

THE HIGH COURT

[CIRCUIT COURT NO. 2015 No. 155]

BETWEEN

KATARZYNA WILCYNKA

PLAINTIFF

AND

DUNNES STORES

DEFENDANT

JUDGMENT of Mr. Justice Barr delivered on the 11th day of May, 2017**Introduction**

1. This action arises out of an accident which occurred on 11th December, 2013 at the Dunnes Stores shop in Kilkenny city. The plaintiff was employed as a sales assistant in the Kilkenny store at the time of the accident. She remains so employed today.

2. On the day of the accident, the plaintiff was operating one of the "express checkouts" in the store. The workstation at these checkouts, involved a wraparound workstation, at which the operative sat in front of the weighing scales and scanning machine. Customers would place a basket with goods in it, in a depression or well to the left of the checkout operative. The sales assistant would lift the produce from the basket, place it on the scales or run it past the scanner and then place the goods in another well to her right, where they would be put into a bag by the customer. The cash register was situated to the right of the operative.

3. On the day of the accident, the plaintiff had returned from a break and was taking over from another employee. She pulled out the chair on which she was going to sit and sat down on it. As she wished to adjust the height of her chair, the plaintiff put her right hand beneath the seat of the chair and pulled the height adjustment lever upwards, which would release the spring and cause the chair to descend. It is the plaintiff's case that the chair descended very rapidly, causing the fingers on her right hand, which was still holding the lever, to become trapped between the underside of the lever and the top of a cashbox, which was housed in shelving to her right. As a result the plaintiff suffered injury to her right hand.

4. The defendant accepts that the accident occurred in the manner alleged by the plaintiff. However they deny that the accident was caused by any negligence or breach of duty on its part. The defence also contains a plea of contributory negligence against the plaintiff.

The plaintiff's case

5. The plaintiff moved to Ireland in 2006. She has worked in the defendant's company in the position of sales assistant every since. She is 31 years of age. She lives with her partner and has one daughter.

6. It is the plaintiff's case that she was returning to her workstation after a twenty minute break. Her workstation had been used by another employee for the duration of her break. The workstation was one of the express checkouts, of which there were two in the store at that time.

7. The plaintiff claims that when she returned to her workstation, the height on her chair had been changed, to facilitate the employee who had been sitting there during her break. As a result, the plaintiff needed to adjust the height of the chair, which she did by pulling the height adjusting lever, which was located beneath the seat and on the right of the chair. The plaintiff stated that the chair descended very quickly, resulting in her hand becoming caught between the lever and a cashbox, located in shelving to the right of the chair. The plaintiff was sitting in the chair, when she activated the height adjustment lever. After the accident, the plaintiff reported it to Ms. Fiona O'Reilly, the H.R. Manager at the store. She received first aid treatment from a trained member of staff. She then took a taxi to hospital.

8. The accident occurred in "express checkout no. 1". This checkout is no longer in existence, as the "express checkouts" were replaced with self-service checkouts soon after the accident. The plaintiff's workstation, featured a cashbox for storage of a till tray containing cash, when an employee took a break. It was located to the right of the employee when seated. These cashboxes were located to the left of the employee in the larger checkout in which conveyer belts were used, referred to as "belted checkouts". The plaintiff stated that the "belted checkouts" were much more spacious than the "express checkouts". She stated that there was little room to move about in the "express checkout" workspace and that entering the space necessitated that the chair be removed from the workstation to allow the sales assistant to enter.

9. The plaintiff set out in her personal injuries summons, dated 4th June 2015, the particulars of negligence and breach of duty, which she alleged against the defendant as follows:-

"The defendant, its officers, servants or agents were guilty of negligence and breach of duty (including breach of statutory duty and breach of contractual duty) in:-

(a) Providing the plaintiff with a chair which was dangerous and defective;

(b) Failing to provide the plaintiff with a suitable chair;

(c) Failing to ensure that the chair which was provided to the plaintiff was defect free;

(d) Causing, allowing or permitting the chair in question to be or to remain in a defective or dangerous condition, such that the seat collapsed rapidly when the lever was pulled;

