IN THE DISTRICT COURT
AT WAITAKERE

I TE KŌTI-Ā-ROHE
KI WAITĀKERE

CRI-2023-090-001046
[2024] NZDC 5503

WORKSAFE NEW ZEALAND LIMITED
Prosecutor

v

ANGLO ENGINEERING LIMITED
Defendant

Hearing: 15 March 2024

Appearances: J Kirtlan for the Prosecutor
B Webster for the Defendant

Judgment: 2 April 2024

RESERVED JUDGMENT OF JUDGE L TREMEWAN

Charges

[1] The defendant, Anglo Engineering, has pleaded guilty and faces sentencing for one charge[1] of being a person in control of a business or undertaking (PCBU) having a duty to ensure, so far as is reasonably practicable, the health and safety of workers who work for the PCBU, including [redacted], while the workers are at work in the business or undertaking, namely operating a John Heine 203A Series 3 mechanical press, did fail to comply with that duty and that failure exposed workers to risk of death or serious injury arising from exposure to a crushing hazard.

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1 Health and Safety at Work Act 2015, ss 36(1)(a), 48(1) and 2(c).

[2] The particulars are that it was reasonably practicable for Anglo Engineering to have:

(a) Ensured that there was an effective risk assessment of the press;

(b) Ensured that the press was effectively guarded in accordance with industry standards and guidance, including monitoring the ongoing effectiveness of its guarding;

(c) Developed, implemented, monitored and trained workers in an effective safe system of work for the operation of the press, including an effective standard operating procedure for the press.

[3] The maximum penalty for this offence is a fine not exceeding $1.5 million dollars.

Summary of facts

[4] Anglo Engineering is a manufacturing business and a specialist subcontract component manufacturer of sheet metal. The John Heine 203A Series 3 mechanical press was purchased as an asset when the company was purchased on 27 March 2001. One of the vendor's employees, who was subsequently employed by the defendant, showed the defendant how to use the press after the purchase. There is no written record of this demonstration.

[5] The press was used to trim excess metal off metal lids. It is manually operated, requiring the operator to depress a foot pedal to power an electric motor which would bring down the press and trim the metal. The press contained a mechanical interlock on a safety gate located at its front, which was intended to ensure that the press could not be operated while the safety gate was open. This would allow the operator to safely access and retrieve anything within the punch and die area of the press.

[6] This interlock safety system did not work as intended, which allowed the press to continue operating even when the safety gate was fully open if the operator did not remove their foot fully from the pedal between cycles.

[7] At approximately 3:06 pm on 31 March 2022, [redacted] operated the press. She opened the gate to remove the trimmed lid but did not remove her foot from the pedal. When she placed her left hand inside the lower die to remove the lid, the press came down and crushed her hand. This resulted in three of her fingers being amputated across their middle phalanges, between the mid and top knuckle. An ambulance was called, and [redacted] was admitted to hospital where she stayed for 14 days.

[8] She underwent surgery on three separate occasions on 5 March, 31 March and 1 April 2022 to reconnect the arteries and replant her fingers. The replant of all three fingers failed, requiring further surgeries to remove the fingers on 8 and 12 April 2022. [redacted] now has partial index, middle and ring fingers on her left hand.

Failure

[9] As a PCBU under the Act, the defendant was obliged to ensure so far as was reasonably practicable the health and safety of its workers while they were at work. The defendant's failure to comply with this duty exposed [redacted] to risk of serious injury.

[10] The defendant failed to ensure the health and safety of its workers by failing to take the following reasonably practicable actions:

Ensure that there was an effective risk assessment of the press

[11] The Safety of Machinery Standard AS/NZS4024 (the "Standard") is the current industry standard for the safeguarding of machinery. It sets out how to select an appropriate machine guard and conduct a risk assessment of a machine.

[12] The Best Practice Guidelines: Safe Use of Machinery (the "Guidelines") refers to the above standard and sets out guidance on how to identify, assess and control hazards, as well as choosing the appropriate guarding and implementing of safe systems of work.

