IN THE DISTRICT COURT
AT HUTT VALLEY

I TE KŌTI-Ā-ROHE
KI TE AWAKAIRANGI

CRI-2022-096-002961
[2023] NZDC 13786

WORKSAFE NEW ZEALAND
Prosecutor

v

ALTO PACKAGING LIMITED
Defendant

Hearing:	8 May 2023
Appearances:	T Braden for the Prosecutor D Erickson for the Defendant
Judgment:	8 May 2023

NOTES OF JUDGE A I M TOMPKINS ON SENTENCING

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[1] Alto Packaging Limited appears for sentence having entered a guilty plea to once charge under ss 36(1)(a) and 48(1)(2)(c) of the Health and Safety at Work Act 2015 which is punishable by a maximum penalty of a fine not exceeding $1.5 million.

[2] The particulars of the offending relate to an incident on 16 December 2021 at the defendant's packaging plant in Lower Hutt, it being one of a number of plants operated by the defendant around New Zealand and the Lower Hutt site being a plastics recycling plant.

[3] In the early hours of that morning prior to the injured person, Mr Colin Rangitaawa, commencing a morning shift at 7.30 am that morning there had been a split in a hose and pump assembly adjacent to an intermediate bulk container and wash plant by which caustic soda had previously been pumped into the wash plant vat. The night shift supervisor noted that the relevant intermediate bulk container was empty and that a step adjacent to that container was wet with white liquid in the vicinity. A maintenance engineer was called and attended and identified the split in the hose above the pump. The maintenance engineer shut down the pump and closed the relevant valves, replaced the hose and then restarted the system.

[4] As a result of that process, liquid entered an area called the bund and it transpired that that liquid was caustic soda. The night shift supervisor at the handover to the wash plant operations team, informed the latter team leader about the spill and directed that the wash plant operations team leader instruct his worker not to change a particular bag in that area because of the uncertainty as to the safety or otherwise of the split liquid.

[5] Mr Rangitaawa commenced his shift at 7.30 am. It seems that there was a communications breakdown because he was not told of the night-time spill. In accordance with his normal duties, he entered the bund area, checked the relevant bag, exited the bund and went to collect a replacement bag. He re-entered the bund and set about replacing the previously full bag. Mr Rangitaawa was within the bund area for a total of approximately three and a half minutes.

[6] During that time, he suffered caustic soda burns to the toes on both feet. He realised initially some discomfort a short time later which he assumed was from a pre-existing gout condition but the pain worsened. He headed home to take appropriate medication for the gout, returned to work but by that time both his feet were painful. He returned home again. When he removed his footwear he noted blisters on his feet. He went to the Hutt Hospital's emergency department where the attending doctor immediately identified chemical burns. A pH test carried out on his feet indicated a level of 12 to 14 which indicates the strength of the alkaline liquid which had caused the burns.

[7] Mr Rangitaawa was admitted to hospital ultimately spending some eight days in hospital and undertaking a number of surgical and other interventions during that time. In total, five skin grafts were performed. Mr Rangitaawa was able to return to work but unfortunately was the target of ill-informed and negative comments by some co-workers.

[8] WorkSafe were informed, attended the site some days later and samples of the liquid from the bund area similar to those taken from Mr Rangitaawa's feet returned a pH level of approximately 14. The charge was laid and essentially at the first available opportunity a guilty plea was entered.

[9] As it transpires, and I am grateful to both counsel for their written submissions, but as it transpires the parties are not a great deal apart when it comes to the structuring of today's sentencing. The areas of difference were late to the initial start point in respect to the substantive fine and to the quantum of the emotional harm reparation which is payable. It is agreed between the parties that no other component elements of a financial penalty are appropriate here.

[10] For WorkSafe, Ms Braden submitted, having traversed a number of the relevant sentencing authorities, that a starting point of $500,000 for the fine would be appropriate referring in particular to the earlier sentencing decision of *WorkSafe v Heinz Wattie's.*[1]

[11] In terms of what might be termed the *Stumpmaster* factors, it is agreed that this offending falls within the medium culpability band. Ms Braden submitted that a starting point towards the upper part of that band would be appropriate here given the failure to install a work platform over the bund area, the inadequate provision of personal protective equipment to all workers operating in that area and the omission to provide Mr Rangitaawa and, by implication, others with appropriate information, training and supervision in relation to working with caustic soda.[2]

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1 *WorkSafe v Heinz Wattie's* [2019] NZDC 6388.