(e) Failing to take any or any proper or effective measure to ensure that the chair in question was secure and would not collapse when the lever was pulled;

(f) Failing to enforce any adequate system for the inspection and maintenance of the chair in question to ensure that it was safe and secure;

- (g) Exposing the plaintiff to a danger of which it was aware or of which it ought to have been aware;
- (h) Exposing the plaintiff to an unsafe system of work;
- (i) Failing to adequately assess the risk to which the plaintiff was exposed;
- (j) Failing to take any or any adequate steps to minimise the risk to which the plaintiff was exposed;
- (k) Being in breach of the implied term of the plaintiff's contract of employment that she would be provided with a safe place of work and a safe system of work;
- (l) Being in breach of the Safety, Health and Welfare at Work Act 2005 and the regulations made thereunder for the reasons pleaded heretofore;
- (m) Being guilty of such further and other acts of negligence and breach of duty (including breach of statutory duty and breach of contractual duty) as may be pleaded prior to the hearing of this action and/or as may transpire during the course of the hearing thereof. The plaintiff reserves her position in this regard;
- (n) The plaintiff should further rely on the doctrine or res ipsa loquitur to affix the defendant with liability for the reasons as pleaded heretofore"

10. In her application to the Injuries Board the plaintiff made the case that the chair she was using was in a dangerous and defective condition and that her injury was caused by the chair dropping rapidly.

11. At the date of issuing the personal injury summons, the plaintiff's case focussed on a liability on the part of the defendant for supplying a faulty chair. In particular, it was alleged that liability for the accident arose due to the speed with which the chair descended and the potential for injury arising from this and was not concerned with potentially hazardous objects in the area adjacent to the chair. The plaintiff's engineer inspected the chair at a joint engineering inspection, which was carried out in May 2015. He accepted that the chair which was made available to him for examination, was in proper working condition at the time that he examined it.

12. The defendant's security manager, Ms. Jodie Maher, stated that approximately ten minutes after the plaintiff's accident, after she had ascertained that the plaintiff was being medically treated, she went to the plaintiff's workstation and removed the chair. She directed a male member of staff to bring it to the back office. There she placed a notice on it, stating that it was not to be put back into circulation. She confirmed that the chair in question had been retained by her in the back office and it was that chair which had been made available to the engineers for their inspection.

13. In her evidence, the plaintiff did not accept that the chair which had been examined by the engineers, was in fact the chair on which she had been sitting at the time of the accident, as there was a significant time lapse between the time of her accident and the time when the chair was removed from the workstation. The plaintiff further stated that there had been ongoing issues concerning the lack of chairs on the shop floor and also in relation to the condition of the chairs on the shop floor. She stated that members of staff often moved chairs from one workstation to another, to ensure that they had the most comfortable chair available, as many of the chairs were defective. The plaintiff stated that she and other sales assistants had complained to Mr. Declan Forrister and Ms. Fiona O'Reilly about the malfunctioning of the chairs. These concerns had been raised at various "communication meetings", which were attended by staff. Counsel for the defendant accepted that there had been an ongoing issue in relation to there being too few chairs, being available for use by sales assistants at the checkout area, but Counsel did not accept that there was an ongoing issue with broken or malfunctioning chairs.

14. The plaintiff stated that the cause of the accident, was the chair dropping too quickly and the location of the cashbox, which constituted a danger to persons using the chair at that workstation. She maintained that Dunnes Stores had not provided an appropriate workspace and as a result of this, when she used the lever on the right hand side of the chair, her hand became caught between the cashbox and the chair lever, causing her injury. The plaintiff claimed that this was an accident waiting to happen, as the chair height had to be adjusted to accommodate height differences between employees.

