OSHI v IBL Ltd

2023 IND 12

CN37/18

THE INDUSTRIAL COURT OF MAURITIUS
(Criminal Side)

In the matter of:-

Occupational Safety And Health Inspectorate

v/s

IBL Ltd

JUDGMENT

As per the amended Information, the Accused Company stands charged with **one Count of Failing To Ensure, So Far As Is Reasonably Practicable, The Safety, Health, And Welfare At Work Of All Its Employees, contrary to ss. 5(1) and 94(1)(i)(vi)(3)(b) of the Occupational Safety And Health Act [Act No. 28 of 2005] (hereinafter referred to as OSHA) coupled with s. 44(2) of the Interpretation And General Clauses Act (hereinafter referred to as IGCA)**.

The Accused Company pleaded Not Guilty to the charge and was assisted by Learned Defence Counsel.

The Prosecutor conducted the case for the Prosecution.

The Proceedings were held partly in English and partly in Creole.

The Prosecution Case

It was the case for the Prosecution that on or about the 21-10-16, in the District of Port-Louis, the Accused Company, being an employer, did unlawfully fail, so far as was reasonably practicable, to ensure the safety and health at work of its employees, to wit: one of its employees, to wit: Migale Jovelyn Bertrand sustained injury when he was hit by a reversing forklift while he was working in the corridor of a frozen warehouse.

The Defence Case

The Accused Company denied the charge in its unchallenged out-of-Court statement (Doc. D) and in Court.

Analysis

The Court has duly analysed all the evidence on Record and all the circumstances of the present matter, and the Court has watched the demeanour of all the Prosecution Witnesses and that of Mr Suraj Suhotee (hereinafter referred to as Representative of the Accused Company) with the utmost care.

The Court has also given due consideration to the Submissions of Learned Defence Counsel.

And the Court has duly considered all the documents produced in the course of the Proceedings.

At the outset, the Court notes that the body of the amended Information mentions one Migale Jovelyn Bertrand, whereas:

1) the List of Witnesses, the Medical Certificate (hereinafter referred to as MC) (Doc. A), mention one Migale Jocelyn Bertrand;
2) the photograph (Doc. B2) mentions one Mr Migale;
3) the Accused Company's statement and the Accident Investigation Report (Docs. D and E respectively) mention one Jocelyn Bertrand Migale and one Mr Migale; and
4) the *Feuille de Présence* (Doc. F) mentions the name of one Migale Jocelin Bertrand.

Be that as it may, at no stage of the Proceedings was the Identity of the person injured put in issue, and the Court therefore acts on the basis that all the said abovementioned names and documents relate to one and the same person, that is one Migale Jocelyn Bertrand (hereinafter referred to as W2).

The Applicable Law

S. 5(1) of the OSHA provides as follows:

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

An employer therefore has a statutory duty to ensure, so far as is reasonably practicable, the safety, health and welfare at work of all its employees.

Not In Dispute

It was not in dispute that W2 "sustained injury to right (sic) side of ribs and right hand on 21 october (sic) 2016 at about 09.30 a.m. in the corridor of the frozen warehouse at IBL Ltd, Riche Terre […] when [W2] was removing the bin from under a metal frame and was in a bent position, and was hit by a reversing forklift of make Hyster and serial number G108015371B" (Folios 16/2601-2 of Doc. D) driven by Mr Bissessur Rama (hereinafter referred to as W3) (Folio 16/2604 of Doc. D).

It was therefore not in dispute that the Accused Company was an employer, and that W2 was an employee of the Accused Company, who sustained injury when he was hit by a reversing forklift, driven by W3, while he was working in the corridor of a frozen warehouse, i.e. that W2 was injured in the course of his employment.

No rear view mirror on the forklift

The first reason invoked by the Prosecution in support of its case that the Accused Company had failed in its statutory duty to ensure, so far as was reasonably practicable, the safety and health at work of its employee, i.e. W2, was that there was no rear view mirror fitted to the forklift involved in the accident.