[13] The Guidelines state that safe systems of work are a formal procedure developed after a systematic examination of a task to identify all the hazards present.

It defines safe ways to work so hazards and risks are minimised. This system is used when hazards cannot be completely eliminated or isolated and must be vetted by a competent person as the only way to control a hazard.[2]

[14] A safe system of work should never be used as the main hazard control without first assessing whether the hazards can be eliminated, or isolated with guarding, either provided by the manufacturer or via a retrofitting of the machinery. Workers are also required to undergo extra training and have more supervision/other protective measures when using a safe system of work, and these steps must be documented.

[15] There is also the WorkSafe New Zealand Factsheet: Power Presses document which provides helpful information to PCBUs regarding hazards associated with power presses and any action that may be taken to mitigate its risks, such as keeping interlock guards closed until the crankshaft is stopped, implementing devices to prevent involuntary descent of the ram, and covering the operator mechanisms to prevent accidental start-ups.

Ensure that the press was effectively guarded

[16] The press was poorly guarded as it had a faulty mechanical interlock system which allowed it to be operated even with the safety gate fully open.

[17] The press had excessive gaps in its various guarding which could allow hands, fingers or arms access to dangerous parts of the press. These gaps would not have prevented a person from reaching into the danger area during the operation of the press even if the gate was closed.

[18] The flywheel cover was not locked or fixed allowing easy access during operation, which presents an additional drawing in or entanglement hazard.

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[2] A competent person being someone with a current knowledge and understanding of the Standards/other relevant standards, the guards and other safety devices, and how to use guards and other devices on that type of machine.

[19] An assessment carried out by an engineer engaged by the defendant following the incident identified the following circumstances which have the potential to create a crushing and shear hazard:

(a) The machine lock does not work if the foot pedal is not released;

(b) The guarding is not sufficient to restrict access when the machine is unsafe;

(c) The mechanical interlock is easy to overcome, allowing access when the machine is unsafe; and

(d) The guarding on the drive belts is not secure, allowing for easy access to the belts and creating an entanglement and crush hazard.

Implementing a safe system of work for the operation of the press

[20] The defendant had a health and safety system containing a hazard register which identified machinery which had been fixed, a company handbook, toolbox meetings at the start of each shift, weekly staff meetings, production meetings and a health and safety committee.

[21] The defendant did not have an individual risk assessment for the press. The defendant did not engage a competent expert to check and verify that the guarding complied with the relevant industry standard prior to the incident.

[22] There was no documented standard operating procedure for the press. A non- documented procedure based on verbal training and demonstration was used to inform workers on how to operate the press. The defendant was unable to produce any induction or training documentation provided to the victim, who can only recall the induction and training being verbal in nature.

[23] It is convenient to note that at the hearing there was further discussion about the issue of training, and the victim [redacted] (and her husband, who also works for the defendant) was present. Although she did not give evidence in any formal way,

she took the opportunity when given, after hearing the matters being canvassed in Court around the topic of training, to speak privately with Ms Kirtlan (for the prosecutor). Ms Kirtlan then reiterated the prosecution position that not only was the training undocumented, but [redacted] was very clearly of the view that the training she had received was inadequate both in terms of the person undertaking it and content.

[24] The defendant's workers were not required to complete pre-start checks of the guarding or arrange proper maintenance of the press' interlocking system, which would have identified that its interlock was not working as intended.

Previous convictions

[25] The defendant has two historic convictions from the 1970s relating to failures to guard machinery, however, these occurred prior to its purchase by the current shareholders.

Victim impact statement

[26] [redacted] life has changed dramatically. The accident on 31 March 2022 left her with two fingers on her injured hand, which she continues to rely on for doing little things. The strength and stability of those two fingers have been affected by this, and she fears the loss of their use in the future. She has been told that the weight that fell on her finger caused a back flow of blood which increases her risk of blood clots in the future. She feels helpless, noting that her career options have become very limited and narrow.