15. In a notice of further and better particulars of negligence and breach of duty dated 30th November, 2015, the plaintiff pleaded the following particulars of negligence and breach of duty against the defendant:-

- "(a) Placing the steel cashbox at the express checkout till in a region proximate to the seat level adjustment lever, with the result that the lever was liable to - and did - make contact with the cashbox in the course of its descent;
- (b) Positioning the steel cashbox too close to the seat level adjustment lever on the chair provided to employees;
- (c) Placing the steel cashbox to the right hand side of the express checkout till, where it was within the descent path of the seat adjustment lever;
- (d) Failing to design the express checkout till area in such a way as to ensure that the cashbox was located in a region which was clear of the adjustable range of the seat;
- (e) Failing to place the cashbox at the express checkout till to the left hand side of the till, the position at which it was located at all other tills in the store;
- (f) Designing and constructing the express checkout till in an unsafe and cramped manner;
- (g) Requiring the plaintiff to work in an unsafe workplace;
- (h) Exposing the plaintiff to a foreseeable risk of suffering an entrapment injury by reason of the design and layout of the express checkout till area;
- (i) Being in breach of sections 8, 9, 10, 15 and 19 of the Safety, Health and Welfare at Work Act 2005 for the reasons as aforesaid;
- (j) Being in breach of regulations 17, 28, 29 and 30 of the Safety, Health and Welfare at Work (General Application) Regulations 2007

for the reasons as aforesaid....”

16. The steel cashbox, the stationary object the plaintiff’s hand came in contact with, causing injury, was a common piece of security equipment in Dunnes Stores retail outlets. The function of this secure steel box, with a lock and key, was to allow employees to store their till trays, containing a cash float, or the takings from earlier in their shift, during breaks. The plaintiff stated that the steel cashbox at “express checkout No. 1”, the location of the accident, was not operational at the time of the accident, due to the doors being broken on that cashbox. A sales assistant who was going on a break from that workstation, would have to leave that post with their till tray and carry it to a cashbox at a different checkout for it to be securely stored during the break.

17. The plaintiff stated there was a busy “belted checkout” located behind the “express checkout”, where she was working. As a result, she had to move her chair into the work space quickly, when returning to her seat. The plaintiff stated that as the accident occurred in December, a busy time of year in the store approaching the Christmas period, her focus while lowering the chair was to quickly get ready to serve customers.

18. The plaintiff stated in cross examination that she believed that she had positioned the chair centrally in the workspace, when the accident occurred. She denied that she had moved the chair over to the right of the workstation so as to be on top of the cashbox. She also contended that the workstation in the “express checkout”, was very narrow and required that a sales assistant remove the chair from the workstation, before entering it, as it was not possible to enter the station with the chair in situ, as this space was too narrow.

19. Mr. Jack O’Reilly, the plaintiff’s engineer, described the construction and function of the chair and the workstation in question. There were two levers to the right hand side of the chair, one to the front to adjust the height of the chair and one to the back to adjust the back of the seat. He stated that the lever used to raise and lower the height of the chair projected 30mm beyond the edge of the seat. It would be approximately four inches from the steel cashbox, when the chair was located in the centre of the workstation. If an operative, for whatever reason, brought the seat over to the right of the workstation, rather than the left, the lever would be directly over the top of the cashbox. If this happened, the lever would come into contact with the top of the cashbox when lowered, potentially trapping the operative’s fingers.

20. Mr. O’Reilly stated that the chair was of a standard design. It was commonly used in shops and offices throughout the country. He explained the mechanical operation of the chair, stating that the cylinder below the seat, was equipped with a spring, such that when the operative pulled the lever upwards and sat on the seat, the spring compressed, lowering the height of the seat. When they removed their weight from the seat, while pulling the lever, the seat would rise. The height on the seat was usually adjusted by an operative putting their right hand down the side of the seat and onto the lever; they would raise the lever and adjust the seat to the required height, using their body weight to cause the seat to descend. He stated that an experienced operative would not normally look down at the lever when adjusting the height of the chair. In a checkout situation, the operative’s focus would have been on the checkout and not on the operation of the lever. Using the photographs taken on the day of the accident, the plaintiff’s engineer estimated that the cashbox projected about two inches beyond the self on which it was sitting. He stated that if an operative placed their seat too far to the right hand side of the workstation, then the lever, as it projected 30mm beyond the edge of the seat, would be in a position directly over the cashbox, causing a risk of entrapment. Mr. O’Reilly stated that this risk of entrapment should have been eliminated by moving the cashbox back, so that it would be flush with the till above, or moved to the left hand side of the operative, where there was no adjustment lever on the chair.

