

**RECENT DECISIONS**

## Safe system of work only as good as its enforcement

*Baig v AWX Pty Ltd & Anor* [2017] QSC 325 (20 December 2017)

[Link to decision](#)

### Summary

In this case the Court held that even though the employer has designed a safe system of work, it was nevertheless liable in negligence for the worker's injury as it failed to enforce that system of work on a day-to-day basis, and failed to properly train its employees.

### Background

The plaintiff was a young man who was employed as a labourer at an abattoir. He worked in what was called the 'paunch room' with another man.

The plaintiff's role was to cut a piece off carcasses that were hanging on a hook. Hooks ran along two chains, and the chains operated at a constant speed. However, the carcasses were placed on the chains at irregular intervals, so the task was not performed at a constant pace. The plaintiff had to perform the task approximately 1,600 times per day.

The plaintiff sustained an injury whilst performing this task. He alleged that the defendants were negligent in a number of ways, including by failing to institute a safe system of work. The defendants contended that if the task was performed at the pace and in the manner shown in a video supplied by them, then the system of work was a safe one. The plaintiff accepted this. However, it was the plaintiff's claim (supported by his co-worker who also gave evidence) that the video did not represent the usual pace and manner of work.

The Judge held that the faster the pace of work, the more likely it became that an awkward posture may be required and adopted by the plaintiff to perform the task, particularly when reaching across to the second (more distant) chain.

The defendants contended that the plaintiff had the authority to press a 'STOP' button, to halt the movement of the chains. The plaintiff disputed this. His evidence at the hearing was that he could not stop the chain himself, unless someone who was senior to him (such as his supervisor) told him to. This was supported by the evidence of his co-worker.

Overall, the Judge held that the work needed to be performed at a 'much faster pace on average than the pace shown in the videos'. It was found that 'the probabilities are overwhelming that reaching up would occur from time to time' and that this would require a one handed pull on a very large object (weighing between 50 to 90 kg) using a non dominant hand at an extreme outreach. The Judge concluded: 'it is highly probable that the forces involved exceeded those recommended. I am satisfied that a reasonable person in the employer's position would have taken precautions against this risk of injury bearing the probability that the injury would occur if care were not taken; the likely seriousness of the injury; and the burden of taking precautions to avoid the risk of injury.'

It was held that the defendants had failed to act as a reasonable employer to prevent the risk of injury to the plaintiff. In this regard the defendants had argued that the instruction to use the 'STOP' button was sufficient.

This was not accepted. In this regard, the Judge noted that 'the problem is that the workers were not adequately trained even when it was their right to stop the chain. That you were having trouble keeping up and might have to adopt an extreme posture to do your work was not itself evidently an occasion to use a stop button and pause the chain.' The judge further noted that the defendant's submission in this regard:

'...reverses the true position of law as to where the responsibility for devising a safe system of work lies ... in effect, the system here was that an employer left it to an untrained worker (and in this case a 19 year old Afghani refugee with 10 weeks experience by the day in question) to determine when it was that the safety device should be activated.'

Accordingly, the plaintiff's negligence claim against the defendants was successful.

## Conclusion

This case highlights the importance of employers not only having robust systems of work and training in place, but of continually ensuring that the training and systems of work are enforced on a day to day basis. It is not sufficient to have a safe system of work 'on paper'. There must be a safe system of work in practice.

## For more information, please contact:



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