DCPI 1283/2004

**IN THE DISTRICT COURT OF THE**

**HONG KONG SPECIAL ADMINISTRATIVE REGION**

#### PERSONAL INJURIES ACTION NO. 1283 OF 2004

# BETWEEN

## WONG PAN Plaintiff

and

EASTERN PACIFIC CIRCUITS Defendant

(HK) LIMITED [formerly known as

WONG’S CIRCUITS (H.K.) LIMITED]

# Coram: Deputy District Judge Anthony Chow in Court

Dates of Hearing: 28th to 30th June 2006

Date of Handing Down Judgment: 24th July 2006

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### JUDGMENT

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1. This is a personal injury claim by an employee against his employer. Prior to commencement of this trial, with counsels’ assistance, parties agreed on quantum, therefore the only issue I have to determine is liability.

Background:

2. The defendant manufactures electronic circuit boards and the plaintiff, one of its employees. The plaintiff’s job was to check circuit boards for defects. The defect detection was a two steps process. First, the circuit boards are checked by an operator using a machine call 309i, then the boards are checked by another operator using a machine call VRS.

3. The workplace was arranged such that all 309i machines were on one side and all VRS machines were on the other. There is a corridor separating the two rolls of machines. There are also yellow lines on the ground that clearly delineated the corridor from the machine stations.

4. The circuit boards are first placed on top of a 30 inches high white wooden trolley (the “White Trolley”). In addition to the top, the White Trolley has two additional lower compartments of about the same height, making the top shelf about 15 inches off the ground.

5. The 309i machine operators would take the circuit boards from the top of the White Trolley, use the 309i machine to check them, then the operator would take a cardboard from the bottom compartment to protect the circuit board and place the completed circuit board in the upper compartment.

6. The circuit boards were then transferred to and checked by the VRS operators. A slightly larger metal trolley (the “Metal Trolley”) is provided for all VRS machine operators. Their job required placing the circuit boards on a bed on top of the VRS machines, which would check for defects like broken or short circuits in the boards. Once the defects are detected, the VRS operators are required to mark the defects with a marker and note the code of the type of defects on the side of the circuit boards. Once completed, the boards would be repaired in another area called the Inner A.D.I. room.

7. The plaintiff was one of the defendant’s VRS operators. On the early morning of 8/12/2001, at or about 12:05AM, while acting in the course of his employment, the plaintiff suffered an injury to his back.

8. After resting for more than an hour, the plaintiff then went to the Tseung Kwan O Hospital for treatment.

The plaintiff’s case:

9. The plaintiff alleged he received no safety training or guidelines from the defendant. His supervisor, Mr. Lam, did not demonstrate any work procedure to him. When he first started with the defendant company in or about March 2000, he was just assigned a department and started work the second day of employment.

10. On the evening of the accident, the plaintiff was working on outer circuit boards that were heavier then inner circuit boards he usually worked on.

11. There was insufficient space for the plaintiff to do his job, because there was another worker next to him and to avoid damaging the boards, the plaintiff had to bend his back to lift the top circuit board a bit before lifting it out of the first compartment.

12. The plaintiff was required to finish checking 60 to 80 boards an hour, therefore he had to do his work in a hurry. The plaintiff would take out 3 to 5 boards at a time. On the evening, the plaintiff sprained his back while removing circuit boards from the White Trolley to the Metal Trolley.

13. The plaintiff reported his injury to his supervisor Mr. Lam, who told him to rest, but after 1 to 2 hours, the pain persisted and arrangement was made to release the Plaintiff and he went to the hospital by taxi.

14. The plaintiff alleged that the plaintiff’s injury was caused by lack of a safe system of work, effective supervision and a safe place of work.

The defendant’s case:

15. When the plaintiff first joined the defendant company in 2/3/2000, on the job training was provided to the plaintiff. The plaintiff was trained on how to operate VRS machine and how to handle circuit boards, including how it should be placed, moved and stored. Mr. Lam, the supervisor demonstrated to the plaintiff the correct position to take the circuit boards and the correct back position when moving the boards.