21. Mr. O’Reilly was questioned by defence counsel about the routine nature of this task; to which he replied that the entrapment occurred, because the seat was moved a very small amount off centre to the right. Employers were required to carry out a risk assessment for the avoidance of risks in the workplace. Mr. O’Reilly stated that what had existed in this case, was a clear risk that should have been addressed by the employer. Employers had a duty to ensure that risks to the health and safety of their employees were avoided, even where the employee was distracted by other matters.

22. In his report, Mr. O’Reilly acknowledged that it was clear that employees would change frequently at any particular checkout and these employees would require their seats to be at different heights and as a result, height adjustable seating was appropriate. If this workstation had been properly risk assessed, the fact that the seat could have caused an entrapment, should have been seen and should have been dealt with, either by moving the cashbox, or recessing it within the shelving. Mr. O’Reilly stated that in preparing a safety statement, an employer was required to carry out a risk assessment, under which the risks arising were to be addressed. Preventive measures in compliance with the Safety, Health and Welfare at Work (General Application) Regulations 2007 should have been implemented. He stated that the primary purpose of a safety statement was the avoidance of the risk of injury to the employee. He stated that an assessor, when assessing this workstation, should have seen the entrapment risk that existed in the workstation.

The Defendant’s Case

23. In its defence delivered on 29th October, 2015, the defendant stated as follows:-

“The grounds upon which the defendant claims that it is not liable for any injury suffered by the plaintiff (the existence of same being denied) are as follows:-

- a. The incident which occurred was in the nature of an unfortunate accident in respect of which this defendant does not have the alleged or any culpability;
- b. The occurrence of the said incident was not foreseeable or reasonably foreseeable on the part of the defendant, its servants or agents;
- c. Further or in the alternative, the plaintiff in respect of such injury, loss or damage as she may have sustained (and no concession being made in that regard) was the author of her own misfortune;
- d. Further or in the alternative and strictly without prejudice to the foregoing, the plaintiff was guilty of contributory negligence.”

24. The grounds upon which the defendant alleged that some or all of the personal injuries contended for by the plaintiff (the existence of which injuries were denied) were occasioned in whole or in part by the plaintiff’s own acts, were pleaded as follows:-

“The grounds upon which the defendant alleges that some or all of the personal injuries contended for by the plaintiff (the existence of which is denied) were occasioned in whole or in part by the plaintiff’s own acts:-

- a. Lowered the chair in circumstances where it was situate at or over the steel cashbox.
- b. Failed to ensure that the way was clear prior to the lowering or attempted lowering of the chair;
- c. Placed her hand between the base of the chair and the steel cashbox;
- d. Failed to use her common sense;
- e. Failed to bring her knowledge and experience of the work place to bear;
- f. Failed to appreciate that the chair once the lever was pulled, would lower;
- g. Failed to consider what the effect of the lowering of the chair would be having regards to the surrounding circumstances;
- h. Exposed herself to the risk which materialised."

25. The defendant contended that there was a necessity in locating the steel cashbox in the region in which it was located, to the right of the sales assistant and under the till, as it allowed a sales assistant to easily, and with minimal security risk, lift the till tray from the steel cashbox into the till box. The location of the steel cashbox in this area, was to prevent staff having to walk around with large amounts of cash and also to facilitate the large numbers of staff changes at the checkouts daily. Counsel for the defendant accepted that the cashbox at "express checkout No. 1" was broken at the time of the accident.

