_____

NORTHERN TERRITORY OF AUSTRALIA

LOCAL COURT

E X T R A C T

No 21832482

WORK HEALTH AUTHORITY

and

GLEN CAMERON NOMINEES PTY LTD

(Sentencing Remarks Extract)

JUDGE ARMITAGE

TRANSCRIPT OF PROCEEDINGS

AT DARWIN ON 26 MARCH 2019

Transcribed by:
Epiq:

HER HONOUR: In this matter, Glen Cameron Nominees Pty Ltd has pleaded guilty to a breach of s 32 of the *Work Health and Safety (National Uniform Legislation) Act*. the maximum penalty that applies to that section is $1.5 million.

The facts in this matter are that Glen Cameron Nominees Pty Ltd was a person conducting a business or undertaking that had a health and safety duty pursuant to s 19(2) of the *Work Health and Safety (National Uniform Legislation) Act* to ensure so far as was reasonably practicable that the health and safety of other persons was not put at risk from work carried out as part of the conduct of the business or undertaking.

The defendant in this matter conducted a road transport and warehouse business within Australia and had an agreement with Woolworths Limited to transport goods to Woolworths retail outlets in Darwin.

The defendant had engaged Bison Haulage Pty Ltd as a subcontractor to deliver goods to Woolworths Limited supermarkets in Darwin since 2012. A Mr Christian Reynolds(?) was the owner/director of Bison Haulage as at 7 October 2016.

At about 7:15 pm on 7 October 2018 a prime mover, driven by Christian Reynolds, entered the loading bay at Leanyer Woolworths to deliver goods. At about 7:48 pm, after the goods were unloaded, Mr Reynolds re-entered his vehicle and drove forward to leave the loading bay. As his vehicle moved forward from the loading dock, he felt a shudder, stopped the vehicle and found a person under his front tyre. He immediately reversed, contacted Emergency Services and commenced first aid. However, the person was declared deceased at 8:30 pm.

The deceased person, through a Coronial inquest conducted on the papers, was identified as a Mr Dan Wilson(?), also known as Dean Nakara(?). He was a member of the public who had accessed the loading dock area and apparently fallen asleep in front of the prime mover. Possibly fallen asleep of the prime mover but was certainly in front of the prime move and unseen by Mr Reynolds at the time Mr Reynolds commenced driving forward.

Mr Reynolds did not physically walk around the vehicle to check for pedestrians or hazards, and there was no one engaged in any form of traffic control or management at that site. The loading dock was accessible to pedestrians, who frequently used it as a shortcut to the bus stop which was directly in front of the loading dock. And the area was also frequented by itinerant persons.

Mr Reynolds had not undertaken any induction training with Glen Cameron Nominees Pty Ltd, the defendant, and had not been given a site induction prior to commencing work at the Leanyer Woolworths site. Mr Reynolds had been subcontracted by the defendant to deliver goods to Woolworths retail outlets since 2012.

The facts, and it is admitted, allege that the defendant failed to provide and maintain safe systems of work. The defendant failed to ensure that Mr Reynolds had

completed its induction program, that was refreshed annually and that a site induction was conducted prior to him working on the site as stipulated in the prescribed procedures of the terms and conditions agreement.

The defendant failed to ensure that Mr Reynolds was aware of and compliant with its own standard operating procedures: SOP 54 and SOP 55. Both of which required drivers to physically check the rear and front of the vehicle for pedestrians before moving the vehicle. This, it was explained to me, was a necessary procedure to ensure the safety of pedestrians, because there were blind spots and there were blind spots in fact in front of the rear vehicle as well as likely at other locations.

The facts allege that the defendant's failure to ensure that Christian Reynolds had completed its inductions program, including annual refresher training, and failure to provide a site induction and its failure to comply with its standard operating procedures resulted in the death of Mr Wilson.

In its submission, the defendant said that a fairer way of presenting the facts would have been to suggest that the failings contributed to the death of Mr Wilson and had those failures not occur, then perhaps his death might have been avoided.

In my view, the way in which it is put by the defendant, in my view, better reflects the facts of this matter are there were a number of persons who had obligations to comply with safety procedures at this site. The defendant, of course, has acknowledged its responsibility by plea of guilty and has fully accepted its failings in ensuring that Mr Reynolds was inducted into and complying with its safety standard operation procedures.

