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NORTHERN TERRITORY OF AUSTRALIA

WORK HEALTH COURT

No: 21942037, 21942039

WORK HEALTH AUTHORITY

and

RIDEM PTY LTD

and

RUSSELL JOHN O'DONNELL

(Sentence)

JUDGE BORCHERS

TRANSCRIPT OF PROCEEDINGS

AT ALICE SPRINGS ON 18 FEBRUARY 2021

Transcribed by:  
EPIQ

HIS HONOUR: Thank you. Well, I will proceed to read my judgment. Ridem Proprietary Limited trading as Dexter Barnes Electrical has pleaded guilty to an offence. That at Tennant Creek in the Northern Territory on 25 February 2019 as a person who had a work health and safety duty pursuant to s 19(1) of the *Work Health and Safety (National Uniform Legislation) Act*, known as the Act in these reasons, failed to comply with that duty and thereby exposed Derick Suratin to a risk of death or serious harm contrary to s 32 of the Act.

It is agreed that the defendant failed to, a) provide Mr Suratin with adequate instruction and supervision regarding the work he was to undertake. And, b) failed to identify risks to health and safety in respect of that work and consequently did not implement mitigation strategies regarding those risks. And, c) failed to ensure that Mr Suratin and its workers were aware of and complied with its safety management system. The maximum penalty is \$1,500,000.

Mr Russel O'Donnell, a director of Ridem Proprietary Limited, has pleaded guilty to an offence that at Tennant Creek in the Northern Territory on 25 February 2019, as a person who had a work health and safety duty pursuant to s 27(1) of the Act, failed to exercise due diligence to ensure that Ridem Proprietary Limited complied with its duty pursuant to s 19(1) of the Act. And that failure exposed Mr Suratin to a risk of death or serious injury contrary to s 32 of the Act.

Due diligence is defined in s 27(5) of the Act and includes in regard to this matter, a) a failure to acquire and keep up-to-date knowledge of work health and safety matters. b) a failure to ensure that Ridem Proprietary Limited provided its workers with a safety management system and ensure the induction and implementation of that system. And failed to ensure that Ridem Proprietary Limited provided its workers with sufficient training and resources to allow them to use and comply with the safety management system, keep records regarding the training, implementation and risks incidental to that system, and monitor its compliance. The maximum penalty in respect of Mr O'Donnell is \$300,000.

The parties presented an agreed statement of facts and it is summarised as follows. Ridem Proprietary Limited conducts a business providing electrical services in Tennant Creek and the greater Barkly area of the Northern Territory. And Russell O'Donnell is and has been a director of that company since 2007. On 5 February 2019 Absolute Renos was awarded a contract by the Department of Infrastructure, Planning and Logistics to replace the roof from the Tennant Creek fire station. Dexter Barnes Electrical was contracted by Absolute Renos to perform electrical works as required as part of the Absolute Renos contract to replace the roof.

On Friday 22 February 2019 the defendant attended the fire station and spoke to Scott Clarke, the owner and director of Absolute Renos. Mr Clarke asked Mr O'Donnell about doing a couple of isolations. During this conversation a walk around the site was conducted and the items to be disconnected were shown to the defendant. These were an extraction fan, an electrical box on a barge cap, both of which were located on the roof the fire station.

The defendant also received a request for some urgent minor works to be done at the fire station. These works were unrelated to the work being done by Absolute Renos to the roof and required changing some lights and sensors at the fire station. The defendant told Mr Clarke to give him a call when he needed somebody to do the electrical isolation work on the roof.

At about 7:40 am on 25 February 2019 Mr Clarke telephoned the defendant and said he needed a sparky to come down and do a couple of electrical isolations. These were the isolations on the roof that had been discussed on 22 February. The defendant told Mr Clarke that he would get a couple of lads there to fix it. The defendant asked then instructed Derick Suratin, a fourth-year apprentice electrician, and Nathan Collier, a third-year apprentice, to attend the site and speak to the builders about electrical work to be done. There was no job card created for this job with instructions on the work to be done. There was no job safety analysis and no safe work method statement prepared for the job. There was no recorded documents of any kind relating to risk identification and mitigation, and specifically working at height and working with electricity.

