

**MAGISTRATES COURT OF SOUTH AUSTRALIA
(INDUSTRIAL OFFENCES JURISDICTION)**

SPINKS, Christopher Mark

v

PREMIER ROADLINES PTY LTD

JURISDICTION: Prosecution

FILE NO/S: 672 of 2008

HEARING DATES: 22 September 2008

JUDGMENT OF: Industrial Magistrate R E Hardy

DELIVERED ON: 7 November 2008

CATCHWORDS:

Prosecution - Guilty plea - One charge - Failure to ensure safety of an employee - Bus driver died from crush injuries when coach descended upon him during wheel change/jacking procedure - Driver not instructed in correct means of jacking coach and used incorrect jacking point which gave way - Air suspension of coach had relaxed during jacking operation permitting vehicle to descend below usual ride height - Failure to mark jacking point, failure to provide safe operating procedure for jacking and wheel changing - Failure to inform, instruct, train and supervise and failure to provide adequate lighting - Conviction recorded - Discount for guilty plea - Penalty of \$45,000 plus costs - Compensation to widow and children totalling \$20,000 - S 19(1) Occupational Health, Safety & Welfare Act 1986.

REPRESENTATION:

Counsel:

Complainant: Mr K Lesses

Defendant: Mr R Manuel

Solicitors:

Complainant: Crown Solicitor's Office

Defendant: Wallmans Lawyers

1 The defendant in this matter, Premier Roadlines Pty Ltd, has pleaded guilty to the following charge:

“1. On the 14th day of July 2006 at Whyalla in the State of South Australia, the defendant, being an employer, failed to ensure so far as was reasonably practicable that its employee, Mark Crompton, was, while at work, safe from injury.

Contrary to section 19 (1) of the *Occupational Health, Safety and Welfare Act 1986* (SA).

Particulars:

- 1.1 At all material times the defendant operated a coach service in the State of South Australia;
- 1.2 At all material times Mark Crompton (‘the employee’) was employed by the defendant as a Coach Driver;
- 1.3 On the said date, the employee was scheduled to depart for Adelaide from the defendant’s Whyalla Depot at 5am on a double-decker Denning coach registration number VBM–387;
- 1.4 Prior to the scheduled departure time, the employee took steps to change a rear tyre on the said coach, during the course of which the coach came into fatal contact with him;
- 1.5 The employee was exposed to a risk of injury at work during the course of performing the task of changing the tyre;
- 1.6 It is alleged that the defendant failed to provide and maintain so far as was reasonably practicable a safe system of work in that it –
 - 1.6.1 failed to ensure that the jacking points on the said coach were adequately marked; and
 - 1.6.2 failed to provide an adequate safe operating procedure in relation to coach jacking and wheel changing;
- 1.7 It is alleged further that the defendant failed to provide such information, training and supervision as was reasonably necessary to ensure that the employee was safe from injury in the event of his having to perform the task of changing a tyre on a coach;
- 1.8 It is alleged finally that the defendant failed to provide so far as was reasonably practicable a safe working environment in

that the employee was required to perform the task of changing the tyre with inadequate lighting.”

- 2 This matter concerns a fatal work accident that occurred shortly after 4.00 am on the defendant’s Whyalla premises on Friday, 14 July 2006 when the employee Mark Crompton was crushed by the coach he was due to drive to Adelaide at 5.00 am. Mr Crompton had only recently commenced full time employment with the defendant.
- 3 At about 4.00 am Mr Crompton contacted a Mr Joseph Bonnici who was the rostered on call workshop person to take instructions as to whether he should change a flat tyre on the coach in question. That coach was a double-decker Denning bus owned by the defendant at the time.
- 4 The rear inner right tyre was deflated. It was company policy for drivers to first ring into the workshop as the first port of call in relation to mechanical problems or issues including tyre changing. Each coach was equipped with a spare tyre and the basic equipment required to change the wheel but first the driver was to seek advice in this way to see whether he was to change the tyre or whether a contractor, usually Bridgestone, would be called in for the purpose.
- 5 Mr Bonnici said that he received Mr Crompton’s call at about 4.00 am, that the matter of who should change the tyre was discussed and that it was decided that Mr Crompton, as there was sufficient time before departure, should do it. Mr Bonnici was the last person to speak to Mr Crompton before he died. Mr Bonnici, shortly after that conversation, then called the company’s driver supervisor, Mr Daryl Kroefer to advise him of the flat tyre and in turn, Mr Kroefer attempted to call Mr Crompton back at 4 23 am but got no answer and when he tried again at 4.38 am was told that there had been an incident and that an ambulance was on its way.
- 6 It would appear that the incident occurred at about 4.15 am but by the time the ambulance had arrived at 4.45 am, the deceased could not be resuscitated.
- 7 The deceased worker was crushed beneath the driver’s side rear of the coach in the course of attempting the wheel change. The cause of death was crush asphyxia. The deceased was trapped beneath the bus with his feet protruding behind the tyres and the upper part of his body beneath the bus.
- 8 The cause of the incident was the incorrect manner in which the deceased had proceeded to jack up the bus in order to change the tyre. He had placed the end of a bottle jack under the end of a vertical hollow square section of steel tube which was attached to the body of the bus rather than place it under the axle. That tube and the plug at the end of it were