However, it is accepted by the prosecution that Woolworths, who have also been charged with breaches under the *Work Health and Safety Act*, failed to provide proper traffic management systems at the loading dock and proper – and failed to have proper procedures or controls in place in relation to pedestrian accessing that location.

It is also clear that Mr Reynolds had his own duties as a subcontractor and truck driver in relation to the safety of other persons, and in addition, the report provided to the Coroner noted or identified that the deceased himself had a blood-alcohol level of 0.27 per cent, and it was considered by the Coroner to be a significant matter contributing to his death.

That does not detract from the responsibility of the defendant in this proceeding, but it does make it clear that there were a number of factors which all came into play that contributed to the circumstances resulting in the death of Mr Wilson.

I am going to address my remarks on sentence, essentially, in accordance with the matters and in the way that has been set out by the prosecutor in the written submissions on sentence. The prosecutor took me to what is, in shorthand, is referred to the (inaudible) factors, as factors instructive in relation to assessing an appropriate penalty in the circumstances of this case.

I note that this is not to be treated as some form of checklist or anything of that nature, but I do find and am persuaded that it does provide a useful foundation or starting point for assessing a penalty in this kind of matter.

In relation to those factors, number 1 is that the penalty must be such as to compel attention to occupational health and safety generally to ensure that workers or other, whilst at work, will not be exposed to risks to their health and safety.

The prosecutor submitted that the defendant could be properly described as a national transfer business and not a small family enterprise, nor a multinational business. She also pointed to the fact that vehicle incidents were the most and are the most common cause of workplace death in Australia.

I accept those submissions; however, in relation to the size of the business, I note that it is a family owned and operated business and has been in the same family for 43 years. It has successfully grown over that period of time from a single vehicle to a mid-size transport company, involving 400 trucks. So yes, it is a national transport business; however, it is not on the scale of some of the larger trucking businesses around Australia.

The second factor that I was taken to is as follows. It is a significant aggravating factor that the risk of injury was foreseeable, even if the precise cause of circumstance of exposure to the risk were not foreseeable. The prosecutor submitted that the risk of injury in this case was foreseeable, as evidenced by the standard operating procedures, which were in fact in force in the defendant's operation.

Those standard operating procedures required drivers to check for pedestrians, especially directly in front of the vehicle, and to check the loading dock for any obstructions, vehicle and pedestrians, and physically check the vehicle before moving the vehicle.

So I accept that risks to pedestrians are in fact foreseeable in relation to the movement of the large delivery trucks. And the risk in relation to moving into or from delivery bay is one which is indeed foreseeable.

The third (inaudible) factor is that the offence may be further aggravated if the risk of injury is not only foreseeable but actually foreseen and an adequate response to that risk is not taken by the employer. Again, I accept that the risk to a pedestrian in front of one of these large trucks at a loading dock was a risk that was actually foreseen and addressed in the standard operating procedures.

As the prosecutor noted, the defendant's standard operating procedures were clearly drafted with this particular risk in mind. I also accept that the defendant knew or ought to have known that this particular docking area was a thoroughfare and was frequented by itinerant persons, such as the deceased.

The fourth factor referred to in the prosecutor's is this: that the gravity of the consequences of an accident does not of itself dictate the seriousness of the offence of the amount of the penalty. However, the occurrence of death or serious injury may manifest the degree of the seriousness of the relevant detriment to safety.

The prosecutor submitting that the offending resulted in the death of Mr Littleton(?) which is accepted. And it was submitted by the prosecutor that in the circumstances of this case, that the death does demonstrate the degree of seriousness of the risk.

The prosecutor submitted that, put simply, the risk was high, the risk of the level of injury was high and the results, such as death of serious injury from not addressing that risk was also high. In my view, the facts of this matter do establish that there was a high risk of serious injury or death to pedestrians from those large trucks moving in and out of loading bays and if that risk is not properly addressed, then that creates a serious chance, risk or death or injury.

The fifth factor is – points to whether or not there has been a systemic failure by the employer to appropriately address unknown or foreseeable risk. Systemic failures are likely to be viewed more seriously than a risk to a person because of inadvertence or a momentary lapse of supervision.