[27] She is heavily reliant on her husband and is unable to leave the house without him for fear of accidents or death. She is unable to drive as she cannot properly grip the steering wheel. Everyday tasks have become a struggle, taking her double to triple the amount of time to complete. She lacks the strength to lift items which has resulted in numerous broken kitchenware.

[28] [redacted] struggles mentally and physically, suffering from constant nightmares and flashbacks of the incident which has affected her sleep and causes her

to hyperventilate throughout the day. She was pregnant at the time of the statement but has since had the baby (who is three months old). The Court was advised at the hearing that her ability to hold her baby and carry out the requisite usual daily tasks of parenting are compromised. In addition, [redacted], now has issues with carpal tunnel in her other hand due to the overuse of that hand in compensation for her injured hand.

[29] [redacted] has been advised by her surgeon that further surgeries will be required and can only be performed after she has fully recovered from having the baby. She attends physiotherapy regularly, as well as counselling, and is on regular medications for blood loss and nerve pain.

[30] [redacted] feels the permanence of the loss of her fingers, stating that she will spend the rest of her life coming to terms with the trauma she has experienced. At the hearing the Court was advised that the incident continues to have a devastating impact for [redacted] (and also indirectly her husband, who was also present at the time of the incident and continues to support her).

Restorative justice

[31] Both counsel agreed that a restorative justice meeting should take place and a referral was made on behalf of the defendant. However, it was confirmed on 8 October 2023 that [redacted] did not wish to participate in the restorative justice process.

Submissions

[32] Both counsel refer to the guideline judgment of *Stumpmaster v Worksafe*, in which the four step approach to sentencing is adopted:[3]

(a) Assess the amount of reparation;

(b) Fix the amount of the fine, by reference first to the guideline bands and then having regard to aggravating and mitigating factors;

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[3] *Stumpmaster v WorkSafe New Zealand* [2018] NZHC 2020 at [35].

(c) Determine whether further orders under ss 152 – 158 of the Health and Safety Act are required; and

(d) Make an overall assessment of the proportionality and appropriateness of the sanctions imposed by the first three steps.

Emotional harm reparation

[33] The prosecutor submits that an award of $35,000 will be appropriate for emotional harm reparation. In support of this figure, the prosecutor refers to *Taranaki Sawmills*, *Marshall Industries*, *Clyde Orchards* and *Donovan Group*,[4] where $31,000 to $40,000 was awarded where the victim's fingers were amputated while operating machinery at work.

[34] Defence counsel agrees that $35,000 is appropriate for emotional harm reparations, noting that an offer to make partial payment of this sum was declined by [redacted] following the adjournment of sentencing in November 2023.

Consequential loss

[35] Section 32(5) of the Sentencing Act allows the Court to impose a sentence of reparation in respect of consequential loss not covered by entitlements under the ACC scheme, commonly referred to as the ACC "top up". This allows the Court to "top up" the 80 per cent of a victim's weekly income paid under ACC to 100 per cent.

[36] The prosecutor submits that a third-party accountant, Mr Taylor, has calculated that [redacted] consequential loss shortfall amounts to $337.94. This amount reflects the shortfall between the defendant's top-up payments and what was calculated to still be owed to [redacted].

[37] The Court notes in passing that the defendant had not intended that there be any shortfall and had been topping up the ACC shortfall since the accident on

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4 *WorkSafe v Taranaki Sawmills Ltd* [2020] NZDC 18014; *WorkSafe v Marshall Industries Ltd* [2018] NZDC 4498; *WorkSafe v Clyde Orchards (1990) Ltd* [2023] NZDC 18623; *WorkSafe v Donovan Group NZ Ltd* [2022] NZDC 23982.

31 March 2022. However, defence counsel accepts Mr Taylor's findings and agrees that $337.94 in consequential loss reparations is appropriate given that the auditing process has revealed that amount to indeed represent a shortfall.

