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NORTHERN TERRITORY OF AUSTRALIA

LOCAL COURT

No: 22207913

WORK HEALTH AUTHORITY NT PTY LTD

and

KALIDONIS NT PTY LTD

JUDGE O'LOUGHLIN

TRANSCRIPT OF PROCEEDINGS

AT KATHERINE ON 18 FEBRUARY 2025

Transcribed by:
Epiq:

MR EDWARDSON: Yes, your Honour. Edwardson.

HIS HONOUR: Thank you.

Mr Patwurst?

MR PATWURST: Your Honour, Patwurst, together with Mr Crean for the prosecution.

HIS HONOUR: Thank you.

And I see another room. Is that family of Paul Leach and Ors?

MR PATWURST: There is a number of connections. Your Honour should see Dianey Shaian(?) on the link and then three people at the WorkSafe office as well, I think, your Honour.

HIS HONOUR: Thank you.

And I'm not sure, are we being broadcast or is there a Teams link to a courtroom in Darwin? I don't think anything was arranged and I don't think we are going to.

MR PATWURST: No, your Honour. My understanding is that your Honour's court is the court that's sitting, and the rest of the links are individuals who are parties or victims who are watching, and or the regulator as well is watching.

HIS HONOUR: Thank you.

Okay. I will proceed to the sentencing remarks and sentence then, and once again, I apologise in advance to the family of Paul Leach. There might be some of my language that causes some offence. But this is a sentencing exercise, and I have the submissions, of the defendant in particular, that I need to address.

So we had a hearing in April and I published reasons in August, and found the defendant guilty on counts 1 and 2, the defendant being Kalidonis NT Pty Ltd. And just to quickly summarise those reasons. That on 20 March, Paul Leach died when he was attempting to tow an excavator with a chain. The chain snapped and hit him in the head, causing his death.

The company was eventually charged under the Act. Two counts of breaching s 32 of the *Work, Health and Safety (National Uniform) Legislation*, where the maximum penalty is 1.5m. The essential element in dispute was that the question of whether the defendant - I found the defendant had failed to ensure so as far as reasonably practicable, the health and safety of the workers.

There were many particulars alleged by the Work Health Authority, and in my reasons I focused on five; namely: risk assessment, issuing a Safe Work Systems Method Statement, ensuring workers did not attempt to tow the excavator until that

specialist equipment arrived, providing unequivocal directions to the worker not to use chains, and reinforcing those directions if a worker continued to use unsafe systems.

The risk in this case was admitted by the defendant that it was a high risk. The factors as to what is reasonably practicable are dealt with in s 18, and they include the risk, and here of course, it was very high, the degree that harm might fall from that risk is high, the extent to which a person knows or reasonably knows about the risk, and in this case, the chain had snapped earlier. So that too, a lot was known about it. The availability of other means and the cost of other means. They are the considerations that go to reasonable steps that can be taken, and are also relevant to penalty.

During the defendant's submissions, there was an emphasis on the - I think the terms was defiance or recalcitrance of Mr Leach - in not following oral directions not to tow with the chain. And that if he was defiant in respect of oral directions, what more could be done, what difference would it have made, if I understood the submissions correctly, by taking these other steps.

And as a matter of law, I don't think that is the reasoning that I should apply, and in pars 13 and 14 - 12 and 13 of my reasons - I refer to two authorities dealing with risk-taking workers. And if a company knows that they have a risk-taking worker, the law still applies, the standard still applies. In those circumstances, when there is a risk-taking worker, the company needs to think still as to what steps can be taken to ensure that workers are not exposed to risk.

So here we have on 15 February 2020, Mr Leach was working down the bottom of the ramp. Mr Kalidonis had told him not to worry about that section. But he did it anyway with his son. He was possibly trying to fix/perfect that area of the ramp, and when doing so, the engine failed. The tide was low. They attempted to start the machine. It didn't. They attempted to tow the machine with chains, and the chains snapped three or four times. So that's on 15 February.

Mr Kalidonis had some stern words for Mr Leach and warned him. The company took reasonable steps to extract/tow the excavator; namely, ordering expensive nylon straps and making steps to get ceased(?) with crane. They get credit for that. They are reasonable steps. On 11 March, though, a mechanic was there trying to free the gear so the machine could be towed by the nylon straps, and Mr Leach was there and he used chains again. And I refer to evidence in par 36 and beyond about the chains snapping on that second occasion.

No one was hurt on that occasion, and that event is related to count 1. And as both parties reminded me, you don't need someone hurt under this charges. I'll continue. Anyway, on 11 or 12 March, the chain broke again twice. Mr Pastrikos, who was an employee of the defendant, in his statement said that he hadn't tagged the chains out before this date, and he hadn't undertaken any disciplinary action. Hadn't put anything to workers not to recover the excavator, and it wasn't mentioned in any toolbox talks. These are steps that could reasonably have been taken.