16. The plaintiff had to observe an experienced machine operator for 4 hours and an experienced operator watched the plaintiff for 4 hours, before the plaintiff was allowed to commence work on his own.

17. In addition to the on the job trainings, formal training were provided as well. On 7/12/2000 and 21/12/2000, the plaintiff attended two formal safety-training courses. The training courses included the proper way to take out circuit boards and to transport them. Specifically, the boards should be transported on trolleys pushed by 2 persons. No more then 20 boards with a maximum height of 18 inches may be transported at one time. Written safety guidelines were given to the plaintiff on both occasions.

18. On the evening of the accident, the plaintiff was working on outer boards, but these boards weighted approximately 3 pounds each.

19. The work schedule on the night of the accident was normal. Mr. Lam did not instruct the plaintiff to check 60 to 80 boards per hour, since there are more defects on outer boards, it was not possible to check more than 30 to 35 circuit boards per hour in any event.

20. There was sufficient space for the plaintiff to work, there was no disturbance around him and there was a trolley to assist the plaintiff to transport the circuit boards. Sufficient training was provided to the plaintiff, there was no negligence on the part of the defendant.

The Law:

21. The relevant legal principle is succinctly stated by Lord Reid in *General Cleaning Contractors Ltd. v Christmas* [1953] AC 180, approved by Mr. Justice Cheung (as he then was) in *Lai Chi Pon v Toto Steel & Iron Works Ltd.* HCPI 1149A/1995, as follows:

*“It is the duty of the employer to consider the situation, to devise a suitable system, to instruct his men what they must do and supply any implements that may be required… No doubt he cannot be certain that his men will do as they are told when they are working alone. But if he does all that is reasonable to ensure that his safety is operated he will have done what is bound to do.”*

22. However, the employer’s duty to lay down a system of work does not extend to task that does not involve any serious risk of injury, is simple and non-complicated. In *Cheung Suk Wai v. AG* [1996]4 HKC 288, Mr. Justice Leung (as he then was) quoted and adopted Lord Oaksey’s statement in *Winter v. Cardiff Rurl District Council* [1950] 1 All ER 819:

*“ In my opinion, the common law duty of an employer of labour is to act reasonably in all circumstances. One of those circumstances is of those circumstances is that he is an employer of labour, and it is, therefore, reasonable that he should employ competent servants, should supply them with adequate plant, and should give adequate directions as to the system of work or mode of operation, but this does not mean that an employer must decide on every detail of the system of work or mode of operation. There is a sphere in which the employer must exercise his discretion and there are other spheres in which foremen and workmen must exercise theirs… where the system or mode of operation is complicated or highly dangerous or prolonged or involves a number of men performing different functions, it is naturally a matter for the employer to take the responsibility of deciding what system shall be adopted. On the other hand, where the operation is simple and the decision how it shall be done has to be taken frequently, it is naturally and reasonably that it should be left to the foremen or workmen on the spot.”*

The Issue:

23. The issue in this matter is: Whether the defendant provided reasonably safe equipment, directions and system of work or mode of operation to the plaintiff?

24. The parties differ significantly on this. The plaintiff’s case was the defendant never provided any training, demonstration or system of work. The defendant’s case was training courses, demonstration and written safe mode of operation were provided to the plaintiff.

25. Do I believe the plaintiff’s version of facts or defendant’s version of facts? As Mr. Kerr, counsel for the plaintiff, stated in his final submission, the decision is ultimately a finding of facts based on the veracity of the testimonies of the parties, their respective witnesses and the documentary evidence.

Disputed facts:

26. Before I can answer the issue in this matter, I must first rule on a number of factual disputes.

***Did the plaintiff suffer injury while moving furniture at home on the afternoon of 8/12/2001?***

27. There is one significant factual disagreement between the parties: On an insurance claim form dated 27/12/2001, the plaintiff disclosed his injury was a result of falling down while moving furniture at home, on the afternoon of 8/12/2001.