It was not disputed that the Forklift was not equipped with a rear view mirror at the relevant time, the reason being that the rear view mirrors get misty inside the cold room (Folio 16/2604 of Doc. D).

Further, the Representative of the Accused Company explained in Court that the said forklift was very old and it was not possible to equip it with rear view mirrors with heating components, otherwise it would have been done.

In the said circumstances, short of turning around to look back, it would have been practically impossible for W3, driver of the forklift at the relevant time, to manoeuvre the forklift safely whilst reversing, even if W3 was aware of what was going on around him at the relevant time.

Be that as it may, true it is that rear view mirrors were fitted on the forklift by 23-06-17, but as can be seen on the photograph (Doc. C2), they are misty, and Mrs Ramsurrun-Baznauth (hereinafter referred to as W1) observed that the rear view mirror was misty due to the cold environment (last bullet point of paragraph 11.0 of Doc. E).

The forklift was operating in the frozen warehouse, i.e. in a cold environment, at the relevant time, and the temperature in the corridor of the cold room was -20° Celsius (Folio 16/2605 of Doc. D). The Court takes Judicial Notice of the fact that mirrors get misty or fogged up when the temperature is cold.

W1 maintained that the rear view mirrors could have been wiped by the forklift driver, who would then not have had to turn back to reverse the forklift.

The Defence raised the point that even if the forklift had been equipped with rear view mirrors with heating components, the rear view mirrors would still have got misty, as the forklift kept going back and forth between the cold rooms and the corridors, so that the forklift was operating in varying temperatures, given the temperature in the corridor was -20º Celsius, and it was much colder inside the cold room.

W3 deponed to the effect that it was about 17° Celsius in the corridor.

The Court has noted the inconsistency in the Prosecution case as to the temperature in the corridor, but is of the considered view that same does not affect the Prosecution case, given bot the Prosecution and the Defence were in agreement as to mist and condensation forming on the

rear view mirrors in cold environments, which could still be a hazard, and that a forklift driver would still have to look back before starting to reverse.

The Court is therefore of the considered view that even if the forklift had been fitted with rear view mirrors at the relevant time, even ones with heating components, the mist and/or condensation on the said rear view mirrors would likely have obstructed W3's view and would not have sufficiently mitigated the risk of W2 being hit when the forklift was reversing.

W1 also conceded that the forklift had inherent blind spots, irrespective of the usage of rear view mirrors.

W1 confirmed that "no one should be behind the forklift […] [t]he reason why is because of the blind spots", when it was put to her in cross-examination, and agreed that the best way to clear a blind spot is to turn back and look, and that even if there were rear view mirrors, the driver would still have to turn back and look.

And the Court has noted that the Accused Company also explained that W2 was in a blind spot according to W3 (Folio 16/2604 of Doc. D), and the Representative of the Accused Company explained in Court that forklifts had blind spots, even if there are rear view mirrors.

The Court has noted that W2 said that there were no blind spots in the forklift, but the Court is of the considered view that the said testimony of W2 does not undermine the Prosecution case, inasmuch as the Prosecution and the Defence were in agreement that the forklift ha blind spots.

W3 explained in Court that he did not see W2 when he was reversing the said forklift, as it was in a bend ("*faire enn contour*").

A blind spot and a bend are not the same.

Be that as it may, W3 maintained that he had looked back on both sides whilst reversing, at the relevant time, and that he only saw W2 on the floor when he got close, which was not disputed by the Accused Company.

Additionally, W3 also added that there were spots that he did not see at all.

In light of all the above, it has been established that W3 did look back whilst reversing, and nonetheless hit against W2.

The job to be carried out by W2 necessarily entailed his bending down, given the bins were “under a metal frame in the corridor of the frozen warehouse” (Folio 16/2602 of Doc. D).

This means that W2 would have been less visible in any rear view mirror due to the need for him to bend down, than if he had been standing upright, and that the forklift had blind spots.

All the above factors lead the Court to conclude that having rear view mirrors fitted on the forklift (even ones that were equipped with a heating device so as not to get misty) at the relevant time, would not have really served to mitigate the risk of W2 being hit when the forklift was reversing, the more so as W2 had no choice but to bend to empty the said bins which were under a metal frame, as highlighted above.

