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NORTHERN TERRITORY OF AUSTRALIA

WORK HEALTH COURT

No: 22115258

WORK HEALTH AUTHORITY

and

TYRONE TROY TAYLOR

(Sentencing Remarks)

JUDGE WOODCOCK

TRANSCRIPT OF PROCEEDINGS

AT DARWIN ON 27 OCTOBER 2022

Transcribed by:
Epiq:

HIS HONOUR: Okay, the defendant, Mr Tyrone Troy Taylor, has pleaded guilty to in his absence today and through counsel to three charges that – a failure to comply with a primary health, safety, duty care under s 32 and 19(2) of the *Work Health and Safety Act*.

On 18 May 2019 namely on that day at Fred's Pass, being a person conducting a business or undertaking a health and safety duty under s 19(2) of the said Act, to ensure so far as is reasonably practical, the health and safety of other persons is not put at risk on work carried out as part of conduct of the business or undertaking, failed to comply with that duty and the failure exposed the individual, namely Brian Challom and also charge 4, identically Sharon Challom to a risk of death or serious injury or illness.

Contrary to s 32 of the *Work Health Safety Act* and on charge 6 on the same day at the same place and of the same legislation did, being a person conducting a business or undertaking a health and safety duty under s 92 of the said Act, fail to ensure as far as is reasonably practical, that the health and safety of the other persons is not put at risk from the duty of care carried out as part of the business or undertaking. Failure to comply with the duty.

And really the gravamen of the offending on 4, is failing to take sufficient care such as to expose those individuals to a risk of death or serious injury or illness. That's the gravamen of the offending in a failure leading to potential death or injury and so that is what informs the court in this process as to the objective seriousness of the offending. And the objective seriousness here is high because the potential for danger or death is high. It's not the actual injury suffered. It's the potential that is the essence of the charge. And informs the court as to the objective seriousness of the offending.

As the facts set out – so, much paperwork here - on the day in question, the employee was operating the octopus ride and another employee was assisting the passenger to be seated, ensure the seatbelts were fitted. The octopus ride had been in operation for approximately 2 hours and all the gondolas were full. Approximately 1 minute in to an operation of the ride, Nicholia(?) heard a loud unusual noise and felt movement on the platform he was standing on. He could see the ride was not operating normally.

Approximately 3 seconds after hearing a noise, having initially surveyed the situation, Nicholai partially applied the brakes. Nicholai further surveyed the situation and observed one tension ride had snapped. He then fully locked the brake, stopped the ride with such force that his feet almost left the platform. From the initial noise of the tension ride snapping, the octopus ride took approximately 10 seconds to stop. This 10 second period includes the 3 second interval between Nicholai hearing the noise and partially applying the brakes.

A further interval of unknown length in which Nicholai looked up to ascertain the issue then looked back down to fully apply the brakes and another further interval of unknown length when Nicholai fully applied the brakes to the point at which the ride

came to a complete stop. During this period of approximately 10 seconds the ride made two full rotations. A sweep arm floor had cracked and its gondola directly impacted with the trailer platform on both rotations in the course of the second rotation before making contact with a loading platform behind the sweep.

The gondola landed on the ground upside down and on top of its occupants, Brian Challom and Sharon Challom. They were subsequently transported to hospital and released, diagnosed with soft tissue injury of the leg. We've read the victim impact statements. The impacts, the distress have been ongoing and not so much physical but emotional. And compensation is consented to on the basis as discussed with counsel. I therefore assess the objective seriousness of the offending as high.

This occurred at the Fred's Pass Rural Show. It's a long-standing show, second only to the Darwin Show. There's always a side show alley type area where children and young adults and sometimes other mature couples go along to have a treat, to have a ride on the rides. And the community very much trusts to the safety of this, I guess, inherently dangerous activity and the proprietors of such rides. The risks are extreme. And on this day the damage to the machine and the physical result of that leaves me in no doubt as to the potential danger.

Having said that, it is an early plea. This defendant is a person who's never been in trouble with the court before. Has pleaded guilty at the earliest. Has cooperated with the authorities. Is working today and is a person who had relied upon qualified engineers to assess in the past the proper structural integrity of this device it seems wrongly and it seems also that it wasn't current, to the point where his obligation wasn't being complied with and the trust the community had placed in him was not being observed, potentially resulting in extreme danger to those cherished people of the community. This category of people I describe that go along for a day and have a little ride at the side-show carnival of the show. The rural show.