The prosecutor submitted that the offending in this case did reflect a systemic failure by the defendant to address a known and foreseeable risk. The prosecutor submitted that Mr Reynolds had been subcontracted to the defendant to deliver goods to Woolworths retail outlets in the Northern Territory since 2012, but had not received any induction training or site reduction or annual refresher training, or nor was he made aware of the relevant standard operating procedures as at 7 October 2016.

So there had been a failure to ensure his training and induction for a period of four years, and it was submitted that the risk was not caused by mere inadvertence or momentary lapse of supervision in circumstances where he had assisted for that extended period of time.

However, the submissions for the defendant, it was noted that as against the failing in relation to this particular subcontractor, the defendant otherwise had a sophisticated and mature health and safety system and a suite of policies and procedures that were appropriate. It was pointed out that most of the business of this particular defendant was conducted in South Australia. A small proportion of work was being undertaken in Darwin or in the Northern Territory.

In relation to that smaller proportion of work, most of that work, in fact up to about 85 per cent of that work was done by company employees and this was the only subcontractor to the business, who was a carrying out about 15 per cent of the Northern Territory operations.

So in contrast to the submission that this was a systemic failure, the defendant pointed to compliance by the significant majority of its employees and staff in relation to the safety procedures that it had in place. They submitted that whilst there was a failure in relation to one subcontractor, that that should not be elevated to the height of being categorised as a systemic failure in relation to the defendant's business operations.

In my view, whilst there was a failure of the defendant to enforce its procedures in relation to a single subcontractor over an extended period of time, when that is balanced against the remaining operations of the business and the safety procedures that were in place and the training and refresher training that occurred, then in my view, the failing in this occasion is less than or is not as high as a systemic failure.

The next matter that the prosecutor took me too is that general deterrence and specific deterrence are particularly relevant factors in light of the objects in terms of the Act. And it was submitted that the court ought to give reasonable – considerable weight to general deterrence in light of the fact that the most common cause of workplace death in Australia in 2016 and the Northern – was vehicle incidents, and that the Northern Territory has the highest rate of vehicle fatalities in Australia.

In my view, it is appropriate to give some considerable weight to general deterrence, particularly in light of the inherent risks, in my view, in operating large vehicles in relation to the risk of death or injury to pedestrians or other road users.

The next matter that I was taken to by the prosecutor is that employers are required to take all practical precautions to ensure safety in the workplace, which requires constant vigilance and employers must adopt an approach to safety which is proactive and not really reactive. In view of the scope of those obligations, in most cases it would necessary to have regard to the need to encourage a sufficient level of diligence by the employer in the future. And this is particularly so where the employer conducts a large enterprise which involves inherent risks to safety.

The prosecutor submitted that this case demonstrated an attitude of complacency and a lack of vigilance in relation to the defendant's failure to ensure that its sub-contractor was properly trained and (inaudible) and complying with its standard operating procedures.

However, in response, the defendant pointed to the fact that they had been operating for a period of 43 years with no other breaches in the country of any health of safety law. They pointed to their mature and sophisticated health and safety and quality management systems which were in place, and tendered a number of certificates and certificates of registration and the like and accreditation and code of conduct in support of those submissions.

It was submitted on behalf of the defendant that this was not a case where they didn't care about safety or they didn't have appropriate (inaudible) and systems in place or that they were deliberately ignoring the breach and flouting the law of their

requirement. Rather, it was a case where they in fact had a strong system of health and safety and quality management in place, but there was a failure of the switch system in this particular instance.

In my view, those submissions are, in my view, accord with the evidence and are persuasive and I find that it was not a complacent attitude, rather, an oversight in relation to this particular subcontractor.

The next matter that I was taken to was that I must have regard to the maximum penalty set by the legislation as indicative of mysteriousness of the breach under consideration. And the prosecutor submitted that the breach in this – on this occasion was serious and ought be characterised as at the mid to upper level for this type of offending.

In light of the other matters that have been raised by the defendant, in particular, the operating procedures that were in place and were generally adhered to, in my view, the breach is more towards the mid-range of seriousness and does not fall at the upper level of seriousness for this type of offending.

The next matter that the prosecutor pointed to was that neglect of simple well-known proportions to deal with an evident and great risk of injury take a matter towards the worst case category. I accept that as a genuine proposition. I accept that there was neglect here of a simple well-known proportion, but as I said, I am satisfied that that was not the general attitude taken towards safety by this defendant. But it was the result of an oversight to ensure that a subcontractor who was carrying out a small amount of business at a more remote location. There was a failure to ensure that he complying with their operating procedures.