28. The plaintiff explained that he signed the insurance claim form in blank and the insurance agent, Mr. Tse Chi Yan, filled in the claim form for him. The plaintiff did not see nor did he approve of the content of the claim form.

29. The defendant argued that since the plaintiff was able to move furniture at home in the same afternoon, the original work related injury must have been very slight. The plaintiff had the burden of proving which part of his injuries was caused by the work related injury and he has failed to do so, the defendant urged the court to dismiss the claim.

30. There was no dispute that the plaintiff suffered an injury at work on the morning of 8/12/2001, there was no allegation that the subsequent injury at home was a superceding and intervening cause of the plaintiff’s injury, therefore, whether the plaintiff suffered an additional injury at home goes only to deciding what percentage of the total injury was attributable to the work related injury and what percentage was attributable to the home injury, if any. This dispute is also a factor in determining whose evidence is more trustworthy.

31. Mr. Tse’s testimony explained many anomalies in the plaintiff’s evidence. For example, the original insurance claim form dated 27/12/2001, the second form dated 7/3/2003 and the letter dated 27/11/2003 to the insurance company were signed in blank by the plaintiff with all of the details completed by Mr. Tse; however, Mr. Tse’s testimony was when completing the original claim form, he simply copied the information from Dr. Peter Wong’s notes contained in part 2 of the claim form.

32. In part 2 of the claim form, Dr. Wong in the column marked cause of accident wrote: “Pain when moving furniture at home” and in the column for when and where did the accident happened wrote: “At 4PM on 01/12/8 at Home.” When examined during trial, the plaintiff denied telling Dr. Wong anything about moving furniture at home. According to the plaintiff, Dr. Wong made up the whole thing.

33. I find the plaintiff’s testimony difficult to accept. It may be true that Mr. Tse may have asked him to sign the forms and the letter in blank and filled in the details later. It may be true that Mr. Tse simply filled in the details of the accident from Dr. Wong’s report, without further confirmation from the plaintiff, but these do not explain why Dr. Wong wrote in his report the plaintiff injured his back while moving furniture at home. The plaintiff’s allegation that Dr. Wong simply made it all up is totally unbelievable.

34. I find the plaintiff was not a truthful witness and I find as a matter of fact that the plaintiff informed Dr. Wong he injured his back while moving furniture in the afternoon of 8/12/2001.

***Whether at the commencement of his employment, the plaintiff received trainings in operating the VRS machines and how to handle circuit boards, including the methods as to how to put down, transport and put away circuit boards?***

35. The plaintiff stated he received no training of any kind when he first started his employment. According to the plaintiff, when he started he was assigned a department and work was then given to him; however, the plaintiff also testified that he started to work on the second day of work.

36. The plaintiff never explained what did he do on the first day of work. Clearly the plaintiff did not simply sit around, something must have happened on the first day of work and the only logical explanation was the plaintiff’s first day at work was used for the trainings as alleged by Mr. Lam.

37. Specifically Mr. Lam in his statement stated when the plaintiff first started he personally demonstrated the correct way to take the circuit boards and the safe posture in respect of caring for the waist area when transporting circuit boards. Before the plaintiff was allowed to take up his post, he spend 4 hours seating next to an experienced operator and observed the proper mode of operation and then an experienced operator sat next to the plaintiff for 4 hours to observe his mode of operation.

38. All of what Mr. Lam said could be accomplished within the first day of work and I find as a matter of fact that was exactly what happened on the first day of work.

***Was the plaintiff required to check 60 to 80 circuit boards per hour?***

39. The plaintiff alleged he was under a lot of pressure to work very quickly, the defendant required each VRS operator to process 60 to 80 circuit boards per hour and therefore safety was compromised.

