

OSHI v Boulangerie Pain D'Amour Ltee

2024 IND 26

THE INDUSTRIAL COURT OF MAURITIUS

(Criminal Side)

In the matter of:-

CN 107/2023

OSHI

v.

Boulangerie Pain D'Amour Ltee

SENTENCE

1. The Accused company has pleaded guilty to an information charging it with failing to ensure the safety and health at work of its employees under Count I – breach of section 5(1) and section 94(1)(i)(vi) of the Occupational Safety and Health Act 2005 (OSHA) –, and 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 under Count 2 – breach of section 85(1)(a) and section 94(1)(i)(vi) of the OSHA. The Accused stands convicted under both counts.

2. A hearing was held for the Court to know the circumstances of the offences. The prosecution adduced evidence to the effect that the Accused runs a bakery. On 11 January 2022, one Atmaram Gunnoo, who was working as cook, fell from the first floor through an opening in the flooring when the wooden board that had been placed to cover that opening broke. Mr. Gunnoo sustained injury at his head which required his admission at hospital for two weeks. The Ministry was informed about the accident only on 22 January 2022. The enquiry revealed that the opening in the floor was not effectively fenced or adequately boarded so as to prevent the fall of a person

through it. The wooden board that had been placed on the opening was not properly maintained. Following the accident, remedial measures were taken by the Accused and a sheet of metal was securely placed on the opening.

3. The Accused company, through its director, has admitted the facts of the case in its out-of-court statement. It has pleaded guilty at the first reasonable opportunity and has a clean record. The Accused's director, Mr. Ching Yan Win, has stated in Court that the Accused continued to pay Mr. Gunnoo's salary even though he was on long medical leave. As regards Count 2 of the information, Mr. Ching Yan Win asserted that he was unaware of such requirement of the law.

4. In **General Construction Company Limited v. Occupation, Safety and Health Inspectorate, Ministry of Labour, Industrial Relations and Employment (2020) SCJ 40**, the Supreme Court highlighted 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."*

5. According to section 5(1) of the OSHA:

"5. General duties of employers

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

6. Section 85(1)(a) of the OSHA further provides:

"85. Notification of occupational accidents and dangerous occurrences

(1) 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 ...".

7. A reading of the Eleventh Schedule to the OSHA indicates that *"any [other] injury which results in the person injured being admitted into hospital for more than 24*

hours” is on the “list of injuries requiring immediate notification.” By virtue of section 94(1)(i)(vi) of the OSHA, any person who contravenes a provision of the Act shall commit an offence. As employer, the Accused has rendered itself liable “to a fine not exceeding 75,000 rupees and to imprisonment for a term not exceeding one year” under each count, pursuant to section 94(3)(b) of the OSHA.

8. In **Mosaheb v. The State (2010) SCJ 150**, the Supreme Court held that “the sentence in each case has to be determined in accordance with the facts and circumstances surrounding the commission of the particular offence and the other relevant personal circumstances of an accused party.” In **Hossen v. The State (2013) SCJ 367**, the Supreme Court stressed the need to apply the principle of proportionality to reach the appropriate sentence in any given case – vide also **Lin Ho Wah v. The State (2012) SCJ 70**.

9. I have considered the facts and circumstances of this case as borne in evidence, and summarised above. In relation to the statement of the Accused’s director as regards Count 2, suffice it for me to quote the following extract from the case of **Director of Public Prosecutions v. Maroam (2014) SCJ 56**:

*“[The Accused’s] belief that his action was not criminal, however honest, is no defence in law. Although it cannot be presumed that everyone knows the law, there is a rule of law that ignorance of the law does not excuse. (Vide **Evans v Bartlam [1937] A.C 473, Johnson v Youden [1950] 1 K.B.544, Saury Pike Ltd v The State [2011 SCJ 357]**).”*

10. In view of all the foregoing factors, I sentence the Accused to pay a fine of Rs 6,000. under Count 1 and Rs 2,000. under Count 2 of the information. The Accused is also ordered to pay Rs 200. as costs.

03 July 2024

M. ARMOOGUM

Magistrate