In light of all the above, the Court is of the considered view that the Accused Company cannot be said to have failed in its statutory duty to ensure the safety and health at work of W2 at the relevant time by failing to equip the forklift with rear view mirrors.

<u>Failing to assess the risks associated with the movement of forklifts in the corridor of the cold room as attendants were called upon to remove waste regularly</u>

The second reason invoked by the Prosecution as to why the Accused Company had failed to ensure, so far as was reasonably practicable, the safety and health at work of W2, was that it had failed to assess the risks associated with the movement of forklifts in the corridor of the cold room as attendants were called upon to remove waste regularly.

The Accused Company denied same.

The Court is of the considered view that the Accused Company failed to assess the risks associated with the movement of forklifts in the corridor of the cold room, as attendants were called upon to remove waste regularly, for the following reasons.

First, W3 explained that he could only come out of the cold room by reversing, as there was no sufficient space inside the cold room to turn the forklift, and the Court takes Judicial Notice of the fact that reversing a vehicle is an inherently dangerous manoeuvre.

True it is that the Accused Company's Representative stated that the said work could be done frontward or backwards, which is contradiction with W3's testimony, but the fact remains that it was not disputed that the accident occurred whilst W3 was reversing the said forklift in the corridor.

Second, as per W3's testimony, despite looking back whilst reversing, he did not see W2, and there were spots which he did not see when he was driving the forklift.

Third, it was advanced on behalf of the Accused Company itself that no one should be behind a forklift due to the blind spots.

Fourth, the Accused Company itself confirmed that the corridor was a "congested area" (Folio 16/2606 of Doc. D).

The Accused Company's Representative explained that there were employees, supervisors, working in the corridor, that frozen goods on wooden racks were kept in the corridor, that there was also the movement of vehicles, and that the corridor was narrowed by the metal stands on both sides of the corridor and the office.

It is to be noted that although the corridor was 06m10cm in width, there were metal stands (Docs. B1, B3, and C1) on either side of the corridor, and there were 02 storekeepers' offices in the same corridor, the width of which was lessened to 03m30cm (first bullet point of paragraph 11.0 of Doc. E). And as per the Accused Company's own version as put in cross-examination to W1, the corridor was a narrow one, precisely due to the presence of the said metal bars, and this reduced "the actual usable distance of the passage way".

The Court has noted that W2 stated that (Doc. B3) was not the locus of the accident, but given the version of the Representative of the Accused Company that it represented the locus of the accident, the Court acts on the said basis.

W3 also confirmed that the said corridor was tight ("*serré*") and was rendered even tighter, given the goods which were kept in the corridor at the relevant time, W3 explaining that (Doc. B1) did not correctly show the situation, as it was taken after the peak time.

Bearing in mind all the above and that the forklift was 90cm in width, 02m in height (fifth bullet point of paragraph 11.0 of Doc. E) and had, as per W1, a turning radius of about 02 metres, it stands to reason that this means there was limited room for manoeuvre for the forklift in the corridor.

Fifth, as per the version of the Accused Company, peak time is between 07h00 and 10h30 and between 15h00 and 17h30, which means that there is "[m]ovement of forklift and pallet trucks […] done at the same time" as "the presence of supervisors, checkers and cold room attendants" (Folio 16/2607 of (Doc. D)) during the peak time.

There was therefore a lot of movement in the corridor at the relevant time, given the accident occurred at about 09h30, i.e. during the peak time.

The Court has noted that according to W2, there was no peak time, but given the Accused Company's own version that the peak time was between 07h00 and 10h30 and between 15h00 and 17h30 (Folio 16/2607 of Doc. D), the Court acts on the basis that the peak times were as per the version of the Accused Company.

W2 stated that the accident occurred at 13h05, and in cross-examination, when confronted with his version given in his statement, stated that he did not remember the time of the accident.

Be that as it may, given the Accused Company itself confirmed that the accident occurred on the relevant day, at the relevant place, at about 09h30 as highlighted above, the Court is of the considered view that the said testimony of W2 does not undermine the Prosecution case, as to the time of the accident, and as to whether it occurred during the peak time.

