

Balancing Safety First Principles and Employee Employment Rights

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1 Case example 1 – prosecution (CQ Seeds)

- (a) Worker injured in a fall
- (b) Safety harness was available but workers failed to use it
- (c) Employer was aware of the workers' practice
- (d) Employer pleaded guilty to a breach of safety legislation

In fining the employer, the court took into account the employer's failure to take any action against the workers

2 Case example 2 – civil liability (Gittani Stone v Pavkovic)

- (a) Lee regularly lost his temper, swore and threw tools
- (b) Lee punched Pavkovic and attempted to hit him with a heavy metal G-clamp. No meaningful disciplinary action was taken
- (c) Lee screamed at and taunted Pavkovic over 3 days. Upon being reproached by Pavkovic, Lee left the workplace, muttering "I will be waiting"
- (d) When Pavkovic went to his car after work, Lee drove up and shot him 3 times

The duty owed by employers to employees may extend to protecting them from the criminal activities of third parties, including co-workers. Pavkovic was awarded \$861,197.77 in damages

3 Case example 3 – unfair dismissal (Leonard v Bluescope Steel)

- (a) Leonard breached a safety procedure of exclusion zones for forklifts
- (b) Leonard was involved in 2 incidents of breach and was dismissed for the 2nd
- (c) 2nd incident – Leonard entered the zone because it was the quickest route to the bathroom (he was suffering from diarrhoea)
- (d) The forklift was not operating at the time
- (e) Leonard was dismissed for breach of Bluescope's cardinal safety rules

- (f) Leonard had over 30 years' employment, with only one previous warning for a safety breach (removing his hard hat)

Was a deliberate breach of the rule but dismissal was harsh. Not a serious breach. Forklift was not operating and Leonard could safely enter the area. Leonard was in discomfort. Bluescope was ordered to reinstate Leonard

4 Case example 4 – unfair dismissal (Sirijovski v Bluescope Steel)

- (a) Sirijovski breached a safety procedure for unloading pallets of vertical coils
- (b) Procedure: chaser assisted driver to set down coil and remove chains. Chaser then held the chains while they were lifted, to prevent them swinging
- (c) Sirijovski raised the hoist with no chaser, even though he was well aware of the procedure
- (d) Sirijovski had a poor safety record
- (e) The incident was investigated and Sirijovski was dismissed

Was a valid reason for the dismissal. Dismissal was not harsh, unjust or unreasonable.

5 Case example 5 – unfair dismissal (ETU v Downer)

- (a) on 2 occasions, Moss dropped a co-worker off in an unsafe position to cross a highway. First occasion, the co-worker was dropped in the right hand turning lane of the highway. Second occasion (next day), the co-worker was dropped on the left edge of the highway and had to cross it
- (b) were previous safety breaches by Moss, but no warnings or counselling

Not every safety breach is serious enough to warrant dismissal. Dismissal was excessive. Compensation ordered

6 Case example 6 – unfair dismissal (Wright v MIM)

- (a) Wright breached safety procedures when he entered an area without a clearance
- (b) Wright followed another vehicle through the barricade, when the procedure required that he get his own clearance
- (c) widespread practice of vehicles travelling in convoy through the barricade points
- (d) Wright knew he'd done the wrong thing and panicked and left the scene without reporting the incident, in breach of procedure
- (e) Wright had a good safety record over 30 years service

Summary dismissal was harsh, unjust and unreasonable