[38] Defence counsel also notes that the defendant will continue to meet the shortfall between the ACC payments received by [redacted] and what she would have earned from her employment so long as she remains an employee of the company between the date of defence submissions being filed and the sentencing date. The Court notes that no final decisions have yet been made about what is to happen to [redacted] employment with the company, as those conversations are yet to be had.

Fine

[39] No agreement has been reached between the parties as to the amount of the fine.

Prosecutor's submissions

[40] The prosecutor submits that the defendant falls within the medium culpability band, attracting a starting point of $550,000.

[41] The prosecutor refers to the four guideline bands in *Stumpmaster* and the relevant factors set out in *Department of Labour v Hanham and Philp Contractors Limited*.[5] It is submitted that the defendant's case falls within the upper end of the middle (medium) band and failed in the three ways as described in the particulars of the charge to take reasonable actions to ensure the safety of its workers.[6]

[42] The prosecutor submits that the ineffective mechanical interlock on the press meant that the machine could cycle power strokes with the frontal guard fully open. Undertaking an effective risk assessment of the press would have identified this issue and enabled the defendant to implement guarding which could have prevented

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5 *Department of Labour v Hanham and Phil Contractors Limited* (2008) 6 NZELR 79.
6 Above at [2].

operator access to the hazard. Further, the workers should have been trained on a safe system of work and standard operating procedure for the press.

[43] It is submitted that the risks of working with unguarded machinery, especially one with ineffective interlocking, are significant and have obvious potential for serious injury, which the defendant should have foreseen given manufacturing is its core business.

[44] The prosecutor submits that the defendant's conduct represents a significant departure from prevailing industry standards contained in the *Safety of Machinery Standard AS/NZS4024* and the *Best Practice Guidelines: Safe Use of Machinery*. It is submitted that the defendant did not have an individual risk assessment nor a standard operating procedure for the press, and relied on non-documented, verbal and demonstrative training.

[45] The prosecutor submits that ensuring the interlocking guarding was working effectively was not cost prohibitive to the defendant's business. Further, given the remedial steps taken by the defendant post-incident, it is submitted that the cost was not disproportionate to remedy the risk.[7]

Aggravating and mitigating factors

[46] Although the prosecution initially argued the defendant's two historic convictions from the 1970s relating to failures to guard machinery should be an aggravating factor, ultimately a concession was made that a 5 per cent discount for previous good character was rightly available given that these dated to a period being five decades ago, and from a time prior to the current shareholders purchasing the business in 2001.

[47] By the time of the hearing, the prosecution accepted the defence submission that a 50 per cent total discount should be available, which would result in an end fine of $275,000 (based on the prosecution's suggested starting point fine):

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7 The defendant engaged an engineer and independent Certified Machine Safety Expert to assess, improve and report on the safety of the press, amounting to $23,000.

(a) Cooperation (5 per cent);

(b) Reparation made (5 per cent);

(c) Remorse (5 per cent);

(d) Previous good character (5 per cent);

(e) Remedial steps taken (5 per cent);

(f) Early guilty plea (25 per cent).

Proportionality

[48] The prosecutor submits that there are no matters relating to the defendant's financial capacity requiring adjustment to the sentence proposed, thus the orders sought are proportionate and appropriate given the seriousness of the offending, though it was acknowledged that time to pay (over 12-24 months) was reasonable given the costs incurred and still to be incurred by the defendant in responding to their accepted obligations once these have been better realised.

Defence submissions

[49] Defence counsel submits that it falls within the medium culpability band, attracting a starting point of $375,000 to $400,000.

[50] The defendant submits that it did not wilfully avoid or ignore its responsibilities under the Act. While it did not undertake an individual risk assessment of the press, it was identified in a fixed machinery hazard register. The inherent danger in operating the press, which was guarded inadequately, was identified and detailed in this register. It is submitted that this was believed to be sufficient in identifying the press as a hazard and in setting out the steps to minimise risk to its operators.