40. Mr. Lam, on the other hand testified that it was physically impossible for anyone to process that many circuit boards per hour and a VRS operator was not expected to process 30 to 35 circuit boards an hour.

41. In this regard, the plaintiff’s witness Ms. Li Mei Yung’s testimony was not helpful to the plaintiff because she was working on an AOI machine, a totally different machine from the plaintiff.

42. If the plaintiff’s testimony was correct, he would be required to process a circuit board in less than one minute; however, it was agreed fact that it takes the VRS machine approximately 30 seconds to register any problems with the circuit boards. After the problems are registered, the plaintiff had to mark the location of the problem on the circuit board and write a numeric code of the type of problems on the side of the board. It also takes a few seconds to take the board from the trolley onto the VRS machine and a few seconds to take it away from the VRS machine back onto the trolley. Moving the circuit boards from the White Trolleys to the Metal Trolleys and moving the completed circuit boards to the stacking shelf once they have been checked would take a few minutes each.

43. Even if only 30 to 40 percent of the circuit boards had any defects, clearly the requirement to process 60 to 80 boards per hour was an impossible task. Having considered all of the circumstances of this matter, I find as a matter of fact that there was no requirement for the plaintiff to process 60 to 80 circuit boards per hour.

***Was the plaintiff working under time pressure such that safety was compromised ?***

44. Mr. Kerr pointed to factory rules number 10 as evidence that the plaintiff was working under such time pressure that he had to sacrifice safety.

45. In the factory rules there were a number of rules contravention would bring summary dismissal. The factory rules are in Chinese and rule 10 states: “故意怠工及屢次矌工”. This phase was translated as “Deliberately slowing down work and repeatedly staying away from work”.

46. The Xiandai Hanyu Cidian 現代汉語詞典,商务印書館, 1998 年,北京, the word 怠工was defined as “有意地不积极工作,降低工作效率” or “deliberately working at less than usual level, to reduce work efficiency”. This is very difference than simply “slow work” as alleged by Mr. Kerr. I find the plaintiff was not under such time pressure that he had to sacrifice safety.

***What was the weight of the circuit boards the plaintiff was working on at the relevant time?***

47. Another disagreement was the weight of the circuit boards the plaintiff was working on. The plaintiff alleged he normally worked on inner boards that weighted 1 to 3 pounds; however, on the night of the accident, he was working on outer boards that weighted 6 to 7 pounds.

48. During trial, the plaintiff changed his testimony and stated that the circuit boards he was working on weighted 5 to 6 pounds.

49. Two circuit boards were submitted into evidence by the defendant. Exhibit D-1 was given to the plaintiff and he estimated it weighted 3 to 4 pounds. I asked my trusted usher to weight D-1 with a postal meter and it weighted 929 grams or 2.049 pounds.

50. Mr. Lam testified that defendant exhibit D-2 was similar to the type of circuit boards the plaintiff was working on the night of the accident. Exhibit D-2 weighted 1062 grams or 2.343 pounds only. If the plaintiff estimated a circuit board that weighted just over 2 pounds as 3 to 4 pounds, it would be likely that the plaintiff had similarly over estimated a circuit board he was working on.

51. I find as a matter of fact that the circuit board the plaintiff was working on was approximately the same weight as D-2 or 2 ½ pounds not 5 to 6 or 6 to 7 pounds as alleged by the plaintiff.

***Did the plaintiff receive two formal safety-training courses on 7/12/2000 and 21/12/2000?***

52. The defendant exhibited two attendance records dated 7/12/2000 and 21/12/2000, both showed signatures of the plaintiff.

53. The plaintiff’s reply was although he signed these attendance records, no safety training was in fact given.

54. I find the plaintiff’s reply difficult to accept. The attendance record for 7/12/2000 showed the training occurred at the defendant’s ground floor training room, between 6:50PM and 7:20PM on the evening of 7/12/2000. The attendance record for 21/12/2000 showed the training again occurred in the defendant’s ground floor training room, between 6:45PM and 7:13PM.