26. Counsel for the defendant accepted that the express checkouts were a confined workspace. Mr. Donal Terry, the defendant's engineer, stated that the type of work undertaken in these workspaces necessitated that these be a confined workspace. In the traditional conveyor belt checkouts, still in operation in the store today, items would be left on the belt by the customer, the item is then taken off the belt by the sales assistant and scanned or weighed as necessary. The item was then placed on a different conveyor belt, or was pushed down a slight slope by the sales assistant, returning the item to the bagging area. In the express checkout situation that was in operation in the Dunnes Stores retail outlet in Kilkenny, which Mr. Terry described as a "basket driven transaction", the customer placed their basket into a depression or well to the right of the sales assistant. The sales assistant then picked the items from the basket for scanning or weighing and returned it to the customer in an alternative depression or well to the sales assistant's left. It was the defendant's case that the workspace in this checkout was necessary smaller than on the belted checkout, as the aid of a conveyor belt was not provided for in this type of checkout, necessitating that the sales assistant would pick items out of and drop them into the wells on either side of them. If this workstation was a wide space, it would necessitate the sales assistant stretching to reach into the well to pick items from it and stretching to place the items back in the returning well. This would have constituted a risk of injury to an operative's neck, shoulders and upper back.

27. Mr. Terry described the "express checkout no. 1" workstation, as set out in Ms. Maher's photographs taken on the day of the accident. The optical scanner was located left of centre line of the scales, to allow an operative to use the till screen with their right hand. He described this as an ergonomically designed workstation, that was built around the operative, who was centrally located in the workstation. Mr. Terry calculated, based on Ms. Maher's photographs, that the workstation was approximately 2ft, 4 inches wide. He stated that the chair was moved approximately six inches to the right between photographs no. 3 and 4. It was this movement that resulted in the lever on the chair being placed over the steel cashbox. He stated that moving the chair over 6 inches to the right, as had been done in photograph 3, negated the usefulness of the ergonomic workspace. He stated that the scanner, scales and till screen were located in front of the operative for convenience. The till box was located to the right of the operative, as there would only be one cash transaction with every sale, but numerous items to scan and weigh. The defendant's engineer stated that for the entrapment to occur, the chair must have been dramatically brought to the right of the workstation. Mr. Terry stated that in compliance with health and safety provisions, an employee should be seated where it was easiest to carry out the operation when sitting. In evidence, the plaintiff agreed that it was important that she did not have to reach too far to pick up items and that was why the express checkout had been organised as it was. She agreed that the cashbox had an important security function. She accepted that she was very familiar with the layout of the express checkout and that the cashbox was fixed in the position that it was in.

28. Ms. Maher, the security manager, stated that the plaintiff was not replaced by another member of staff in "express checkout no. 1" after the accident. She stated that when she went to the checkout, some ten minutes after the accident, there was one girl at the other "express checkout". She stated that she placed the chair that was at "express checkout no. 1" in the cash office, with a note specifying that it was not to be returned into circulation. Ms. Maher stated that she used an identical chair to carry out the reconstruction soon after the accident, for the purposes of her photographs. She stated that as security manager, it was her role to investigate accidents in the immediate aftermath thereof. To this end, she would fill in an accident report form, take statements from relevant witnesses, preserve any physical evidence, and take photographs showing the locus of the accident. Ms. Maher also stated that part of her role as security manager, was to receive any complaints that were made by staff in relation to broken equipment. She would then resolve these issues. She stated that she had no recollection of any chair being brought to her attention as being broken, in the years that she worked in the Dunnes Stores Kilkenny retail outlet.

29. The H.R. manager at the time of the plaintiff's accident, Ms. Fiona O'Reilly, stated in evidence that at each express checkout, the operative using the checkout would be changed eight to nine times per day, as these checkouts were particularly busy. Dunnes Stores did not allocate a particular checkout to a particular member of staff. They would be rotated among all the checkouts. Counsel for the defendant stated that based on the figure given, of the operatives changing eight to nine times per day, the chairs in the "express checkout" could be adjusted up to 6,000 times per year to facilitate the changing of operatives.

30. Ms. O'Reilly stated that she had attended all the staff "communication meetings", where any complaints in relation to equipment would be brought up. There had not been any complaints that any of the chairs were defective. There had been complaints that there were not enough chairs on the shop floor. As a result, they had ordered more chairs. However, she was adamant that there were never any complaints about the operation of the chairs.

31. The plaintiff at the time of the accident, had worked in the store for six years. She stated that she had never had any difficulty in adjusting the height of her chair before this accident. She stated that she only had difficulty on this occasion, because the chair had lowered at a faster speed than she had anticipated. The plaintiff also stated in cross examination, that she had no knowledge of any other sales assistant having any difficulty with the adjustment of the height of a chair, or suffering an entrapment injury similar to her own.