[51] The defendant accepts that it did not have a documented safe system of work in place, but rather, trained its employees through an informal verbal and physical

demonstration.[8] It is submitted that had training been followed, the accident is unlikely to have occurred. However, the defendant recognises that this does not excuse the lack of compliant guarding.

[52] The defendant notes that the press had been routinely used since 2001, when the current shareholders purchased the business, with no incidents or near misses, and that [redacted] had used the press for approximately 50 hours with no issues or concerns raised prior to the accident.

[53] The defendant submits that health and safety was a topic of discussion at toolbox meetings conducted before the start of each shift, weekly staff meetings, production meetings and its health and safety committee's meetings. It is submitted that the company had health and safety systems in place, engaged with its employees on health and safety, and provided training before allowing employees to use machinery.

[54] The defendant accepts that there is a risk of harm to workers if machinery is not guarded adequately but notes that the risk was limited to serious injury and not death in this case.

[55] The defendant does not accept the prosecutor's submissions that its departures were as significant as alleged. Defence counsel compares this to the case *WorkSafe v Kimberley Tool & Design (NZ) Ltd* cited by the prosecutor,[9] in which the Court noted that there was inadequate inspection, maintenance, supervision, adherence to industry standards and woefully inadequate training. The defendant states the following differences:

(a) There was no complete lack of guarding, and a belief that the guarding was sufficient to prevent against harm;

(b) There was a documented hazard assessment for the press;

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8 This training has been documented into a safe operating procedure following the accident.

9 *WorkSafe v Kimberley Tool & Design (NZ) Limited* DC Waihi CRI-2019-079-000556, 1 March 2021.

(c) If the press had been operated per the training provided, the accident would have been avoided. It is submitted the prosecutor has attempted to minimise the importance of this training. While the training was not documented, the defendant believed its obligations to train its workers in the safe operation of the press and facilitating access to health and safety were met;

(d) The verbal/physical demonstrations were considered to be a suitable method of training, adapted to suit the workplace in which English is a second language for a significant portion of the defendant's workforce.

[56] The defendant submits that it was not aware that the guarding was not operating as it should until the accident, and that the prosecutor should not imply that there was prior knowledge of this as was the case in *Taranaki Sawmills* and *Skyline Buildings Limited*. It is submitted that specific knowledge was required to assess the adequacy of the guarding and the defendant should have sought assistance from an expert, which they have now done to fix up the machine.

Aggravating factors

[57] The defendant submits that there are no aggravating factors warranting an increase in the starting point. Ultimately no issue was taken with this contention.

Mitigating factors

[58] The defendant submits that a 50 per cent discount should be available, resulting in an end fine of $187,500 to $200,000 (based on the defence suggestion as to starting point):

(a) Cooperation (5 per cent);

(b) Remorse (5 per cent);

(c) Reparations (5 per cent);

(d) Previous good character (5 per cent);[10]

(e) Remedial steps (5 per cent) per steps taken in Mr Forrest's sworn affidavit;[11]

(f) Early guilty plea (25 per cent).

Proportionality

[59] The defendant accepts that it has no capacity to pay issues but seeks consent to pay the fine in instalments given the significant remedial costs it has committed to over the next 2 years.

Fines Starting Point

Prosecutor submissions

[60] Frequency: the prosecutor submits that the press was used frequently but no effective risk assessment had been done to identify hazards, thus operators were more frequently exposed to the risk of harm without a safe system of work in place to protect its workers. Therefore, this attracts a higher culpability than in *Marshall*[12] in which the press was infrequently used.

[61] Inadequate guarding: the prosecutor submits that this case is analogous to *Niagara*,[13] in which guarding was in place but not working as intended, similar to the interlock gate in this case.