I take those matters into account. The potential maximum is \$300,000. I have seen the financials. The financials really go only to the trading years, the last two trading years. And I don't doubt people that put on events like this and other people involved in hospitality have had probably their worst trading years ever. I know nothing about cash in hand. I know nothing about potential assets to call upon. I really know nothing about the financial affairs of the defendant or capacity to pay, other than the superficial material that I have. Which does set out he's had a dreadful time over the last two years as people have in these related industries.

To the degree that I have that, I take that into account. But I don't have the full picture to consider his capacity to pay a fine. Nonetheless, it should be proportionate. It's an unusual offence, this and – but the regulation is very important for the reasons that I have stated. I consider those matters and the subjective factors. I know this is comfortably mid-tier offending, serious offending. The subjective factors relating to the good character that I've read about, the previous steps taken and the lack of criminal history wind the punishment back somewhat to

the affect that as I carefully consider all of those conflicting sentencing principles, it would seem to me, \$30,000 is about where we're at. The maximum being \$300,000.

And as I've said, I think it fair to take into account that in the compensation. And it's caused great ongoing distress to the victims. I read their victim impact statement. Very fairly and a factor I take into account in mitigation, the defendant has consented to the compensation. And therefore, the sentence will be – this part anyway, will be structured as follows; there will be a fine of \$10,000. There will be compensation for Brian Challom of \$10,000 and compensation for Sharon Challom of \$10,000. I come to consider whether or not there should be a conviction. The Supreme Court set out, on a number of occasions, s 8 must be considered and weight should be given to each of the three limbs under subs (1).

There's more broadly a discretion but in part the exercise of the discretion should be concerned with the weighing of these factors. The character, antecedents, age, health or mental condition of the offender. The character is good. Antecedents are good. The extent, if any, to which the offence is of a trivial nature. This is not an offence of a trivial nature. The extent, if any, to which the offence was committed under extenuating circumstances. It seems to me that the defendant has relied up on those previous engineers reports to some degree. Although, he has significant or immense experience with these machines in this industry. So, I suppose that's to be taken into account.

It's not small thing for a hard-working person with no criminal history to be convicted. And it seems to me, in these circumstances, giving weight to these factors but moreover considering my discretion, it's not really a matter where we need general deterrence. It's very uncommon. Specific deterrence possibly. I think that's been made out by the fine and the compensation. I very much doubt it's likely the defendant is likely to reoffend. And therefore, weighing these factors, considering those matters, I record no conviction. I come to consider forfeiture. It's under s 99(a) I think.

MR CURTIN: 99(a), your Honour.

HIS HONOUR: 99(a), thank you. If a court imposes a term of imprisonment or a fine on an offender, the court may also order the property owned by the offender and used in the commission of the offence for which the offender is being sentenced, is forfeited to the Territory of Australia. This is quite apart from punishment. And I really look to the purpose of the legislation that the defendant has been prosecuted under. It's to do with providing safe environment, a safe work environment and a safe environment for people that go along to carnivals and use the services provided by people such as the defendant.

Given the age of the machine, given the clear problems with the structural integrity at this point and the danger posed as it currently stands, I am unable to give great weight to the submissions I hear really opposing this. I don't know the extent to which remedial action, what it will cost, how it can be done and whether it's going to be done given my superficial knowledge of the finances of the defendant. I think

given the purpose of the Act, given the nature of the offence, to do with the protection of society, it's entirely appropriate to forfeit the machine.

MR SANDERS: Court pleases.

HIS HONOUR: And this is not punishment. This trumps financial concerns. This is to do with the safety of the people of the Northern Territory who go along to these shows. I order forfeiture of the octopus ride described in P1. That's the facts. And it is forfeit to the Northern Territory of Australia. All right. I think that covers everything. So, it's 10 and 10 and 10, no conviction and forfeiture of the machine.

Have I missed anything? Do you wish to say anything?

MR SANDERS: Your Honour, if I might be so bold as to – on the question of forfeiture, I don't suppose there is any possibility of carving out certain elements of this machine such that my client might salvage the motor, for example, and re-sell it?

HIS HONOUR: I don't think so. I have considered what you've had to say. In my assessment, the safety of the people of the Northern Territory trumps financial considerations. It's not meant to further punish your client, no doubt it's an asset he'd rather have. But for that purpose, the entire machine is forfeited.

MR SANDERS: As your Honour pleases.

HIS HONOUR: Thank you. Thank you.

Please adjourn the court.

ADJOURNED