32. Counsel for the defendant put it to the plaintiff that for the entrapment to have occurred in the manner she described, the plaintiff would have had to have moved her chair off centre to the right of the workstation. She further put it to the plaintiff, that this accident could have been easily avoided, if she had moved her chair back to the centre, or to the left of the workspace, where there were no potential obstacles. The plaintiff accepted the contention put to her by counsel for the defendant, that people occasionally have accidents that were not the fault of anyone in particular. However, she stated that the cause of her accident was the fact of the chair lowering quickly and the steel cashbox being in a location that created a risk of entrapment.

33. Mr. Terry, the defendant's engineer, discussed how risk assessments are carried out. He stated that the number of accidents would be divided by the number of times an operation is conducted, to develop a risk assessment. He stated that all movements of a moving object near a fixed object create a potential risk of entrapment. It was the degree of this risk, that was the key consideration. Mr. Terry stated that hazards were numerous in a working environment, especially in relation to moving objects coming into contact with stationary objects. He distinguished between a hazard and a risk, stating that the potential for the hazard to operate is the risk. There were numerous hazards in any workplace. Moving devices in a fixed workspace created the hazard of entrapment. He accepted that the cashbox was an unnecessary hazard, but stated that the absence of any prior accident was informative in the concept of risk and the risk assessment. There was only one moving part in this workstation, the only variable in the workspace was the chair itself.

34. The defendant's engineer stated that there was no suggestion at the inspection, that the chair which they inspected, was other than the chair which had been involved in the plaintiff's accident. He stated that the chair which he had inspected was working properly. He stated that the use of this type of chair, was almost universal in retail and office workspaces.

35. Mr. Terry stated that he did not consider the plaintiff's workstation to have constituted a sufficient risk of entrapment, for the employer to have to alter the configuration of the workstation. He considered the workstation, as pictured in photographs 1 – 13, a safe working environment. He stated that he had never seen an accident of this nature before, nor had he been told of any accident of this nature by any colleague of his. Mr. Terry stated that he was of the opinion that the system of work in operation at "express checkout No. 1", was safe. As a risk assessor, he would not have recognised the potential entrapment that occurred, as a risk. It was put to Mr. Terry that the hazard could have been removed by carrying out remedial work to the workstation. He stated that he did not believe that the workstation created a risk and, therefore, remedial work did not need to be carried out to it.

Conclusions

36. This action arises out of an accident which occurred on 11th December, 2013. At that time the plaintiff, while acting in the course of her employment as a sales assistant in the Dunnes Stores shop in Kilkenny City, suffered injury while lowering the height of the chair on which she was going to sit at the checkout. At the time, she was working at "express checkout No. 1". This was a somewhat confined workstation. She placed her right hand beneath her chair and pulled the height adjustment lever. The plaintiff says that this caused her chair to descend rapidly, causing her fingers to become trapped between the underside of the lever and the top of a steel cashbox, which was on shelving to her right.

37. While the defendant accepts that the accident occurred in the manner alleged by the plaintiff, it denies that the accident was caused due to any negligence or breach of duty on its part and further denies that the particular accident was reasonably foreseeable. There is also a plea of contributory negligence against the plaintiff.

38. The first issue which the court must decide, is whether the chair, which was examined by the plaintiff's engineer in May 2015, was the chair, which the plaintiff had been using on the day of the accident. The workstation at which the plaintiff had been working, had not been taken over by any other employee in the immediate aftermath of the accident, so there was no need for any other employee to interfere with, or move, the chair. The court accepts the evidence of Ms. Maher that within approximately ten minutes of the accident, she went to the plaintiff's workstation and removed the chair. She retained the chair in a back office. She put a notice on it, stating it should not be put back into circulation.

39. In these circumstances, the court finds that the chair which was examined by the engineers in May 2015, was one and the same chair as used by the plaintiff at the time of the accident. As both engineers were in agreement that the chair which they inspected was in proper working order, the court finds that the accident was not caused by any defect in the operation of the chair.