It is to be noted that despite the presence of not one, but two, Supervisors, on site, at the relevant time), whose duty was to ensure that the work was being carried out safely (Folio 16/2605 of Doc. D), the reversing forklift nevertheless hit against W2.

The Court has also noted that line of cross-examination adopted in relation to W1 and W2 as to the fact that it was W2 who had not followed the instructions given to him as regards the emptying of bins, which caused the accident, which W1 and W2 denied, and the line of cross-examination adopted in relation to W2, to the effect that the Accused Company had given him instructions as to the times at which he was to empty the bins, which W2 denied.

It was put to W2 in cross-examination that he had been instructed to empty the bins after 10h00.

Even if W2 had been given such instructions, which W2 denied, the said instructions meant that the bins would still be emptied by W2 in the last half-hour of the peak time of the morning.

Be that as it may, the Representative of the Accused Company deponed to the effect that W2 "was not supposed to be there [i.e. in the corridor] at that particular time because it was a peak time and he had been instructed, if [he was] not mistaken, by supervisors not to be there at that particular time".

Further, the Representative of the Accused Company was explained that it was one Mr Warren who had so instructed W2 verbally.

Mr Warren did not depone in Court, and the Court notes that the testimony of the Representative of the Accused Company was rather non-committal, his stating that such instructions were given to W2, if he was not mistaken, then that there was no rush for W2 to remove the bins (which is different from saying that W2 was instructed not to be there at that specific time), and that W2 could have emptied the bins later (which is different from saying that W2 was not supposed to empty the bins at that specific time).

The Representative of the Accused Company also stated in examination-in-Chief that such instructions were given to W2, if he was not mistaken, but then went on to state in cross-examination that W2 was absolutely informed not to remove the bins at that time, and that he knew such instructions were given by the supervisor.

The said versions of the Accused Company in Court are in total contradiction with the version given by the Accused Company itself at the time of the Enquiry, to the effect that it was <u>after</u> the

said accident that it had instructed W2 not to empty the bins during the peak times (Folio 16/2607 of Doc. D).

This implies that there were no such instructions given to W2, and that there was no set time for W2 to perform his said duties, prior to the said accident.

The Accused Company mentioned in Court for the first time that it had restricted the number of persons in the corridor during the peak time, bur this seems to have been an ultimate attempt on the part of the Accused Company to exonerate itself.

And sixth, the Representative of the Accused Company explained that the bin was under the metal frame, near the wall, and in light of all the above mentioned factors, by having W2 remove bins from under the metal frame, i.e. W2 having to inevitably bend down, it was foreseeable that W3 would not see W2 whilst reversing the forklift in the corridor, and that W2 risked being hit by the reversing forklift at the relevant time.

At no stage was it the case of the Accused Company that it was W2 who had decided to place the bins under a metal frame.

In light of all the above, the Court is of the considered view that had the Accused Company assessed the risks associated with the movement of forklifts in the corridor of the cold room, W2 would not have been called upon to remove waste bins during the peak time, given the Accused Company's own position that no one was to be behind a forklift due to the blind spots.

It was incumbent on the Accused Company to ensure that no employee, including W2, was behind the reversing forklift, the more so as the forklift was reversing from the cold room on the left hand side towards the office on the right hand side (Doc. B1), which is where W2 was emptying the bins.

W2's job inevitably entailed his bending down to empty the bins, which bins were found under the metal stand, which were, in the present matter, behind the reversing forklift. This meant that W2 had no other choice but to bend down to empty the bins, and given the physical position of the bins under the said metal stand in relation to the cold room (Doc. B1), W2 inevitably had to give his back to the reversing forklift in the present matter.

In light of all the factors mentioned above, the Court is of the considered view that the Accused Company failed in its statutory duty to ensure the safety and health at work of W2 at the relevant time.

No demarcation lines (Doc. B1) and no separate passageways

It was also the case for the Prosecution that the Accused Company had failed in its statutory duty of ensuring the safety and health at work of W2 by failing to provide separate passageways for vehicles and pedestrians in the corridor.

