IN THE DISTRICT COURT
AT TIMARU

I TE KŌTI-Ā-ROHE
KI TE TIHI-O-MARU

CRI-2023-076-000263
[2025] NZDC 3094

WORKSAFE NEW ZEALAND
Prosecutor

v

TURLEY FARMS LIMITED
Defendant

Hearing: 13 February 2025

Appearances: K Sagaga for the Prosecutor
G Gallaway for the Defendant

Judgment: 13 February 2025

NOTES OF JUDGE C D SAVAGE ON SENTENCING

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[1] I would like to thank counsel for the helpful submissions as they have been of assistance to me. Also, I have read and heard statements outlining the consequences of the loss of a man that you love so dearly and I take them into account as also do I take into account matters that simply cannot be put into words.

[2] With regard to the defendant, the defendant is a company but the people who run it seem to have imbued it with an element of soul as this whole process, as it has played out in front of me, seems to have been done with humanity at the forefront rather than with the aim of protecting a corporate entity as being the major driving force. The people that run that company are entitled to credit for the way they have carried themselves throughout the process but now I have to sentence

Turley Farms for their part in Mr van Heerden's death and as part of that I will be awarding emotional harm reparation.

[3] It has been said many times before but it has to be said again, money can never compensate for the loss of a man who was clearly so loved and respected by so many for his attributes as a family man, a friend, a valued employee and a contributor to his community.

[4] Mr van Heerden died when he was crushed at the end of a seed-unloading operation that was carried out in the drying shed in the defendant's property in March of 2022. Mr van Heerden had assisted a colleague in the unloading of a heavy trailer that had been filled with seed that had a moisture content that made it less able to flow than a dryer load. It was, I understand, a task that could usually be carried out by one worker. On this occasion, it could not and I accept from the bar Mr Gallaway's comments about it being a particularly wet season. It could not be done by one worker and Mr van Heerden stepped in with tragic consequences.

[5] The defendant company has pleaded guilty to a charge under the Health and Safety at Work Act 2015 because it failed in its responsibility to Mr van Heerden to ensure, so far as reasonably practicable, his health and safety whilst he was in their employ. The particulars of that failure are that it did not develop, implement, maintain or train its workers in an effective, safe system of work for unloading loads in the drying sheds, including an effective traffic management plan which would have ensured that no worker was inside the relevant drying shed during unloading operations except for the driver of the plant or if that was impractical, it failed to implement a standard operating procedure that would ensure the safety of any other worker who came into the drying shed perhaps acting as a spotter as seems to have happened on this occasion.

[6] Principles and purposes of sentencing under the Health and Safety at Work Act 2015 are 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 New Zealand v Stumpmaster and all the other cases that have been referred to me both on behalf of the defendant and by the prosecution.[1]

[7] I have to adopt a four-stage process as set out in the *Stumpmaster* decision. The first of those steps is to assess the amount of reparation and consequential loss. Secondly, to fix the amount of the fine, having set a starting point that is consistent with guideline decisions and comparable cases and adjusted appropriately for factors that relate to the defendant company. Thirdly, I must determine what ancillary orders including costs are appropriate and then finally to have a look at the overall proportionality appropriate to the sentence.

[8] I say again, as it has been said in many cases before and it applies particularly in this one, you cannot put a value on a family suffering. The purpose of evaluating and ordering emotional harm reparation which is the first step I am about to turn to, is to recognise that a family has suffered emotional harm and that there should be some compensation for this.

[9] Worksafe submits that a payment of $130,000 is appropriate. Counsel for the defendant takes no issue with that submission so I make an order that reparation for emotional harm be made in the sum of $130,000 and portioned as per the schedule at paragraph 6.8 of the prosecutor's 16 January submissions.

[10] There is to be no reduction for payments already made though they will be taken into account when the overall financial consequences of the defendant are assessed.

[11] I then move to consider consequential loss and I make an order at the outset in the sum of $6,247.57 for the costs incurred by Mr van Heerden Sr as they were a direct consequence of the tragedy.

[12] I make a further order for consequential loss to Mrs van Heerden in the sum of $71,477.60 and I have calculated that figure from Mr Shaw's statement and made

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[1] *Stumpmaster v WorkSafe New Zealand* [2018] NZHC 2020, [2018] 3 NZLR 881.

an adjustment for payments already made. If I have erred in that, then I will receive submissions from counsel on the point, should they see fit to file some.

[13] The next step is to decide what the level of the fine is. The *Stumpmaster* decision established four bands of culpability.

(a) Offending with low culpability could see a fine ranging up to $250,000.

(b) Medium culpability would see a fine in the $250,000-$600,000 range as a starting point.

(c) High culpability would attract a starting point in the $600,000 to $1,000,000.

(d) Very high culpability would demand a starting point of between $1,000,000 and $1,500,000.

[14] There is a divergence between the parties on the appropriate level of culpability.

[15] The prosecution submits the culpability is high because of the defendant's failure to outline a standard operating procedure for unloading operations when it was not reasonably practicable to exclude all workers other than the driver so it is really the second stage of that test. The prosecution categorises the defendant's failure in this respect as a significant departure from established industry standards.

[16] The defence, however, points to the defendant's history of proactive compliance with health and safety guidelines, its training regimen and the establishment of best practice guidelines as evidence of its commitment to the wellbeing and safety of its employees whilst acknowledging that, on this occasion, the steps that it took were not sufficient to prevent the tragedy.

[17] Training around adherence to greater exclusion zones would have assisted but as Mr Gallaway says, hindsight is 20/20.

[18] I assess the defendant company's culpability as being in the medium range and deserving of a starting point of a fine of $450,000. I reduce that by five per cent for co-operation with the investigation, five per cent for reparation already paid and that ordered today. I reduce it by 10 per cent for a genuine expression of remorse and for the remedial steps that had been taken since and I reduce it by 25 per cent for the guilty plea which, while not coming at an early stage of the proceedings, was signalled without undue haste.

[19] That would reduce the fine to $247,500.

[20] In addition, I make an order for costs in the sum of $4,547.24.

[21] I do not intend to summarise the financial consequences to the defendant that I have just outlined because they pale into insignificance next to the losses that have already been suffered and will continue to be suffered into the future by those that had the good fortune to have Louis van Heerden in their lives.

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Judge CD Savage
District Court Judge | Kaiwhakawā o te Kōti ā-Rohe
Date of authentication | Rā motuhēhēnga: 20/02/2025