IN THE DISTRICT COURT
AT HAWERA

I TE KŌTI-Ā-ROHE
KI HĀWERA

CRI-2020-021-000933
[2022] NZDC 12765

WORKSAFE NEW ZEALAND
Prosecutor

v

ANZCO FOODS LIMITED
RIVERLANDS ELTHAM LIMITED
Defendants

Hearing:	4 July 2022
Appearances:	K Sagaga for the Prosecutor G Gallaway for the Defendant ANZCO Foods Limited J Lill for the Defendant Riverlands Eltham Limited
Judgment:	4 July 2022

NOTES OF JUDGE A S GREIG ON SENTENCING

---

[1] I want to start by acknowledging the victims of this very tragic accident. Robin Killeen has died as a result of things that went wrong in his workplace. No one should ever leave home to go to work and never come home. The victims have provided what Mr Gallaway acknowledges, and I certainly agree, were very moving, fulsome, and utterly genuine victim impact reports.

[2] I am going to have to sentence ANZCO Foods Limited and Riverlands Eltham Limited for their part in Mr Killeen's death and as part of that I will be awarding emotional harm reparation. It has been said many times before, but has to be said again, money can never compensate for the loss of a man who was clearly a wonderful,

busy, hardworking, talented man with many attributes. He has left behind a wife, a child, grandchildren, and a great-grandchild and all of them have been robbed and money will not ever compensate for that.

[3] I must also make clear that I am doing this sentencing without quite the amount of preparation that I would have liked, not being aware of it until this morning. Partly that is my fault, but I do reserve the right to edit and improve, particularly the legal grounds, eventually when I release the decision in writing.

[4] The defendants face one charge each laid under the Health and Safety at Work Act. In essence, the charges are that they failed to ensure that a worker was protected from the risk of death or serious injury. The maximum penalty is a fine of $1.5 million for each of the two defendants.

[5] I am going to summarise the summary of facts because the agreed summary is very long. ANZCO is a limited liability company that produces beef and lamb products. ANZCO is the ultimate holding company of Riverlands, who I will refer to from now on as REL, which is the legal owner of the plant and is the employer at the ANZCO Eltham site. The entities are wholly integrated. Support functions such as human resources, health, safety, and finance are all provided through a centralised function.

[6] Mr Killeen worked for Kia Ma. Kia Ma was contracted to provide cleaning services at ANZCO's Eltham site. Kia Ma is also a defendant in this prosecution, but at this stage has pleaded not guilty.

[7] One of the areas at the plant is a small, enclosed room called the mountain chain room. Within that is something called a bin lifter. The bin lifter is used to raise and attach a bin from floor level, approximately two metres up a column, before tipping the contents, which would be tripe, into the top of an adjacent tripe refiner known as La Parmentiere, (Par).

[8] The control panel for the bin lifter is on a column and it had an up, stop, and down button. The down button was configured as a hold-to-run system. You had to hold it in order to run it. If you took your finger off it, the bin automatically stopped.

The system prevented anyone from being inadvertently crushed under the bin while it was lowered back to the floor. The bin was not designed for a person to stand in. The signage above the bin lifter control panel included a warning symbol not to stand in the bin.

[9] Kia Ma had trained its workers to clean the top of the Par by using an access platform which was on the opposite side of the bin lifter column from the control panel. To the defendant's knowledge, no part of the cleaning process called for a cleaner to step into the bin. However, during WorkSafe's investigations, one Kia Ma worker did say that she used to get into the bin and use the controls to move the bin up to access the top of the Par for cleaning.

[10] On 19 December 2019, Mr Killeen began his shift at 3.15 am. At around 6 am, he was discovered trapped between the bin lifter column, the raised bin, and the extraction hood above the Par. It seems he tried to use the bin to go up and clean the Par. He failed to stop the bin lifter and it appears that as he tried to get out of the bin, he became caught between the bin and the bin lifter column.

[11] The principles and purposes of sentencing under the Health and Safety at Work Act are as set out in the Sentencing Act 2002 and I have regard to those. In particular, I have regard to the decision of the Court of Appeal in *WorkSafe v Stumpmaster Ltd* and all the other cases that have been referred to me by both the defendants and the prosecution.[1]

[12] The four-stage process, as set out in the *Stumpmaster* decision, is to first assess the amount of reparation. Secondly, fix the amount of fine. Thirdly, determine any ancillary orders including costs, and then have a look at the overall proportionately and appropriateness of the sentence in particular with regard to a defendant's ability to pay.

[13] At the risk of repeating myself, I am going to say again, because it has been said in many cases and it applies particularly in this one; you cannot put a value on a family's suffering. The purpose of evaluating and ordering emotional harm reparation,

[1] *Worksafe New Zealand v Stumpmaster Ltd* [2019] DCR 61; [2018] NZDC 900.

which is the first step that I am about to turn to, is to recognise that a family has suffered emotional harm and there should be some compensation for this.

