

Update on Court Decisions

Harvey O'Sullivan

Cases

- Juken NZ Ltd
- Stuart Kenning (Coroner Inquiry)
- Delta Utility Services

General

- Judicial decisions
 - District Court decisions only recently available on line (Previously available from WorkSafe)
 - Not all decisions are written
 - Decisions still relating to HSE Act only
- Australian decisions are now relevant where they relate to the equivalent NZ legislation
 - Being monitored

Juken

- Employee injured when finger caught between chain and sprocket
 - Barrier latched shut but not locked or interlocked
 - Wood-jams in conveyor were frequent
 - Procedure for clearing jams required isolation of conveyor
 - Procedure not used on day of accident
- WorkSafe identified practicable steps as locking or interlocking the gate

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- Juken claimed contributory negligence by employee
- Judge responded to say;

Employees often feel in a position where they should speed up processes for employers, even if that is against policy. It is predictable enough, in my view, when this machine regularly jammed and there was easy access to it, that employees would seek to fix that as promptly and easily as possible. The ultimate responsibility must still fall largely on the employer's shoulders, not the employee.

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- Judge accepted that existence of the procedure which should have been used lowered Juken's culpability.
- Other factors which heightened culpability as well as some which lowered it
- Juken convicted and fined.

Stuart Kenning Coroner's Inquiry

- Stuart Kenning was an employee of Power Services Ltd who was electrocuted when he contacted a live part which should have been isolated and earthed.
 - He had assured the controller that isolation and earthing was complete.
- Coroner endorsed the recommendations in the PowerNet report

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- Recommendations included;
- *More emphasis could and should be given to the communication between linesmen (or other workers) and the systems controllers. As is to be expected, there is a familiarity between trusted work colleagues but this leads to limited, or imprecise, pre-work discussion. I note that steps have been taken by PowerNet to ensure more formality is associated with such discussions in the future. I endorse the use of a more formal and structured template for communication in this situation.*

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- *I recommend that PowerNet continue to develop a robust census of its poles, particularly those which are associated with critical safety functions such as fuses, as part of the systems controller cross-check obligation. If Stuart Kenning had told a systems controller that he had opened the fuse on a pole of a given number, this ought to have been able to be checked by the systems controller and the appropriate reassurances or warnings given.*
- 7 recommendations in total, including one relating to two person responses to faults.

Delta Utility Services

- Delta employee was connecting a new LV cable to an overhead line.
- Employee had Delta documentation for hazard id and other processes but did not complete any of it.
- Used ladder to access pole but did not tie it off on either of two occasions
- Completed fuse holder installation

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- Needed to access other side of pole to connect neutral and identified conductors which could interfere with his access so he removed what he thought were the fuses for those conductors but did not test them.
- Relocated ladder to connect neutral but did not secure himself to the pole, and did not use gloves, helmet or arc rated top.

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- When connecting the neutral his crescent made contact with a live conductor (which he thought he had de-energised). Resultant flash caused him to fall.
- Delta pleaded guilty to charge that it failed to take all practicable steps to ensure safety of employees.

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- Judgement records that;
 - *The practical step the defendant could have taken in discharging its legal obligation was to have an effective policy in place for the control of the hazard of exposure to low voltage electricity, which included requiring elimination as the primary control in accordance with s 8 of the Health and Safety in Employment Act 1992, and Regulation 101 Electricity (Safety) Regulations 2010.*

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- The Judge also notes that;
 - *The defendant's position is that they accept they failed in the manner stated in the summary of facts. The failure was an absence of a specific procedure requiring elimination as the primary control.*

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- The Judge also notes that;
 - *There was dispute between the parties about what, in fact, the industry standards were. There is an absence of evidence one way or another and the Court is unable to reach a determination on that point.*

(Note: Delta has prepared a briefing paper on this case explaining it from their perspective and the actions they have taken)

Conclusion

- Note the predominant focus on the duties of the employer (Now the PCBU), even when employees do not follow procedure
 - At best the culpability is lowered
- Note the WorkSafe focus on live work and the need for systematic procedures for its management as a hazard

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