W1 conceded that at the relevant spot, there would be an intersection between the demarcation lines for the pedestrians and the forklift, given the corridor is only 03m30cm-03m40cm wide, and W1 seemed to contradict herself by stating at times that the demarcations lines would have served no purpose at the relevant spot, due to the reduced width of the corridor, and at other times insisting that they demarcations lines would have reduced the risk of W2 being hit by the reversing forklift.

W3 confirmed that even if there had been demarcation lines, he would have had to drive the forklift where there were pedestrians, given the presence of goods in the corridor, which was tight.

The Accused Company explained that the width of the corridor prevented the provision of separate passageways indicated by demarcation lines, given that bins for frozen goods for delivery are kept in the corridor, and given the movement of forklift and pallet trucks takes place at the same time, coupled with the presence of supervisors, checkers and cold room attendants, the more so during the peak time (Folio 16/2606 of Doc. D).

The Representative of the Accused Company explained in Court that the forklift would have encroached on any demarcation lines, as the corridor was narrow.

As highlighted above, the corridor was 06m10cm in width, but there were metal stands (Docs. B1, B3, and C1), in the corridor, and there were 02 storekeepers' offices in the same corridor, the width of which was lessened to 03m30cm (first bullet point of paragraph 11.0 of Doc. E).

This coupled with the fact that the forklift had a turning radius of about 02 metres, it stands to reason that the forklift would have crossed over any demarcation lines, given the very layout of the corridor as evidenced by (Docs. B1, B3, and C1).

The Court is of the considered view that even if demarcation lines and separate passageways had been provided, it is unlikely that they would have mitigated the risk of W2 being hit whilst W3 was reversing the forklift in the corridor and/or would have prevented the present accident, bearing in mind the corridor was narrowed as highlighted above, which considerably reduced the space for manoeuvre for the reversing forklift as highlighted above, and given the forklift would have had to go over the demarcation lines to be able to reverse into the corridor.

Reasonably practicable

As per **Sinassamy v Navitas Holdings Ltd [2021 SCJ 424]** "[t]he term "reasonably practicable", which also appears in various similarly-worded English enactments on occupational health and safety, has been explained in **Halsbury's Laws of England (5th Edition) (2020), Vol 52: Health and Safety at Work** at **paragraph 382** as follows–

> ""Reasonably practicable" is a narrower term than "physically possible" and implies that a computation must be made, before the breach complained of, in which the quantum of risk is placed in one scale and the sacrifice involved in the measures necessary for averting the risk (whether in money, time or trouble) is placed in the other and that, if it be shown that there is a gross disproportion between them, the risk being insignificant in relation to the sacrifice, the person upon whom the obligation is imposed discharges the onus which is upon him. The unforeseeability of a risk may be relevant in deciding what is "reasonably practicable"".

In all the circumstances of the present matter, the Court is of the considered view that the risk of W2 being hit by a reversing forklift in the corridor, was a foreseeable one.

The Court has noted that W3 was given a refresher training in relation to Forklift Safety Procedure (Doc. M), but there is no indication whether the said training related to driving the forklift in the frozen warehouse.

Be that as it may, this risk could have been mitigated, for instance, by preventing W2 from emptying the bins during the peak time or by preventing the forklift from reversing in the corridor when the bins in the corridor were being emptied.

The very fact that the Accused Company gave instructions to W2, as remedial action, that is after the present accident, to empty bins after 10h00 (Folio 16/2607 of Doc. D), establishes in a cogent manner that it was reasonably practicable for the Accused Company to adapt its system of work, in order to ensure the safety and health at work of W2.

The Court however notes that since the bins are being emptied "after 10h00 hrs" (Folio 16/2607 of Doc. D), they are still being emptied during the last half-hour of the peak time of the morning, which is between 07h00 and 10h30 (Folio 16/2607 of Doc. D).

