17/92

COUNTY COURT OF VICTORIA

DPP v PACIFIC DUNLOP TYRES PTY LTD and ANOR

Judge Fricke

22 November 1991

OCCUPATIONAL HEALTH AND SAFETY – SENTENCING – STATUTORY PROVISIONS BREACHED – EMPLOYEE INJURED – OFF WORK FOR 18 MONTHS – RELEVANT CONSIDERATIONS AS TO PENALTY – GENERAL DETERRENCE – SERIOUSNESS OF OFFENCE – WHETHER GOOD BEHAVIOUR BOND APPROPRIATE: *OCCUPATIONAL HEALTH AND SAFETY ACT* 1985, S21.

An employee who had his hands caught in the nipping point of a roller and a conveyor belt suffered multiple fractures in the bones of each arm and was off work for 18 months. On the return of charges laid against the employer, the magistrate released the employer on a $5000 good behaviour bond with a total of $4000 to be paid to the Court Fund plus costs. Upon appeal by the DPP—

HELD: Appeal allowed. Order set aside. Fined $5000 plus costs. Having regard to the need for general deterrence, and the seriousness of the offending, a good behaviour bond was not appropriate.

JUDGE FRICKE: [1] These are appeals brought by the Director of Public Prosecutions against sentencing orders made by the Broadmeadows Magistrates' Court on 15th July, 1991, against each of the respondents, Pacific Dunlop Tyres Proprietary Limited and Goodyear Tyres Proprietary Limited, whereby the Magistrates' Court adjourned the charges upon each respondent entering into a $5,000 bond to be of good behaviour with a condition in each case that each pay $2,000 to the Court Fund.

The informations were brought against each respondent for breaches of s21 of the *Occupational Health and Safety Act* 1985 in that essentially it had failed to install a guard thus leading to the injury suffered by Mr Deloia who was a skilled maintenance worker.

Each of the respondents is a substantial company. I am told that the partnership which they were operating on the day on which Mr Deloia had his hands caught in the nipping point of a roller, between a roller and a conveyor belt acquired the business from each of the respondents for something of the order of $300million. I am further told by Mr Gillard of Her Majesty's Counsel for the respondents that the partnership is world competitive in the manufacture of tyres, manufacturing some number of tyres of rubber and steel, car and truck and tractor, some number of tyres in excess of 6 million per annum with a turnover in excess of $500 million per annum.

It has been contended by Mr Bongiorno, of Her **[2]** Majesty's Counsel, who is himself the Director of Public Prosecutions, that the adjournment of these charges on a good behaviour bond was inappropriate having regard to the seriousness of these offences. I accede to that submission. In my opinion a bond was inappropriate having regard to the seriousness of these offences. General deterrence, as has been said in other cases, is a significant feature of the sentencing policy which ought to be implemented in these cases and looking at the matter *de novo* as I am required to do I consider a bond is inappropriate.

The fact that Mr Deloia was skilled tradesman has some relevance. The fact that he was a maintenance worker has some relevance in that if this were a matter of the day to day use of unguarded machinery by an operative that would be more serious than the present circumstances. However, the fact that he is skilled does not detract from the seriousness of these offences.

The legislation was designed for the protection of employees familiar with machinery. The fact that he was familiar with this machinery does not mean that he is not a proper object of the legislature's concern. The very purpose of guarding is to prevent inadvertence by those of whom

familiarity breeds a cavalier attitude towards the operation of machinery. This was an avoidable accident and it was avoidable by the simple measure of installing a guard which was done, I am told, at minimal cost shortly after this accident at the suggestion of the Department. As a result of that step not having been taken, Mr Deloia suffered multiple fractures in bones of each arm and he was off work for some 18 months. I accordingly **[3]** consider that a bond does not adequately reflect the seriousness of these offences. Manufacturers who might be tempted to sacrifice safety for productivity need to be constantly reminded of the seriousness of this legislation and the importance of adhering to it.

I accordingly, as I so take the view that a bond is inappropriate, in determining the appropriate penalty I need to bear in mind that $10,000 is the maximum penalty that can be imposed summarily and on appeal to this court although the maximum penalty on indictment is $25,000. I do not regard this as by any means the most serious imaginable offence but it is a significantly serious offence. Had there been one entity involved I would have taken the view that the appropriate fine to impose would be $7,500. I uphold Mr Gillard's submission that I should look upon these two companies as one in all the circumstances so I will reduce that fine by half. The appeals as to sentences are allowed, the orders made below are set aside. Each respondent is convicted and sentenced to pay a fine of $3,750 with $750 costs.