55. I find it difficult to accept the defendant would go to such details to create two sets of fake training records, years in advance in order to cover up their failure to provide trainings that took 23 minutes and 30 minutes respectively. The plaintiff’s allegation simply did not make any sense.

56. Having considered all of the testimonies of the parties and their witnesses and all of the evidence submitted, I find as a matter of fact that the plaintiff did attend both training courses.

***What was the content of these training courses?***

57. Attached to the first attendance record were a set of Factory Rules and a set of Industrial Safety Guidelines. Many of the Factory Rules dealt with safety as well as the usual regulations. Specifically, clause 6 of the Factory Rules specified: “運送電路板必須放在運送車上及有2人運送, 以確保有人開門及不被撞踫”

58. Attached to the second attendance record was a set of Rules on Handling Circuit Boards. All of the rules dealt with proper method in handling circuit boards. Mr. Kerr argued that these rules were designed to protect the circuit boards and not employees. Having reviewed the rules in detail, I do not agree with Mr. Kerr’s assessment.

59. Whilst the rules talked about circuit boards and not employees, but numerous clauses dealt with employee safety issues as well. For example:

Clause 5: “從運輸或檯上拿取電路板, 必須小心抬起,不可用力拖拉電路板”;

Clause 11: “若運送路較遠時,必須用膠盆或手推車…或放板盤…”;

Clause 17: “…放板架的放板數量之安全限制是保持放板架邊有2吋空間距離, 以免引起不必要的意外”;

Clause 26: “停泊運輸車時, 必須扣緊運輸車轆, 避免運輸車自由流動而發生意外”;

Clause 27: “在不同工序中運送板時, 必須由兩人運送, 並使用行李帶固定,以免電路板墜下”;

Clause 28: “搬運板時要適量, 以免因太重而引致電路板使之墜地.”

60. I find the training courses consisted of a set of directions on the proper and safe way to work.

***The Issue: Did the defendant provide adequate plant, and adequate directions as to the system of work or mode of operation to the plaintiff?***

61. It is agreed that the Metal Trolley was provided for the Plaintiff to transport circuit boards to and from his workstation, there is no doubt that adequate plant was provided to the plaintiff.

62. Mr. Kerr placed much emphasis on Mr. Lam’s testimony that the transfer of circuit boards between 309i machine operators and VRS machines operators depended on cooperation between the operators as evidence that the defendant had no system of work or mode of operation. I do not agree with this assessment. The initial trainings the plaintiff received on the first day of work, together with the content of the two training courses the plaintiff received, in my opinion constituted adequate directions as to the system of work or mode of operation of the defendant.

63. The transfer of circuit boards between the two operators involved only a simple act of moving circuit boards from the White Trolley to the Metal Trolley. Let’s not forget the actual act that the plaintiff alleged caused his work related injury was moving 3 to 5 circuit boards, each weighting 2 ½ pounds, from one trolley to another. Although he had to bend down to 15 inches off the ground to remove the circuit boards from the upper compartment of the White Trolley, this was by no means a process that was “complicated or highly dangerous or prolonged or involves a number of men performing different functions”.

64. The injury was caused by a simple task that all of us have performed at one time or another. To paraphrase Lord Oasley in *Winter v. Cardiff Rurl District Council*, the decision on how this simple task should be done is naturally and reasonably left to the employees. So, as an alternative, I also find no direction to the system of work or mode of operation was required from the defendant for this simple task.

65. Orders:

1. Claim is dismissed.
2. Costs to the defendant, to be taxed if not agreed.
3. Plaintiff’s own costs be assessed in accordance with Legal Aid Regulations.
4. Certificate for Counsel.

(Anthony Chow)

Deputy District Judge

Mr. John Kerr, instructed by M/s Yeong & Co. (assigned by DLA) for the Plaintiff.

Mr. Kam Cheung, instructed by M/s Paul C.K. Tang & Co. for the Defendant.