That being said, there is no evidence on Record that the said change in the system of work occasioned any loss/difficulty to the Accused Company, and the fact that this new system of work was implemented by the Accused as a result of the present accident, shows it was not grossly disproportionate to the risk involved, and that it was reasonably practicable for the Accused Company to modify its system of work so as to mitigate the risk to W2.

The Court bears in mind that "[t]he 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. It is surely also for lessons to be learned to improve safety […]. " [1]

In light of all the above, the Court finds that the Accused Company has not proven on the Balance of Probabilities that it was not reasonably practicable to do more than was in fact done to satisfy its duty, pursuant to **s. 96(6) of the OSHA.**

Miscellaneous

Forklift

The Court has noted that the serial number of the Forklift mentioned in the Accused Company's statement is "G108015371B" (Folios 16/2602/4 of Doc. D), whereas the serial number of the Forklift mentioned on the documents (Docs. B2 and E) is "G108A01537B".

[1] **General Construction (supra)**

Be that at it may, at no stage of the Proceedings was it put in issue that the Forklift (Doc. B2) was the one involved in the present matter, and the Court acts on the said basis.

The Court has noted that W1 confirmed that the forklift was in good working condition, and was equipped with an alarm, which was audible, quite loud, and that there was an echo when the alarm was sounding, given the frozen warehouse was a closed space, and that the forklift was also equipped with a red reversing flashing light at the back and two front lights.

W3 stated he did not remember whether the said forklift had flashing lights.

It may be that the flashing lights of the reversing forklift were reflected on the white shiny reflective wall of the corridor at the relevant time, but W2 stated he had not noticed same, and this understandable as W2's very job entailed his bending down to empty the bins which were placed under a metal frame.

This is even more so given the position of the bins under the metal frame in relation to the cold room (Doc. B1). In order for W2 to empty the bins, he had to give his back to the cold room from which the forklift was reversing.

W2 maintained in Court that there was no alarm on the forklift at the relevant time, W3 stated he did not remember whether the said forklift had any alarm, and the Representative of the Accused Company explained in Court that the said forklift had a beacon alarm, which was between 75 and 77 decibels, which was in layperson's term, louder than a loud conversation which is about 65 decibels. And it was put to the Representative of the Accused Company that it was because the noise level was high that W2 did not hear the forklift reversing.

That being said, W1 visited the locus for the first time after the accident on 07-11-16. Hence, although there may have been an alarm sounding on the said forklift on 07-11-16, there may have been no alarm sounding on the said forklift on the day of the accident, i.e. 21-10-16.

At no stage was it however made a live issue by the Prosecution that there was no alarm sounding, and/or flashing lights, on the forklift at the relevant time, which caused the accident, and/or that it was due to the noise that W2 did not hear the reversing forklift.

As has been authoritatively set out in **Marday v The State [2000 SCJ 225]**, "[i]n a criminal case it is normal to assume that the version that is put to an accused party when recording his or her defence is the very complaint that was made by the victim.".

It was therefore not open to the Prosecution to raise the said issues for the first time in Court, in support of its case.

Corridor

The dimensions of the corridor are mentioned as being "6m10cm large and 60cm long" (Doc. B1). This is clearly a typo.

At any rate, it was not disputed that the corridor measured 06m10cm in width (Doc. E and Folio 16/2606 of Doc. D) and 60m in length (Doc. E).

W1 deponed to the effect that the corridor should not be congested when the forklift is operating, but the Court is of the considered view that this was not specifically put to the Accused Company in the course of the enquiry, and it is therefore not open to the Prosecution to raise same for the first time in Court, as a further reason in support of its case that the Accused Company had failed in its statutory duty to ensure, so far as was reasonably practicable, the safety and health of W2, as "[i]n a criminal case it is normal to assume that the version that is put to an accused party when recording his or her defence is the very complaint that was made by the victim." (**Marday (supra)**).

Training

The Accused Company also explained that a risk assessment was carried out, which was the basis for the training provided to all persons, including forklift operators and attendants, and that only W2 performed cleaning work in the corridor (Folio 16/2605 of Doc. D).

The Accused Company's version was that it did dispense training to W2 (Folio 16/2603 of Doc. D) and W3 (Folio 16/2604/7 of Doc. D).