So again, where the prosecutor submitted that the case fairly mid to high-range at worst category cases, I'm not persuaded that it falls at the high-range end of that range of that range. However, in my view, it falls more towards the mid-range end of serious.

Finally, the prosecutor submitted that the objective seriousness of the offence, without more (inaudible) for the imposition of a very substantial penalty to vindicate the social and industrial policies of the legislation and through regime of penalties, and it was submitted that the objective seriousness of the offence calls for a substantial penalty and I don't have any issue with that submission.

I accept that the risk in this case was foreseeable and it was obvious and that the failure to address that risk was one of the matters that contributed very substantially and to a high level to the death of the person. And they are matters that I note and take into account, obviously, in the sentence that I impose.

Against all of those serious objective matters, I note that the defendant has pleaded guilty and in my view, should be given a full discount of a plea of guilty. I note that both the company and its owner-director are of excellent character. There have no criminal or Work Health and Safety matters found against either the

company or its owner in its 43 years of operation. Indeed, its owner has no convictions of any kind whatsoever.

So there are no marks against the good character and good citizenship demonstrated by both the company and its owner. Indeed, there are matters that I was taken to that positively demonstrate the defendant and its owner-operator's commitment to community, and I have been shown a number of documents which attest to donations and other aspects of good work that the company engage in in the community, and I take those matter into account.

In my view, this matter was objectively serious because it involved a foreseeable risk of death or serious injury in circumstances which, as I said, were foreseeable, in circumstances where there were operating procedures in place which may well have prevented this death had they been acted on and in circumstances where one person working for this company as a subcontractor had not been inducted into those standard operating procedures.

The death was as a result of the failure of the defendant to ensure that its standard operating procedures and health and safety procedures were complied with and implemented. It was not a failure to have such appropriate procedures in place, and I think that's significant.

Taking into account the objective seriousness of the matter, including the foreseeable risk of death and the actual death and the failure of the company to ensure implementation and compliance with its safety procedure, in my view, this is an example of mid-range offending by a mid-range transport company.

To reflect the objective seriousness, to give weight to the need, to impose a sentence which upholds the intent of the legislation and gets the message out to other operators of large vehicles as to the need to fully comply and have in place safety procedures, in my view, an appropriate penalty that addresses those matters, taking into account the number of other cases that have been drawn to my attention, which don't set a range but provide some guidance as to the kind of penalties that might be imposed, but for the plea of guilty, I would of impose a fine of $220,000.

Taking into account a discount for the plea of guilty, a discount which reflects demonstrated prior good character and a discount which reflects demonstrated, in my view, remorse and a proactive response by this employer, I have reduced – sorry, to this incident, I have reduced that fine by 30 per cent and impose a fine of $154,000.

MR DENNISON: As your Honour pleases. I understand there's $1000 victim levy applicable. Not sure whether your Honour formally needs to make that order.

HER HONOUR: I order that there is $1000 to be paid as a victim levy.

Is there any costs?

MS BLUNDELL: Yes, your Honour, there's two matters. Firstly, I am seeking a days' costs in the matter.

HER HONOUR: And have you agreed as to a rate?

MS BLUNDELL: It's the standard rate. This is a – comes under the *Criminal Procedure Act*.

HER HONOUR: Do you know what that is?

MS BLUNDELL: $1500 for the first day.

MR DENNISON: I consent to that order, your Honour, the amount of $1500.

HER HONOUR: Costs in the sum of $1500 to be paid by the defendant to the prosecution.

MS BLUNDELL: Thank you, your Honour. Just one matter; your Honour didn't - - -

HER HONOUR: Didn't say conviction, sorry.

MS BLUNDELL: Yes, that was the question.

HER HONOUR: Sorry. I also record a conviction. In my view, a conviction is necessary to reflect the objective seriousness of the matter, to reflect that the offending resulted in the death of a human being and to some extent, denounce the behaviour and to give weight to general deterrence in relation to other persons operating businesses or large vehicles, such as that which is involved in the circumstances of this case.

MS BLUNDELL: Thank you, your Honour. One last question; is your Honour proposing to publish the sentence?

HER HONOUR: I – no.

MS BLUNDELL: But I – simply a question. Thank you.

HER HONOUR: Yes, if necessary, a transcript can be ordered.

_____