Derick Suratin and Nathan Collier attended the fire station and spoke to Mr Clarke who showed them the electrical work that needed to be done. At this time Mr Clarke also told them that Nathan Ferguson, the officer in charge of the fire station, had some other electrical work that needed to be doing in the fire station. This was unrelated to the work on the roof.

Derick Suratin and Nathan Collier accessed the roof using a ladder. The roof ranged from 2.5 to 4.8 metres in high. Neither they nor anyone else on site accessed the plant room where the switchboard was located to turn off the power to the work area and to tag out the switch. Neither Mr Suratin nor Mr Collier were using any fall prevention equipment.

Derick Suratin and Nathan Collier identified the first item to be isolated which was an exhaust fan. Mr Suratin tested it to see if it was alive and determined that it was dead and there was no voltage. They took apart the isolator and made it safe. Whilst Mr Suratin was finishing that job, Mr Collier rang the defendant and asked about the other job at the fire station to find out more information about that job which would involve putting up some other lights.

The second item to be isolated was a day-night sensor for a light mounted on the side. Mr Suratin and Mr Collier found a cable which they decided needed to be pulled back through the roof and made safe. While Mr Suratin and Mr Collier were on the roof trying to work out how to isolate and make safe this cable, the defendant Mr O'Donnell arrived onsite and was standing on the ground in clear view of the two workers on the roof. Mr Suratin told Mr Collier to get down off the roof and asked the defendant to run through the next part of the job to do with the lighting at the fire station. Mr Suratin remained on the roof finishing the isolation of the cable.

The defendant did not ask Mr Suratin or Mr Collier what they were doing on the roof at this time. He did not request or ensure that they both come down off the roof.

Neither Mr Suratin or Mr Collier were wearing any fall prevention equipment and there was no qualified electrician supervising the electrical work to be done on the roof. The defendant did not enquire whether the power had been isolated at the switchboard, and gave no direction about this or any other matter.

The defendant and Mr Collier walked through the fire station to look at the next part of the job. Mr Suratin remained on the roof. A few minutes later Mr Clyde McDonald, an employee of Absolute Renos, saw Mr Suratin being electrocuted. He called out to Mr Clarke who told him to kick him off. Mr McDonald attempted to pull Mr Suratin away by grabbing Mr Suratin's boot however the boot had not been done up and Mr McDonald fell over. He attempted the same move but with the other boot which was also not done up and again fell over. He eventually managed to get his foot between the wire and Mr Suratin and kick the wire out.

While this was occurring Jason Muckavin(?), an employee of Absolute Renos, told the defendant and Mr Collier that an electrician was being electrocuted. Mr Collier immediately went to the plant room to isolate the power. The plant room was below the roof where the work was being done. The plant room was locked and had not been unlocked on that day. It was then unlocked. Mr Collier then isolated the power by flicking the switches on the switchboard.

Mr Clarke and the defendant climbed up onto the roof to commence first aid, followed by Mr Collier and another person. CPR was performed and a defibrillator applied. Mr Suratin was removed from the roof using a scissors lift that was onsite. He was taken to the Tennant Creek Hospital by ambulance where he was pronounced deceased at 10:40 am.

Subsequent investigations found that the cable that Mr Suratin was working on was a live cable which was traced back to a switch panel in the control room, and was found to be part of the lighting security circuit. Locating the circuit breaker and turning it off should have occurred prior to any work commencing.

The defendant had arranged for the company to obtain the document entitled Dexter Barnes Electrical and Barkly Crane Hire Work Health and Safety Management System version 1. This was provided to the company on 1 November 2013. The defendant did not ensure that this document was provided to its workers including Mr Suratin and Mr Collier. On 25 February 2019 there was a copy of that document in the company's office. There was no evidence that the company's employees in general and Mr Suratin and Mr Collier in particular were aware of this or had read the document.

This was a tragic outcome for the family of Mr Suratin. His partner sent a letter to this court which reads in part.

"I'm hoping that you could appreciate how difficult this statement is to put together and the pain it causes. The impact of this accident has had on my family is immeasurable. The emotional, mental and financial consequences will last myself and my children a lifetime."

The principles regarding the appropriate sentences to be imposed in these matters are set out in a number of authorities which both the prosecutor and Ms Matthieu, who appeared on behalf of both defendant, have referred to in this court in both their written and oral submissions. In addition the court must consider a number of legal provisions, and I have had regard to both the provisions and those authorities. Included in the legislative provisions are s 5 of the *Sentencing Act*, the sentencing guidelines, and s 3 of the Act setting out the objects of the Act.