40. It was accepted at the hearing, that the particular cashbox, against which the plaintiff's fingers became trapped, was not working on the day of the accident. It appears that the doors thereon were malfunctioning. However, the cashbox was a stationary object, which was bolted to the shelf on which it stood. The fact that the cashbox could not be used on this particular occasion, due to the defective condition of the doors thereon, was not relevant to the circumstances of this accident.

41. The court is satisfied from viewing Ms. Maher's photographs, that the cashbox jutted out from the edge of the shelf on which it stood by some distance. It is very difficult to give an accurate assessment of this distance, but doing the best that I can, I would estimate the distance at approximately one inch or perhaps a little more. Mr. Terry, the defendant's engineer, accepted that the cashbox was sitting proud of the shelf, but thought that it was flush with the position of the till box on the cash register above it. The fact that the cashbox was sitting proud of the shelf, would have meant that it was possible for the plaintiff to move her chair close to the shelving to her right, and thereby put her hand, when holding the lever, in a position above the cashbox itself.

42. Some complaint has been made by the plaintiff that the workstation was somewhat cramped. I am satisfied having regard to the evidence given by Mr. Terry that this workstation was an ergonomically designed wraparound workstation. It was of a somewhat confined design. This was due to the fact that it was designed for customers, who would have a basket containing a relatively small number of items. The basket would be put into a well to the left or right of the checkout operative. The operative would pick up items from the basket, place them on the weighing scales or across the scanner and then put them into the well on the opposite side, where they would be put into a bag by the customer. The operative would be working from a seated position. To avoid a strain injury to the neck, shoulders and upper back, it was necessary to design the workstation such that the two wells, to either side of the scanner, were close together. Accordingly, I do not accept that there was any negligence in the design of the workstation itself.

43. The court accepts that this accident could have been avoided if the cashbox had been placed on a shelf to the left of the checkout operative. However, that is very much a counsel of perfection, made with the benefit of hindsight. The duty on an employer is to take reasonable care to prevent injury to an employee from a cause that is reasonably foreseeable. Or to put it another way, the accident must have been reasonably foreseeable. In this case, the accident could only have occurred if the operative chose to alter the height of her chair, while the chair itself was positioned at the extreme right of the workstation. The normal position for the chair was in the centre of the workstation, in front of the weighing scales and the scanner. The plaintiff would have been looking at that area when adjusting the height of the chair to the required height. If the chair was positioned centrally within the workstation, which was the normal position for it to be in, the operative could adjust the height of the chair without any danger of entrapment to

her fingers, between the height adjustment lever and the cashbox. While the plaintiff did not have to move the chair far, to be in a position of danger of entrapment, some two to four inches would have sufficed, it still required the chair to be positioned significantly off centre for the danger of entrapment to occur.

44. In looking at the question of foreseeability of this injury, the court has had regard to the evidence of Ms. Fiona O'Reilly that in her seven years experience with Dunnes Stores, she has never come across this type of accident before. The court also accepts the evidence of Mr. Terry, that in his twenty years experience as a forensic engineer, he has never seen this type of accident, nor has he heard of any similar accident. He was of the opinion that this accident would not have been reasonably foreseeable to any employer carrying out a risk assessment of the system of work carried on at this workstation.

45. The plaintiff also fairly conceded that she was not aware of any similar accident to any of her fellow employees. The court has also had regard to the fact that at the time of this accident, there were two express checkouts in operation in the Kilkenny shop. The shop was open from 08:00 to 22:00hrs each day. The checkout operatives at the express checkouts, were rotated every 60-90 minutes. Thus, it was probable that there were a considerable number of height adjustments made to the chairs during any given year. The fact that there was no similar accident to that suffered by the plaintiff, is significant.

46. Taking all relevant matters into consideration, the court finds that this accident was not reasonably foreseeable. It was an unfortunate accident, which occurred in very unusual circumstances. However, it was not one that was reasonably foreseeable to anyone looking at the system of work carried on at this workstation. Accordingly, I must dismiss the plaintiff's case against the defendant.