[62] Inadequate training: the prosecutor accepts that the facts in *Kimberley Tool* were more serious,[14] but the case identifies inadequate training and supervision as a

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10 The defence cites *Kimberley* and *Skyline*, in which previous convictions, dating 24 and 30 years ago, did not prevent an award for good character. Further, ownership of Anglo Engineering changed in 2001, after the convictions.

11 The defendant is committing to: spending significant sums over the next 2 years to ensure requirements are met, purchasing compliant new machinery, undertaking a full review of machinery.

12 *WorkSafe v Marshall Industries*, above n 4.

13 *WorkSafe v Niagara Sawmilling Company Ltd* [2019] NZDC 9720.

14 *WorkSafe v Kimberley Tool & Design (NZ) Limited*, above n 24.

causative factor. The defendant in this case has been unable to produce any induction or training documentation provided to its operators.

Defence submissions

[63] Lack of formal notice: the defendants in *Skyline*, *Taranaki*, *Claymark* and *Clyde*[15] were on notice to rectify outstanding issues such as conducting formal risk assessments and ensuring proper guarding was in place but failed to act.

[64] Defence counsel submits that in the present case the defendant was not aware of any risk from previous incidents, given the significant period of time in which the press was operated with no accidents, near misses or issues of concerns raised, thus should be assessed at a lower starting point compared to these 4 cases.

[65] Knowledge of risk: in *Oji Fibre*,[16] there was knowledge amongst employees that there was an area with risk, but no steps were taken to minimise the risk even though guarding reviews of the machine were undertaken.

[66] Training: in *Addiction Foods*,[17] experts were engaged but there was no safe operating procedure or safe system of work. Defence counsel submits that Anglo Engineering had a guarded press, a document identifying hazards and had provided training.

[67] Defence counsel rejects the prosecutor's following caselaw submissions asserting that the defendant is liable to a higher culpability on the medium band:

(a) *Marshall*: Anglo Engineering had identified risks and had a guard in place. The defence contends that frequency of use should not amount to a higher culpability. The defendants there were on notice unlike Anglo Engineering which had no prior indicators that there was an issue;

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15 *WorkSafe v Skyline Buildings Ltd* [2020] NZDC 10681; *WorkSafe v Claymark* [2019] NZDC 1977; *WorkSafe v Taranaki Sawmills Ltd* and *WorkSafe v Clyde Orchards (1990) Ltd*, above n 4.

16 *WorkSafe v Oji Fibre Solutions (NZ) Ltd* [2023] NZDC 19203.

17 *WorkSafe v Addiction Foods NZ Ltd* [2023] NZDC 17152.

(b) *Niagara*: the case is distinguishable as it involves a higher level of culpability since the defendants were on notice but did not carry out a detailed hazard identification and risk assessment;

(c) *Kimberley Tool*: there was completely no training or guarding, unlike Anglo Engineering. Further, the prosecutor accepts that this case was much more serious than the present one.

Regulator's costs

[68] The prosecutor seeks an order of $2,613.40 being half of the prosecutor's legal costs. The defendant accepts this.

Analysis

[69] Section 151 of the Health and Safety at Work Act 2015 applies to the current offending. The Court must apply the Sentencing Act 2002 and have regard to the purposes of the Health and Safety at Work Act which aims to protect workers and other persons against harm to their health, safety and welfare by eliminating or minimising risks arising from work, as well as ensuring compliance through effective and appropriate compliance and enforcement measures.

[70] Following the methodology in *Stumpmaster*:

Assessing amount of reparation

[71] Both parties agree that $35,000 for emotional harm reparation is appropriate.

[72] Both parties agree that $337.94 for consequential loss reparation is appropriate, given that the defendant has been paying the ACC shortfall since the incident.

[73] The Court agrees that these are suitable and appropriate payments to be made.

Assessing amount of the fine

[74] Both parties agree that the defendant falls within the medium culpability band, but disagree on the appropriate starting point and placement within that band:

(a) Prosecutor seeks a starting point of $550,000;

(b) Defence counsel seeks a starting point of between $375,000 and $400,000.

