCormick conflicts with another witness we prefer the evidence of that other witness.

We should add that in assessing this evidence we have very much borne in mind the standard of proof to which counsel referred us and have applied that standard.

Authorities

Archbold (1993 Ed'n): para. 5-43.