

07/84

## INDUSTRIAL RELATIONS COMMISSION OF VICTORIA

**TUCKER v MAPPIN**

KD Marshall, P

21 November 1983

**INDUSTRIAL LAW – EMPLOYER CHARGED WITH OFFENCE OF NOT PROVIDING A GUARD TO MACHINERY WHICH CAUSED INJURY TO AN EMPLOYEE – IN SENTENCING A BOND WAS NOT APPROPRIATE.**

The defendant had been charged with a breach of s16 of the *Industrial Safety, Health and Welfare Act* 1981 in that being the occupier of a work place, did fail to provide a guard for a dangerous part of machinery so as to prevent, as far as possible, loss of life or bodily injury. A worker employed by the defendant sustained certain injuries whilst working a press; there was no guard on the machine on the day in question. When the matter was heard in the Metropolitan Industrial Court, the defendant was released upon entering into a recognizance in the sum of \$20 pursuant to s80 of the *Magistrates (Summary Proceedings) Act* 1975. The informant appealed to the Commission in Court session against the decision. The evidence before the Commission was that the defendant was concerned about and regretted the injury to the worker; that the defendant had not previously been involved in a breach of the provisions of the Act; and that he has since taken action relating to safety in his work place. President Marshall in handing down his decision said:

**MARSHALL P:** The respondent's actions relating to safety in his work place, plus the undisputed information that the respondent has not previously been involved in such a circumstance and is most jealous of his reputation as an employer have also been considered. The fact that certain evidence points to a conclusion that the press concerned did not move by reason of malfunction is noted, but is not relevant. I have considered the fact that the respondent is here, not at his desire but on appeal, and that he has engaged counsel. Nevertheless, the Commission in Court session must, and does, take a serious view of a breach of Section 16. A bond is not appropriate, particularly when personal injury is involved. The order of the Commission is that the Magistrate's order be varied by substituting a fine of \$200 in lieu,...together with professional costs of \$120...

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