The defendants have pleaded guilty and have been cooperative with the NT Work Health Authority. They feel great remorse for what has happened and have tried to implement policies and procedures to mitigate against a repeat of this incident. In an affidavit sworn by Mr O'Donnell he states:

“The death of Derick Suratin as an employee of Ridem has devastated myself, my wife Kerry O'Donnell and Ridem employees on a personal level. We lost a valued member of the team and we are motivated by a strong desire to never lose another life. I am so remorseful.”

The defendants are aware of the devastating effect upon Mr Suratin's family.

The pleas of guilty and remorse must be taken into account. The relevant legal principles in relation to sentencing have been considered in a number of authorities referred to by counsel as I have said. And particularly *Damday Proprietary Limited v Work Health Authority (2014)*, Northern Territory Supreme Courts, *Gelding v Gibbo's Tyres Proprietary Limited (2018)*, a decision of the Northern Territory Local Court, and *Comcare v Commonwealth of Australia (2007)*, Federal Court of Australia.

In *Damday*, Southwood J, who was hearing an appeal from the decision regarding the *Work Health and Safety Act* of the Northern Territory, identified nine factors that affect the level of objective seriousness of the offence under s 55 of that legislation. They are: (1) The level of harm or danger to which workers and others are exposed by an employer breaching the general statutory duty of care; (2) The likelihood of risk and harm occurring; (3) The prevalence of such breaches; (4) The nature and time when particular breaches continued to occur; (5) The number of workers and others potentially affected by the breach; (6) Whether the breach was easily identified; (7) Whether the breach was inadvertent or the result of oversight or deliberate; (8) Whether the potential hazard can be easily managed; and (9) Whether it has a system in place for reviewing or monitoring the management of random hazard.

Madgwick J in *Comcare v the Commonwealth of Australia* discussed ten issues that could be considered in determining an appropriate sentence, including: general deterrence, foreseeability of risk, the nature of the defendant's failure to address its statutory responsibilities. It is accepted that the offences are serious, manifested by the maximum penalties proscribed and call for a sentence that reflects the principles of general deterrence. Ms Matthieu submitted that the degree of risk of the offenders' failures could be assessed as moderate. To this end this court must focus

on the risk presented by the offenders' conduct rather than the outcome of the failure. I accept that that proposition as it has been accepted in a number of authorities.

There was not one cause of the accident leading to Mr Suratin lying on the roof of the Tennant Creek Fire Station working on a live energised circuit before isolating and disconnecting that circuit. That he should have been doing this was the result of a failure of the defendants to exercise their statutory responsibilities including but not implementing their Safety Management System and not being proactive in their training of their staff in respect of health and safety policies on a recurrent basis. This failure meant that the risk of death or injury was foreseeable but the actual circumstances of the incident somewhat mitigate this to the extent that I find, in accordance with Ms Matthieu's submissions, that the degree of risk because of the offenders' failure was moderate.

Having regard to the objects of the Act on both general and specific deterrence, particularly random factors, in determining an appropriate sentence, both defendants have no prior convictions. Ridem is a moderately small family company providing electrical services in a remote town in the Northern Territory of Australia. It employs nine persons together with three apprentices and two trade assistants. It is a good corporate citizen which has contributed to the local community. It has done so at times on a voluntary basis. Most recently when the town's only supermarket was destroyed by a fire, the defendants volunteered their services to assist in getting money, a supermarket in temporary premises so that food could be available to the community.

The imposition of a conviction on both defendants is in itself a significant component of the overall penalty required to be imposed when having regard to s 5(1A-D) of the *Sentencing Act*. As already indicated the defendants have expressed significant remorse. The defendants have also taken significant steps to address its failures including – and this goes to the issue of rehabilitation. Those steps include: a substantially increased financial commitment to staff training and safety equipment; implementing safety checklists including a Safe Work Methods Statement and procedures regarding the use of those statements; implementing weekly staff meetings where safety issues are discussed and the policies and procedures agreed to in meeting those safety issues, and a MESAY app on employees' phones; revising its work health and safety management system and engaging an external provider regarding work health and safety policies and procedures being Safe Business Systems NT to assist in developing and monitoring its safety management systems.

