OSHI VS WOODPRO LTD

2024 IND 23

MINISTRY OF LABOUR, HUMAN RESOOURCE DEVELOPMENT AND TRAINING (OSHI) VS WOODPRO LTD

Cause Number: 37/2022

THE INDUSTRIAL COURT OF MAURITIUS

(Criminal Division)

In the matter of:-

MINISTRY OF LABOUR, HUMAN RESOOURCE DEVELOPMENT AND TRAINING

VS

WOODPRO LTD

JUDGMENT

Introduction

This is a case where the Accused stands charged under 2 Counts of an Information, as follows:

(i) Under Count I with the offence of failing to ensure, so far as is reasonably practicable, the safety, health and welfare at work of its employees in breach of section 5(1) and sections 94(1)(i)(vi) and 94(3)(b) of the Occupational Safety and Health Act – Act No. 28 of 2005 coupled with section 44(2) of the Interpretation and General Clauses Act;

(ii) Under Count II, with the offence of failing to forthwith notify the Director, Occupational Safety and Health of an accident arising out of or in connection with work by the quickest practicable means in breach of section 85(1)(a) and sections 94(1)(i)(vi) and 94(3)(b) of the Occupational Safety and Health Act – Act No. 28 of 2005 coupled with section 44(2) of the Interpretation and General Clauses Act.

The Accused, as duly represented by its director, pleaded not guilty to both Counts of the Information and was assisted by Counsel.

The facts

On the 4th December 2021, an accident occurred in the wood crushing section of the Accused company situated at Accacia street, L'Esperance, Trebuchet where Mr Das Gopal Chandra, an employee of the company, sustained injury to his right hand. Mrs Ramkurrun, an acting Principal Occupational Safety and Health Officer, enquired into the case. She took 4 photographs which were duly bound in a booklet and produced in Court.

During the course of her enquiry, she secured a copy of the risk assessment of the wood crusher machine, as well as the working instructions and safety guidelines for operators of wood crusher machine at the Accused company. After the enquiry, she drew up a report. In Court, all the documents were produced and Mrs Ramkurrun recalled her observations of her visit of the locus on the 6th December 2021. She averred that the machine involved in the accident consisted of 3 parts, namely the conveyor, the silo and the packing section. The airlock of the wood crusher machine was found at the outlet of the yellow silo, consisting of blades, with an access of 25 centimetres.

According to Mrs Ramkurrun, Mr Das Gopal Chandra was operating the wood crusher machine at the material time and he got injured when he inserted his right hand to dislodge wood lumps which were jammed in the airlock. As a result, he sustained amputation injury to his right hand. The enquiry carried out by Mrs Ramkurrun revealed that there was no interlocking device provided to the airlock which could have prevented the accident. Therefore, Mrs Ramkurrun testified that there was no suitable and sufficient assessment to the risk of the safety and health to which an employee is exposed whilst operating the machine and the accident was not notified to the Ministry by the quickest and practicable means.

The version of the Accused is contained in a statement given by the representative of the Accused to Mrs Ramkurrun on the 11th February 2022. The Accused explained that he had made a suitable and sufficient assessment of the risks to the safety and health to which an employee is exposed whilst working on the wood crusher machine which was involved in the accident at work. He denied the charges against him.

Observations

I have assessed the evidence on record. The Accused is charged under 2 Counts of the Information and I shall deal with each Count in turn.

COUNT I

Under Count I of the Information, the Accused stands charged for an offence of having failed to ensure, so far as is reasonably practicable, the safety, health and welfare at work of its employees for having failed to take appropriate measures to deny access to the dangerous part of the airlock of a wood crusher machine, as a result of which Mr Das Gopal Chandra sustained amputation of his right forearm by the blades of the airlock of the wood crusher machine when he inserted his right hand to dislodge lumps of wood dust. This happened at the place of work. Section 5(1) of the Occupational, Safety and Health Act 2005 reads:

> *"Every employer shall, so far as is reasonably practicable, ensure the safety, health and welfare at work of all his employees."*

The charge against the Accused is couched under the Occupational Safety and Health Act. I deem it fit to refer to the case of **GENERAL CONSTRUCTION COMPANY LIMITED v OCCUPATION, SAFETY AND HEALTH INSPECTORATE, MINISTRY OF LABOUR, INDUSTRIAL RELATIONS AND EMPLOYMENT (2020) SCJ 40** which reflects the essence of the legislation, namely that:

> *"the legislator's intent behind OSHA is to ensure the safety of workers and OSHA therefore sets out the responsibilities of the employer in that regard".*

For a case of this nature, the onus is on the employer to provide a safe place of work. *"It is evident that the Act imposes a duty upon an employer to ensure, so far as is practicable, the safety at work of all his employees. It casts a duty on him to provide and maintain a system of work that is safe and without risks*". (**RE: CONTAINER LIFT LTD v THE MINISTRY OF LABOUR, INDUSTRIAL RELATIONS & EMPLOYMENT AND ANOR (2014) SCJ 414).**

I have therefore considered the safety measures that were put in place for the operation of the wood crusher machine. I have considered the version of the Accused as contained in the statement given to the investigating officer of the Ministry in the case. It is borne out that the wood crusher machine was equipped with stickers that warn employees to refrain from putting their hand therein. In the event that the machine shut down, the onus was on the employee to switch off the machine and inform maintenance. The Accused ensured that all necessary training was provided to the employees in their native language. It is the version of the Accused that there was a plank placed in the part of the machine which was dangerous to prevent an employee from inserting his hand and the plank was secured by rubber to ensure safety.

The safety measures as explained by the Accused are reflected in the working instructions and safety guidelines for operators of wood crusher machine at the Accused company. I am comforted that the instructions and safety guidelines were actually

implemented within the Accused company for the purposes of the operation of the wood crusher machine as Mrs Ramkurrun visited the locus and drew a report which was produced in Court. I have kept in mind the dicta in the case of **MEADERS FEEDS LTD v MINISTRY OF LABOUR, INDUSTRIAL RELATIONS AND EMPLOYMENT(OCCUPATIONAL SAFETY AND HEALTH INSPECTORATE) 2010 SCJ 410** to the effect that:

> *"We take the view that however well indicated the safety precautions for employees may appear in a "Guide de l"emploi", it will serve no practical purpose if the safety policy proposed and undertaken therein by an employer to render the working conditions, equipment and systems of work safe, is not actually put into practice".*

I find that in the present case, the report of Mrs Ramkurrun confirms that Mr Das Gopal Chandra was operating the wood crusher machine, he had received training for the job, he was aware that he had to inform his supervisor in the event the machine got jammed which he failed to do, he tried to dislodge lumps of wood by inserting his right hand in the airlock when the machine got jammed several times in the day, he was in possession of a signed copy of the working instructions and safety guidelines for operators of the wood crusher machine, he was aware that he should not insert his hand inside the airlock.

In Court, Mrs Ramkurrun conceded in cross-examination that there was a safety device to the airlock which consisted of a rubber plank. On the day of the accident, Mr Das Gopal Chandra removed the plank to insert his hand despite the warning signs.

I find that Mr Das Gopal Chandra defied all safety measures when he actually removed the rubber plank to insert his hand into an airlock in a wood crusher machine. In so doing, he removed the safety device to commit a dangerous act. The case for the Prosecution is that there was access to dangerous part of the airlock which should have been equipped with an airlock interrupter but in truth and in fact, there was no access to the dangerous part of the airlock. It was blocked by a rubber plank. It was Mr Das Gopal Chandra who removed the plank leading to the accident, and he did so despite training offered to him and all warning signs to his knowledge.

Although it is very unfortunate that Mr Das Gopal Chandra met with an accident, it is important to consider whether he methodically followed the safety procedures, whether adequate safety measures had been provided to him and whether the real cause of his injuries was not his non-compliance with the measures. The Court cannot overlook the preliminary responsibilities of the employee. **(RE: MEADERS FEEDS LTD v OCCUPATION, SAFETY ANDHEALTH INSPECTORATE, MINISTRY OF LABOUR, INDUSTRIAL RELATIONS AND EMPLOYMENT (2019) SCJ 33).**

In the present case, I find that Mr Das Gopal Chandra failed to follow the safety measures and procedures and the real cause of his injuries was the result of his own action when he failed to comply with the safety measures by removing a rubber plank to insert his hand in an airlock of a wood crusher machine, despite being trained and aware of the dangers associated with his action. The accident did not occur because there was no safety device. It occurred through the sole action of Mr Das Gopal Chandra. Even if there was an interlocking device or any other device to the airlock of the machine, an accident would still happen if an employee tampers with or removes the device to positively create a dangerous action.