[14] I have considered all of the cases. WorkSafe submit that a payment of $130,000 is appropriate, considering all of the precedents. The defendants submit that something less than that is appropriate. I agree with WorkSafe. The appropriate level of emotional harm reparation is $130,000 and I direct that the defendants between them are to pay 90 per cent of that. $20,000 has already been paid which means that $83,000 is still to be paid.

[15] I therefore order emotional harm reparation of $103,000 inclusive of the $20,000 that has already been paid. If Kia Ma is not ordered to pay the remaining 10 per cent for some reason, then the defendants are to make up that shortfall within 28 days of the completion of the proceedings against Kia Ma.

[16] The emotional harm reparation is to be divided 60 per cent to [redacted], 40 per cent to [redacted].

[17] The next stage is to assess consequential loss. Unfortunately, WorkSafe have had a lot of trouble ascertaining this. They needed figures from both Kia Ma and ACC and those latter figures have only just arrived this morning and I think they might be short of the other figures that they needed.

[18] What has been very helpful is the approach by the defendants who have been keen to resolve all of this today. We have, as a rudimentary exercise, assessed consequential loss as $15,000 and so I am ordering that that sum be paid, and purely for the sake of formalities, that is to be paid by ANZCO Foods Limited to [redacted].

[19] The next exercise is to assess the level of the fine. The first question was should this be one single fine or should a fine be levelled against each entity separately? Ms Sagaga submitted a case during argument, which I had not had a

chance to read, but I have now, *Maritime New Zealand v Nino's Ltd***,** in which a fishing trawler sunk after it was grossly overloaded.[2]

[20] In that case, both the company and one of its directors were fined separately. That was not actually a point argued on appeal as I read the case—skim read the case I think I would add—but certainly was not disturbed or commented on by Thomas J. But as the defendants in this case have pointed out, it was an entirely separate breach of duty by an officer of the company.

[21] Here, I do consider that the two defendants, REL and ANZCO, are effectively indivisible and to fine them both would be to double count. I could, I suppose, do as WorkSafe are urging me to do which is to significantly discount the fine of one, but that seems to me to be still wrong in principle.

[22] I am going to level one fine. The prosecution submit that this is at the high end of the scale and that there should be a starting point of $700,000 to $800,000, somewhere between those two figures, $700,000 to $800,000.

[23] The prosecution submits that an analysis of the above cases involving moving machinery, with a lack of both standard operating procedures and a list of adequate risk assessments, place culpability in the middle of the high culpability band. They say that there was a high level of responsibility in the bin lift and particularly by REL.

[24] Prior to the incident, no risk assessment had been completed for the bin lifter, the piece of machinery that led to Mr Killeen's death. There was a hazard register drafted by ANZCO for the plant and in particular the Par and bin lifter, but this had not been provided to Kia Ma.

[25] On the other hand, the defence say that it was not an obvious hazard, this was not a piece of machinery that was inherently dangerous and which needed to be guarded, as so often is the case with, say, guillotines or augers. And furthermore, this was a piece of machinery for which a platform had been provided for cleaning

[2] *Maritime New Zealand v Nino's Ltd* [2020] NZDC 2536.

purposes. Mr Killeen, and this is not to victim blame, but I am focusing now on the defendants' culpability, Mr Killeen was doing what he should not have been doing.

[26] I accept that another worker had come forward after Mr Killeen's death and said, "Well actually I also used to get into the bin," but I do not understand that this was ever drawn to the defendants' attention. They did not know that their machinery was being used in a way in which it was not designed and for which they had specifically designed a practice in place of that. I agree with the defendant that there was a moderate degree of departure from the best industry practice. This is primarily about monitoring systems.

[27] With regard to the cases produced by both the prosecution and the defence, most of which I agree involve a high degree of culpability, I assess the starting point for this fine as $550,000.

[28] REL twice have offended in the past, in 2004 and 2015. The prosecution submit that I should uplift for those reasons. The defence say I should not, that the convictions are too long ago. I agree with the prosecution, I should. I uplift that fine by five per cent or $20,000. It is a total fine of $570,000.

[29] I discount that by 25 per cent for the early guilty plea and a further 15 per cent, which is a departure from what the prosecution submit I should do, for the remedial steps that the companies have taken. I accept that they are significant. They are over and above and they were expensive. The defendants also provided an advanced payment prior to a guilty plea to [redacted] which had a real benefit for her.

[30] They attended restorative justice, they have done what they can to redress the harm suffered, and their co-operation has extended right up until this afternoon. So I discount that $570,000 by 40 per cent which brings a total fine of $340,000 or a fine of $170,000 each which is how I record it for the record.

[31] I need to award costs. The prosecution seeks $12,578 and have provided the workings for that. The defence say that is too high. In my judgement, both defendants should pay costs of $10,000, so that is $5,000 each.

[32] I supress the name of the victim's family.

_____

Judge AS Greig
District Court Judge | Kaiwhakawā o te Kōti ā-Rohe
Date of authentication | Rā motuhēhēnga: 11/07/2022