not designed to be used as a jacking point. The plug was made of thin material and the jack penetrated the plug and entered the tubing. The bus air suspension system had compensated for the angular change induced by the jacking action by transferring or reducing air within the suspension system away from the driver's side rear area in an attempt to level the bus. When there was no more air to exhaust the weight transferred from the air bags to the bottle jack and the cap failed permitting the jack to enter the tube section and the body to drop below its usual or set ride height crushing Mr Crompton who was then beneath the bus. Effectively that corner of the bus was unsupported and sank to the ground when the chassis support failed and the jack penetrated the tube section. It remained in that position after the bus was righted and weight removed from it. Once the engine was running again the air pressure was re-established and the coach resumed its original ride height.

- 9 The complainant alleges three particulars each justifying the complaint.
- 10 They are that it:
 - (1) failed to provide and maintain a safe system of work in that it failed to ensure that the jacking points were adequately marked and failed to provide an adequate safe operating procedure in relation to coach jacking and wheel changing;
 - (2) failed to provide such information, instruction, training and supervision as was reasonably necessary to ensure that the employee was safe from injury in changing a tyre on a coach; and
 - (3) failed to provide a safe working environment in that the employee was required to perform the task of changing a tyre with inadequate lighting.
- 11 As a result of a consequent investigation the jacking points were made more apparent by the application of iridescent paint. Additionally, markings for the jacking points were added externally to the buses. Further, an updated safe work system was documented and affixed to the tyre luggage area of all coaches. That applicable at the time was more cursory and the latter more detailed. The former gave no direction as to the correct jacking point. The prosecution maintains that these changes were simple and practical to implement.
- 12 With respect to training and induction the employee's program was devoted basically to operation of coaches and procedures and only a small section to workshop procedures, which were described as "a quick familiarisation". There was no specific instruction or demonstration

about tyre changing and jacking of buses to the deceased employee. It was not contemplated by the defendant that drivers would usually perform mechanical work but there was an expectation that in some circumstances, such as in remote locations, some work such as wheel changing, was expected of them.

- 13 Although the deceased had some background and experience with heavy vehicles and machinery, and with coaches, the defendant was not entitled to rely upon or assume that knowledge. It did not follow that he was competent or experienced on every single relevant aspect of the defendant's operations. Additionally, there was no proper recording of his participation and success in training.
- 14 Finally, it is claimed by the prosecution that the lighting in the area was inadequate. In fact it was dark, being just after 4.00 am and only one of two spotlights was illuminated which would not have afforded sufficient light for the performance of the work. The area was poorly lit and the deceased was working with only a torch when attempting to locate the jack beneath the bus. The prosecution maintains that better lighting was required at that hour of the morning for the performance of the work.
- 15 Of these matters the prosecution maintains that the lack of appropriate training was the most serious.
- 16 The prosecution acknowledges that new policies are now in place relating to the changing of tyres and, in particular, a special contractor, if available, is to be used.
- 17 The incident has had extensive and devastating effects upon Mr Crompton's family. I have had regard to the victim impact statements which detail financial and material effects along with emotional and psychological consequences. An application has been made for compensation for all four of his immediate family of his wife and three children..
- 18 Mr Manuel who appeared for the defendant made a number of appropriate submissions. The defendant consented to payment of the maximum amount of compensation of \$20,000.
- 19 I am told that the incident has caused significant concern and sadness to the defendant. Mr Crompton was well regarded. Because of his prior experience with buses the defendant might have made assumptions about his competence and capabilities. I am told that the defendant did have systems in place but they were inadequate. However the defendant did not ignore risk. It takes safety very seriously. It had an induction programme and safety policies and made too many assumptions in relation to wheel changing but did not ignore safety.