W2 attended a "*Formation interne Basique d'Hygiène Alimentaire et Principes HACCP*" (Doc. F) [2], but the Court is of the considered view that the training has no bearing on the determination of the present matter given the subject of the said training was food hygiene and the principles of HACCP.

One Alain Migale was provided the training in relation to Storage and Handling Protocols on 04-09-14 (Docs. G and R), but the Court notes that:

1) The name of Alain Migale appears on (Doc. G), whereas W2's name as per the List of Witnesses is Jocelyn Bertrand Migale;
2) the said training was given about 02 years before the present accident; and
3) it is not specified whether the said training dealt specifically with working in the cold room.

The name of Alain Migale also appears on (Doc. H.

Be that as it may, Identity was not put in issue, and W2 accepted having followed Trainings with the Accused Company, but explained that the said trainings were not about how to empty the bins.

In light of all the above, the Court is of the considered view that the said trainings do not avail the Accused Company, the more so given the time lapse between the said trainings and the present accident, i.e. the trainings were given 2014, i.e. about two years before the present accident, which occurred in 2016.

Further, there is no indication that the said corridor was in exactly the same state in 2016, at the time of the accident, as it was at the time the trainings were given to W2.

W3 said he did not remember being given any training by the Accused Company, and that he was given instructions by the Accused Company as to what to remove, where to remove things, and where to place same.

[2] HACCP stands for Hazard Analysis and Critical Control Point, and is a system adopted by the Codex Alimentarius Commission, which was established by the United Nations Food and Agriculture Organization (FAO) and the World Health Organization (WHO) in 1963. The purpose of the HACCP Principles is to identify, reduce and prevent the occurrence of food safety hazards.

W3 then identified his name and signature on (Doc. J) and it has been established that W3 was provided a Forklift safety training on 08-11-12 (Docs. J and N), but this training was regarding forklift safety.

It is to be noted that the said training was provided to W3 on 08-11-12, that is about 04 years before the present accident, which occurred on or about 21-10-16, and there is no indication whether the said training specifically dealt with driving the forklift inside the cold room, given that the training related to "[d]riving with maximum safety under normal working condition" (Doc. N).

W3 attended a training on 30-09-14 and on 02-12-14, in relation to Storage and Handling Protocols (Docs. K) and Safety Tips for forklift drivers (Doc. L), but there is no indication whether the said trainings concerned driving the forklift in the frozen warehouse.

The said trainings (Docs. N and K) therefore do not avail the Accused Company.

The Court is of the considered view that the trainings of 23-08-13 and 24-08-13 (Doc. P), of 07-10-14, 09-10-14, and 11-10-14(Doc. Q), of 01-09-14, 08/09-09-14, 16-09-14, 18-09-14, 22-09-14, and 11-10-14 (Doc. R) cannot be linked to W2 and/or W3, in the absence of any attendance list for the said dates either for W2 or W3.

The Court has duly considered the presentations (Docs. S and T), and notes the following:

1) The presentations (Docs. S and T) do not deal specifically with working, whether for the attendant or the driver, in the frozen warehouse;
2) There is no indication of when the said presentations were done; and
3) Whether W2 and/or W3 attended the said presentation.

Further, the presentation (Doc. T) is hardly legible, or not legible at all on some slides.

The Court has noted that W2 confirmed he was to take precautions for his own safety and that W3 confirmed that he was to take precautions to ensure the safety of other persons, but this does not absolve the Accused Company of its statutory duty of ensuring the health and safety of all its employees, including W2.

In light of all the above, the Court is of the considered view that the said Trainings in relation to W2 and W3 are not relevant to the determination of the present matter.

Conclusion

In light of all the evidence on Record, all the circumstances of the present matter, and for all the reasons given above, the Court finds that the Prosecution has proven its case against the Accused Company beyond reasonable doubt, and the Accused Company is therefore found Guilty as charged.

[Delivered by: D. Gayan. Ag. President]
[Intermediate Court (Financial Crime Division)]
[Date: 27 February 2023]