



Why SafeWork NSW Prosecuted the Worker

A Worker was convicted in early October by the NSW District Court for not complying with his WHS duty under section 28 of the WHS Act. The Worker has been ordered to pay the prosecutor's legal costs (SafeWork NSW) of \$30,000.

The prosecution of a Worker by a Safety Regulator is not a common event and the circumstances of this case and the conclusions of the Judge may be a valuable case study for you in ensuring that workers in your workplace do not suffer a similar fate. The Judge's finding about what training the PCBU should have provided to the Worker may also be of particular interest.

What Happened

The Worker had 30 years experience as an employee with an engineering services company and his specialty was in quoting customers for the repair and maintenance of their plastic and rubber extrusion machines. He was the only such specialist in the company and worked with a significant amount of autonomy.

The Worker was called out to a customer's premises about the need to clear a blockage in the customer's extrusion machine. He was being assisted by 2 of the customer's workers. He did not warn all the workers in the area to stand clear of the machine or to wear PPE to guard against the well known industry risk associated with a blocked machine, of chlorine fumes and being splashed by hot material. One of the customer's workers was severely injured by a discharge of steam and molten metal from the machine hitting him in the face. He had to undergo a number of skin grafts, his eyesight is affected and he has some facial scarring.

The Judges' Decision

The Judge concluded that the Worker had not complied with his obligations under section 28 of the WHS Act because he had adversely affected the health and safety of other people. The Judge said; "*The steps required to eliminate or minimise the risk were simple*" and the "*risk was one of serious injury*".

The Penalty

In deciding not to impose a fine on the Worker the Judge took into account that;

- the worker had "*no previous convictions*";
- he had "*a solid work history*";
- was "*held in high regard as a competent tradesman*";
- "*a man of excellent character*";
- "*accepted responsibility for his actions and demonstrated genuine remorse and contrition*";
- had an "*impeccable safety record of about 50 years without incident in a dangerous industry*";
- he had *pleaded guilty to the offence*;

- was 69 years of age and close to retirement;
- he had "very little, if any capacity to pay a fine" and had agreed to pay the prosecutor's costs of \$30,000. So the Judge did not impose a fine.

What the PCBU Failed to Do

The Judge also noted that the Worker's employer did not provide him "*with any of the following*:"

- (a) occupational health and safety training,
- (b) safe work methodology statement training or procedures, documenting
- (c) safe work practice procedures,
- (d) risk identification or management, or
- (e) risk assessment"

The judge concluded that the fact that the PCBU did not train the Worker on "*his obligations under the Act is the most significant causal factor in the incident.*"

The Prosecution of the PCBU

In a separate prosecution by SafeWork NSW the PCBU was convicted and fined for not complying with section 19(2) of the WHS Act, "*A person conducting a business or undertaking must ensure, so far as is reasonably practicable, that the health and safety of other persons is not put at risk from work carried out as part of the conduct of the business or undertaking.*"

Note

You can download a transcript of the judgements in the above prosecutions from NSW Case Law at these links:

[SafeWork NSW v Extrusion Machine Co](#)

[SafeWork NSW v Alejandro Bocaz](#)

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