Mr Kalidonis was on the ramp for the latter part of that second effort, and he was very upset when he saw that chains were being used. He then terminated Mr Leach that day, but then reinstated him that day. And then we get to 20 March, and on that occasion, the Sea Swift boat was arriving and with a forklift. But the excavator needed to be moved a little bit further. So Mr Leach must have thought, and he again went to tow it, and went to tow it with chains. It's not clear in the evidence.

But I suspect that Mr Leach - he sounds like a hard worker and a loyal worker, hard worker to a fault perhaps. Perhaps he felt some guilt that he was the one using the excavator at the bottom of the ramp at low tide, when he was told not to, to fix the job. And perhaps he felt responsible to continue to fix the situation of the broken-down excavator by repeatedly towing the excavator even after being told expressly by Mr Kalidonis not to do so.

He probably knew of the risks of towing with chains because one of the last things he did in his life was to tell his colleague - I think it was Ross Brian - to stand clear, and that was his last effort at towing the excavator, and the chain snapped and hit him in the head, and he died soon thereafter. They are the backgrounds facts of the sentencing exercise. I've got extensive material from the defendant as to the circumstances of the company.

It has no priors. There's good character references. It has suffered significant financial costs already in respect of financing and insurance premiums, and other secondary consequences from these events and the prosecution and this criminal proceeding. I can't assess remorse because of a plea of not guilty. I don't see any evident remorse because of the plea of not guilty. Presumably, though, there is considerable understanding and regret as to the cost of these circumstances, and one would assume that the corporation has learned a lesson already.

The prosecution submitted that there's a high degree of seriousness here, and pointed to *Titan Plant Hire(?)*, I think. But I don't think we are in that level. The defendant did take a number of steps that it should be recognised and be given credit for; namely, the planning of SWMS in Darwin, the organising of the crane and the barge, the ordering of those expensive nylon straps which no one suggests were insufficient. They seem to be the correct method.

And orally, reprimanding Mr Leach. I guess they also get credit for momentarily terminating his employment. But then reinstating him might have given a mixed message. But nonetheless, the defendant did not issue SWMS at Maningrida. Documents given to workers, this is what we need to do. Again, I refer to those authorities, even in the context of a - I'll use Mr Edwardson's language - a calcitrant and defiant employee.

The defendant company still had duties, and knowing that Mr Leach was keen to tow this excavator on two occasions with chains, knowing that it had remaining obligations under the Act, and they included to issue a Safe Work Method Statement, instructing the staff to do risk assessments with their workers, explaining

the risks that were probably evidence. But just to make it clearer, it was reasonably practicable to do that as well. To tag out the chains, to tag out the excavator, and including to terminate the employment Mr Leach by 12 March.

I turn now to the sentence, and the sentence is going to be a fine, and I tell the family what someone had probably told them already, that this is not an exercise of putting a value on Paul Leach's life. It's a different exercise of sentencing, with a large body of law guiding me, with the help of the parties, and it is not an attempt to value his life or the circumstances of his tragic death.

For count 1, I record a conviction and impose a fine of $400,000.

For count 2, I record a conviction, impose a fine of $550,000. But that is entirely concurrent with count 1. So the total is $550,000. Plus a victim's levy which I think is $1500 for a corporation, and I award costs. I can do a rough discount on the costs. They were a claim of $90,000. But on some crude party-party akin basis, I order the defendant to pay the Work Health Authorities cost of $70,000. Have I missed anything?

MR PATWURST: No. Thank you, your Honour.

MR EDWARDSON: No, I don't think so, your Honour. I have to check the *Sentencing Act* as to the terminology regarding concurrency of fines, and whether it's other terminology. But we understand the effect of it.

HIS HONOUR: Yes. I'll have a look back in Chambers, and if there is some tweak to my language, I will make that. Well, in the speed in this court, usually it's brackets concurrent with count 1.

MR EDWARDSON: Yes. Different jurisdictions use different terminology. But we understand the effect of what your Honour is seeks to achieve.

HIS HONOUR: Understood.

Anything further?

MR PATWURST: Your Honour, can I just mention one matter. Yes, please, your Honour. If I just mention one matter. My instructing solicitor I think has written to your Chambers requesting copies of the exhibits that were obviously tendered in the course of the contested hearing. We need access to those exhibits for the purposes of the appeal. So I would appreciate it if the court could facilitate access to those exhibits, or at least copies of them.

HIS HONOUR: Yes. Enquiries were made last week, and yes, that's been prepared now, I believe.

MR PATWURST: Your Honour pleases. Thank you.

HIS HONOUR: Thank you.

MR EDWARDSON: And also, your Honour, did I understand that your Honour has drafted written reasons to which you've spoken to?

HIS HONOUR: Today?

MR EDWARDSON: Yes.

HIS HONOUR: No.

MR EDWARDSON: So your Honour's references to the paragraph numbers were to your Honour's findings in relation to the conviction.

HIS HONOUR: Yes.

MR EDWARDSON: Thank you, your Honour.

HIS HONOUR: Thank you. And out.

MR EDWARDSON: May it please the court.

ADJOURNED