Both counsel for the prosecution and defence have urged upon this court consideration, once there has been a finding of guilty, of penalties contemplated in Pt XIII Div 2 of the Act, which are in addition to any penalty that may be imposed on any other action that may be taken in relation to the offence, being s 135(2) of the Act. In particular the prosecution draws the court's attention to s 236, adverse publicity orders, s 238, the funding of work health and safety projects, and s 239, release on giving a court undertaking regarding work health and safety.

Mr Matthieu concurred with this submission but emphasised conditions of release pursuant to s 139 that were to be more tailored to the regional businesses and locations where the defendant works. I accept that this is a genuine offer to demonstrate to local businesses the defendant's commitment to work health and safety. I also accept that in making this submission the defendant has to some extent recognised that their own failures could be repeated by others in the local industry if not addressed.

However I am concerned that without specifically identifying the businesses and locations in the local area, that is, the how, when and why of such an order, that such an undertaking would remain too open-ended. Nevertheless I accept that penalties under Pt XIII Div 2 of the Act have great merit in circumstances such as this. I have been provided with a table of comparative penalties and decisions, particularly a number of decisions in the District Court of New South Wales which I noted in respect of determining the appropriate sentences and taking into account the submissions of counsel.

Accordingly, Ridem Proprietary Limited trading as Dexter Barnes Electrical will be convicted and fined \$80,000 with a victim's levy of \$1000. In addition, pursuant to s 239 of the *Work Health and Safety (National Uniform Legislation) Act*, the defendant will by 28 May 2021 pay \$40,000 to NT WorkSafe to fund an electrical safety campaign to be developed and delivered by NT WorkSafe, the Electrical Trades Union and the Power and Water Corporation. Such a campaign must include delivery of the campaign to persons working in the electrical services industry in the Barkly region. (2) The defendant is to pay NT WorkSafe's costs fixed at \$24,127 on or before 30 June 2021.

Mr Russel O'Donnell is convicted of the s 32 offence and fined \$40,000 with a victim's levy of \$150. In addition I order, pursuant to s 241 of the Act, that Mr O'Donnell will, (1a) undertake by 10 September 2021 a work health and safety risk management course for supervisors and managers conducted by a registered training organisation; (2) undertake by 10 September 2021 a due diligence training for senior managers and company directors conducted by a registered training organisation.

Pursuant to s 239 Mr O'Donnell is to enter a work health and safety undertaking in the following conditions. (2a) To appear before the Work Health Court sitting in Tennant Creek on 16 September 2021 to provide evidence of the completion of the work health and safety risk management course and the due diligence training. (b) Not to commit any further offences under this Act during the term of adjournment(?). And, (c) To appear before this court if called upon to do so during the term of the adjournment. (3) Mr O'Donnell is to pay NT WorkSafe's costs fixed at \$24,127 on or before 30 June 2021. And to provide evidence of such payment before this court on 16 September 2021.

Yes, thank you. Anything arising out of that?

MS BLUNDELL: Your Honour, there is two matters. Firstly, and it's just the audio, can I confirm that the fine in relation to Ridem Proprietary Limited is \$80,000, 80?

HIS HONOUR: Yes.

MS BLUNDELL: And the fine – I just couldn't hear whether it was 18 or 80. And the fine for Mr O'Donnell is \$40,000, not 14. So, 40.

HIS HONOUR: Yes.

MS BLUNDELL: And, your Honour, the final question is have is your Honour didn't make reference to any enforceable undertaking in relation to Ridem Proprietary Limited. Is that your Honour's intention?

HIS HONOUR: Yes, that's my intention.

MS BLUNDELL: So, essentially if the financial penalty amounts are not paid, as I understand that provides no mechanism for the court to ensure compliance with the order. That's my concern. I just raise it with the court.

HIS HONOUR: Yes, well, I don't see that that's any different to any other fine that I impose in this jurisdiction.

MS BLUNDELL: May it please the court.

HIS HONOUR: Yes, thank you.

Mr Stirk?

MR STIRK: No, your Honour.

HIS HONOUR: Right. Thank you very much. Your client will have to remain to sign his undertaking.

MR STIRK: Indeed, your Honour. I will be with him outside.

HIS HONOUR: Yes, thank you.

ADJOURNED