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INDUSTRIAL APPEALS COURT MELBOURNE

DICKMAN v CONSOLIDATED MEAT HOLDINGS LTD

Leckie J, President

1 August 1974

LABOUR AND INDUSTRY – EMPLOYEE INJURED WHILST USING MACHINERY – EMPLOYER CHARGED WITH OFFENCE – SUBMISSION THAT THE PART AROUND THE DRAIN HOLE WAS NOT DANGEROUS – SUBMISSION UPHELD BY MAGISTRATE – CHARGE DISMISSED – WHETHER MAGISTRATE IN ERROR: *LABOUR AND INDUSTRY ACT* 1958, S174.

HELD: Appeal allowed. Charge proved.
1. This was a dangerous part of the machine in that it provided a nip between the blade of the auger and the edge of the hole. Consequently, the obligation under the section upon the occupier was to provide a guard or guards so as to prevent as far as possible loss of life or bodily injury.

2. The obligation under s174 of the *Labour and Industry Act* 1958 if the question of 'dangerous part' was satisfied was an absolute one except so far as it may be qualified by these words 'as far as possible'. On the evidence it would have been possible not only to provide a plug for this drain hole but also to provide what was obviously called for, an interlocking guard, so that the plug could be removed until the machine was switched off.

3. Accordingly, all the elements of the charge were fulfilled. The respondent was the occupier of the factory, it had machinery in the factory which had a dangerous part, this area around the drain hole, for which no guard was provided, and it was possible to provide an interlocking guard.

LECKIE P: The respondent company, Consolidated Meat Holdings Limited, was charged on information that 'being the occupier of a factory did fail to provide a guard for a dangerous part of the machinery of the said factory, to wit the worm feed on the No. 1 cooker screw, so as to prevent as far as possible loss of life or bodily injury'. The charge, of course, follows the appropriate wording of s174 of the *Labour and Industry Act*.

The elements of the charge are these; firstly, that the Court should be satisfied that the respondent was the occupier of a factory. That is not in dispute. Secondly, that the part of the machinery was a part of the machinery of the factory, and there is no dispute that this screw was part of the machinery of the factory. Thirdly, that the part with which we are directly concerned, the area around the drain hole, was a dangerous part, and true it is that just because an accident happens in connection with that part, it does not of necessity follow that the Court should find that it is a dangerous part. However, it is extremely good evidence that it is a dangerous part.

In considering the question of whether it is dangerous, regard must be had not only to normal operation but to the type of things that employees do, as the Court is only too well aware. Indeed, a good 80 per cent of the matters that come before this Court in connection with this section are either where the operator is removing waste or blocking material or else is adjusting or cleaning the machine in question. It is against all those operations that the obligation applies to guard dangerous parts.

We are satisfied to the required degree that this was a dangerous part of the machine, that it provided a nip between the blade of the auger and the edge of the hole. Consequently, the obligation under the section upon the occupier was to provide a guard or guards so as to prevent as far as possible loss of life or bodily injury.

The obligation under this section if the question of 'dangerous part' is satisfied is an absolute one except so far as it may be qualified by these words 'as far as possible'. On the evidence, and the Court is satisfied on this evidence, it would have been possible not only to provide a plug for

this drain hole but also to provide what was obviously called for, an interlocking guard, so that the plug could be removed until the machine was switched off. In those circumstances we are satisfied that all the elements are fulfilled. The respondent was the occupier of the factory. It had machinery in the factory which had a dangerous part, this area around the drain hole, for which no guard was provided, and we are satisfied that it would have been possible to provide a guard. Indeed, the evidence of the last witness I think quite clearly, that, even if it be true that in order to clean the blades of the auger the machine should be in motion, if a blockage, then the machine was stopped, in order to clear blockage. An interlocking guard such as I mentioned would fulfil that requirement absolutely.

Consequently we find the charge proved and the appeal will be allowed as far as conviction is concerned.