2 *Stumpmaster v WorkSafe New Zealand* [2018] 3 NZLR 881, (2018) 15 NZELR 1100, [2019] DCR 19.

[12] From that starting point Ms Braden submitted that a 10 per cent uplift should occur recognising that Alto Packaging have in two previous convictions been fined in this court, one for a workplace injury and the second relating to a workplace fatality. From that, Ms Braden accepts that a number of regular discounts are applicable, being discounts for the guilty plea, for co-operation, remorse, reparation and remedial steps. In round figures, Ms Braden submits that a total discount of 35 per cent would be appropriate from the initial starting point of $500,000 together with the 10 per cent uplift which leads to an end figure for the fine of some $300,000 or thereabouts.

[13] In respect to emotional harm reparation, Ms Braden submits that a $50,000 figure would be appropriate acknowledging, as is inevitably the case in cases such as this, that the setting of an emotional harm reparation figure is to some extent arbitrary, however, Ms Braden notes that the injuries suffered in this case are similar to those suffered by the worker in the *WorkSafe v Heinz Wattie's* case noting the eight days in hospital, the five skin grafts and about six months off work together with thereafter a limited work return.

[14] For Alto Packaging, Mr Erickson adopts a similar approach albeit, as noted, his starting point for the substantive fine is somewhat less being 400,000. Mr Erickson arrives at that figure by reference first to the *WorkSafe v Heinz Wattie's* case which he submits is more serious in terms of culpability but also accepts that the culpability here is less serious than the *WorkSafe v Heinz Wattie's* case but more serious than *Perry Metal Protection Limited* where an emotional harm reparation payment of $30,000 was awarded.[3] He submits that in those circumstances a starting point of $400,000. Mr Erickson accepts that a 10 per cent uplift for the two previous convictions is appropriate and from that figure seeks discounts for guilty plea, for remorse, remedial steps, co-operation with the investigation and reparation and support to Mr Rangitaawa. That results for an adjusted starting point of $440,000 of an end fine of $242,000.

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3 *Perry Metal Protection Limited.*

[15] In respect of the emotional harm reparation payment, Mr Erickson submits that $40,000 would be appropriate noting that earlier sentencing authorities, because of differences in circumstances, can sometimes offer limited guidance.

[16] In broad summary, I accept Mr Erickson's approach to the calculation of the appropriate fine to the extent that I am able to do so. I accept that here Alto Packaging's culpability is less than that of the employer in *WorkSafe v Heinz Wattie's* but greater than that of the *Perry Metal Protection Limited* decision.

[17] The 10 per cent uplift which is agreed by both counsel is appropriate for the earlier convictions. There is no dispute but as to the applicability of the available discounts. In those circumstances and the substantive fine imposed on the defendant is $242,000.

[18] With respect to emotional harm reparation payment however, I adopt the approach advocated for by Ms Braden on behalf of WorkSafe. The victim impact statement which was read to today's hearing by Mr Rangitaawa's wife sets out not only the enormous effect that these chemical burns had on Mr Rangitaawa in the immediate aftermath of the injuries and although it is not referred to in the victim impact statement directly, the effect on both Mr Rangitaawa and his immediate family of the uncertainty which would invariably have been involved in an eight day stay in hospital with multiple intrusive surgical interventions to scrape the wounds and then to undertake the skin grafts cannot be underestimated. Likewise, the long-term effect on Mr Rangitaawa and his family, he having been released from hospital on Christmas Eve 2021, was also significant and wide-ranging.

[19] Lastly, although I accept that Alto Packaging were not aware of this until the eleventh hour, the detrimental and somewhat degrading comments made to Mr Rangitaawa when he returned to work must have had a similarly detrimental impact on him. In those circumstances, the higher emotional harm payment of $50,000 is entirely appropriate.

[20] Lastly, and as not disputed by Alto Packaging, there will be prosecution costs of $1,300.

[21] There will be a direction with appropriate redactions to preserve privacy as sought by Mr Rangitaawa for a release of the summary of facts. No suppression orders as required.

A I M Tompkins
District Court Judge