- 20 A director, the CEO and the area manager were in court during the hearing.
- 21 Generally all new bus drivers were inducted to a level, which included the changing of tyres, above that extended to Mr Crompton. An unfortunate fact was that Mr Crompton was not effectively inducted or shown how to change a tyre because the person who usually did such an induction was not available on the day that Mr Crompton was present for instruction. The defendant accepts that this was a fundamental failure. Unfortunately this failure led to Mr Crompton jacking the bus on a non-load bearing point. Had he jacked it correctly and used the additional safety jack, there would not have been the same impact on the air suspension. In fact the incident was the result of an accumulation of circumstances.
- 22 Mr Manuel made the point that the employee to whom he spoke at 4.00 am, Mr Bonnici, had some basis for assuming that Mr Crompton knew the proper procedure for changing tyres and the discussion was about whether or not he ought to do it without addressing whether he was able to do so.
- 23 Since the incident, a far more detailed and comprehensive procedure has been put in place. Even though employees are aware and capable of the wheel changing procedure the preference is to entrust the process to a specialist tyre dealer who will attend at the site. In fact driver changing of tyres is a method of last resort for use only in remote areas where no specialist is available.
- 24 The defendant initially pleaded not guilty to the above charge, on the third occasion the matter was listed. At that time the defendant did not understand how the accident had occurred as it assumed that Mr Crompton had been inducted but when it understood its failure in this respect, the plea was changed before a contested hearing commenced. Hence the plea was not entered at the earliest available opportunity but was still in sufficient time to save the cost and inconvenience of a full trial. I take this into account and apply a 10% discount to the penalty imposed.
- 25 I am told that jacking points are now clearly marked with iridescent paint and as part of maintenance procedures, the defendant's buses are now checked for visibility of those markings.
- 26 Inasmuch as there was a failure to complete documentation relating to the induction process, so that the defendant might have been aware that Mr Crompton had not been inducted, I am informed that the defendant has improved this recording process as well as improving the nature of the induction.

- 27 The defendant has fully co-operated in this matter in terms of investigations and with SafeWork inspectors. It has also engaged in investigative re-enactments of the incident. The defendant has shown its remorse and its public face at the hearing. There has been a demonstrable improvement in its procedures. It has taken responsibility for its conduct. It has accepted the outcome of the investigation. It has been accessible and “up front” and has provided all relevant documentation and statements, as well as full access to its coaches.
- 28 This is the defendant’s first offence in 36 years. I take into account that the breach was not wilful or intentional in any way but came about within the defendant company by an internal failure now effectively dealt with. There should be no recurrence.
- 29 I take all of the foregoing into account in determining penalty. Although the offence is extremely serious and resulted in the death of an employee I am of the view that, within those parameters, the penalty to be imposed ought to be on the lower end of the scale. It is indeed unfortunate that the deceased was not properly instructed. Nevertheless I think it appropriate to take into account that the defendant did have some procedures in place which would have at least demonstrated correct jacking methods and principles and which would not have introduced the same air suspension compensation factor by jacking on the axle rather than the body. The culpability of the defendant lies primarily in its failure to ensure that Mr Crompton was properly instructed and that that fact was properly recorded. I accept that the former was due to an oversight or lapse in procedure. In all the circumstances I consider that a conviction is appropriate and impose a penalty of \$50,000 which sum I reduce by 10% because of demonstrated contrition and the plea of guilty.

Compensation

- 30 Compensation has been sought by the widow and three children of the deceased. As indicated I have had regard to the victim impact statements that his widow and mother have each completed. It is evident that the death of their son, husband and father has had far reaching structural, financial and emotional consequences on his family. The maximum amount of compensation that I am able to award is limited to \$20,000 and is payable for “injury, loss, or damage” resulting from the offence. “Injury” includes mental injury, shock, grief and distress resulting from the offence.
- 31 The four claimants are the deceased’s widow Rosemarie Ann Crompton, and his daughters Leanne, Kayla and Melissa Crompton.
- 32 As I have indicated, the defendant has consented to payment of the maximum amount of compensation of \$20,000.

33 I accept that no award of compensation can be fully reflective of the injury, loss or damage suffered by the family.

34 Having regard to the matters set out in the respective statements of injury and application for compensation I am of the view that the maximum of \$20,000 should be awarded and apportioned as follows:

\$8,000 to the employee's widow Rosemarie Crompton;
\$4,000 to each of the employee's daughters Kayla, Melissa and Leanne.

Total of compensation: **\$20,000.**

35 There will be a conviction and the defendant is to pay the following penalty and costs:

| | |
|---------------------------|---|
| Penalty (after reduction) | \$45,000 |
| Court costs | 131 |
| Levy | 70 |
| Counsel fee | 800 (payable to the Crown Solicitor's Office) |
| Total | \$46,001. |

36 All of the above amounts for penalty, costs and compensation are to be paid within 28 days.