To make matters worse, it has remained unclear as to why Mr Das Gopal Chandra inserted his hand in the airlock of the wood crusher machine. It was initially the version of Mrs Ramkurrun that he did so to remove lumps of wood stuck inside the machine, but, when cross-examined Mrs Ramkurrun acknowledged that Mr Das Gopal Chandra never said so in his statement. At any rate, by the time the case came for Trial, Mr Das Gopal Chandra had already left Mauritius, leaving the version of the Prosecution unsubstantiated and the version of the defence credible and unshattered.

In the circumstances, I find that the Accused has ensured, so far as is reasonably practicable the safety, health and welfare at work of its employees.

COUNT 2

Under Count 2 of the Information, the Accused stands charged with the offence of failing to forthwith notify the the Director, Occupational Safety and Health of an accident arising out of or in connection with work by the quickest practicable means. Section 85(1)(a) of the Occupational, Safety and Health Act reads:

> *"Where any employee, as a result of an accident arising out of or in connection with his work, dies or suffers any of the injuries or conditions specified in the Eleventh Schedule, or where there happens a dangerous occurrence specified in the Twelfth Schedule, the employer shall –(a) forthwith notify the Director, Occupational Safety and Health by the quickest practicable means";*

There is no dispute that the accident occurred on the 4th December 2021. The Accused notified the Occupational, Safety and Health division of the Ministry on the 9th December 2021. I have noted with care that the legislation does not impose a specific time frame to limit the maximum number of days within which the Accused has to notify the Ministry. Nonetheless, an employer has to send a report to the Ministry within 7 days, which tends to suggest that a delay of less than 7 days would be reasonable. Given that there is no specific

time frame for the Accused to inform the Ministry, the conduct of the Accused must be taken into account to determine whether the Accused acted by the quickest possible means.

It is the version of the Accused that there was no means to contact the Ministry on the 4th and 5th December 2021. However, the Accused informed Piton police station on the same day. On the 6th and 7th December 2021, the Accused went to Riviere du Rempart Labour Office to seek assistance which was not forthcoming. On the 8th December 2021, the Accused filled the 13th schedule form and notified the Ministry on the 9th December 2021.

I have noted that the accident took place on a Saturday. Mrs Ramkurrun confirmed that the Ministry does not work on Saturdays and Sundays which means that the Accused could not have attended the Ministry on the 4th and 5th December 2021. On the 6th December 2021, the ministry was notified of the accident through an employee of the Accused. Mr Ramkurrun was not in a position to tell whether the employee informer acted under the delegated powers of the employer to inform the Ministry.

Be that as it may, when the Accused could not inform the Ministry, the Accused went to the extra length of informing Piton police station that there was an accident on the 4th December 2021. Piton police station informed the Ministry of same on the 6th December 2021. The Accused contacted the Ministry on the 9th December 2021 after having attended Riviere du Rempart Labour Office for assistance.

Although the Accused did not inform the Ministry from the 4th to the 9th December 2021, the Accused cannot be taxed as the Ministry is not opened during the weekend. The purport of the enactment is for the Ministry to be informed of the accident and this happened on the 6th December 2021 through an employee of the Accused company and Piton police station. The employee who informed the Ministry was not present in Court and the possibility that he was delegated by the Accused to inform the Ministry is left open. In doubt, the balance tilts in favour of the Accused. Moreover, the fact that the Accused duly informed the police station and contacted the Labour Office shows the good faith of the Accused. It suggests that the Accused had initiated actions through practicable means forthwith after the accident.

When viewed holistically, I find that the Accused tried by the quickest practicable means to inform the Ministry by contacting the police station, the labour office and through its employee as well as the Ministry, within a delay of about 5 days.

Conclusion

In view of the above, I find that the Prosecution has failed to prove both Counts against the Accused beyond reasonable doubt. This being a case where the main witness was absent

from Court on Trial date, much of the Prosecution case has remained unsubstantiated. I dismiss both Counts against the Accused.

Judgment delivered by: M.GAYAN-JAULIMSING, Ag President, Industrial Court

Judgment delivered on: 20th June 2024