[75] Culpability is assessed under the *Hanham* factors, as recognised in *Stumpmaster*:[18]

(a) Identifying operative acts or omissions at issue;

(b) Assess the nature and seriousness of the risk of harm occurring as well as realised risk;

(c) The degree of departure from prevailing industry standards;

(d) The obviousness of the hazard;

(e) The availability, cost and effectiveness of the means to avoid the hazard;

(f) The current state of knowledge of the risks and nature/severity of the harm that could result; and

(g) The current state of knowledge of the means available to avoid/mitigate the occurrence of the hazard.

[76] The Court accepts that *Oji Fibre* and *Addiction Foods* as submitted by the defendant are strongly analogous to the case when considering the *Hanham* factors. Both cases involve an existing hazard that had been identified as such but was

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18 *Hanham & Philp Contractors*, above n 9, at [54].

inadequately addressed. The hazards were assessed as low risk, namely due to either the unlikelihood of workers coming into contact with the hazard or due to a prolonged period in which there were no incidents arising.

[77] The Court has considered and rejects defence submissions relying on Judge Callaghan's statement in *Marshall* as indicative that a machine's frequency of use correlates with culpability. The statement was made in response to that defendant's argument that their culpability should be lower because of the machine's "low usage and simple operation".[19] It is noted that His Honour was making the point that a machine's low frequency of use does not negate the need for ensuring its safety, especially where an accident has occurred.

[78] However, the Court agrees that the defendants in *Marshall* were more culpable as they were aware of issues with the machine yet did not include it in their hazard register. Further, this case was decided prior to *Stumpmaster* and in reliance of the bands in *Rangiora Carpets* which sets medium culpability as attracting a fine between $350,000 and $600,000,[20] which is higher than the range of $250,000 to $600,000 established in *Stumpmaster*.

[79] The Court accepts that, like in *Niagara*, in which there was an inadequate interlock gate, the present case is similar in that there appeared to be a guarding mechanism in place giving the illusion of safety, but in reality, that safety measure was inadequate. This is not a case where there had been notice of any arising issues nor a cavalier disregard by the defendant in meeting its responsibilities. The Court accepts that the defendant had wrongly believed that the guarding was sufficient to prevent against harm.

[80] The Court agrees with the defence that the facts in *Kimberley Tools* were more serious than the present case, as has been recognised by the prosecutor. While the present defendant did not undertake an individual risk assessment of the press, presses, including this particular press, were identified in a fixed machinery register that had been put together after a site-wide assessment of the factory by a previous manager of

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19 *Marshall*, above n 4, at [43].
20 At [32] and [46].

the company. The defendant believed that this was sufficient to identify the press as a hazard, its associated risks and steps taken to minimise risk.

[81] That said, given the lack of a more appropriate and comprehensive risk assessment process, there can be an unintended complacency seen. It is critical that robust practices are employed by those within the relevant industries.

[82] While it could be said that in this case the press was a regularly used machine which had no known issues arising, the primary concern here is the element of risk arising from an exposure to hazards. It could be said that the risk had been serious and ongoing despite not having previously eventuated in actual harm.

[83] Clearly, an injury was in fact caused to the victim which arose from that hazard, and the dangerousness of the situation evidenced. The situation has been devastating for her and indirectly for her family. It is also accepted, though without minimising what occurred, that this is not a scenario which would have likely been life threatening.

[84] When considering this case alongside other cases which raise similar issues, the Court cannot place this case at the upper-medium band of the *Stumpmaster* bands but finds that it lies in the midrange of the medium band.

[85] I find that a starting point fine of $400,000 is appropriate.

Determining further orders under ss 152 – 158

[86] The defendant has agreed to pay WorkSafe's costs in bringing prosecution pursuant to s 152(1) of the Act amounting to $2,613.40.

Assessment of proportionality

[87] The Court in *Stumpmaster* caution against routine discounts that could distort the sentencing process by so reducing the starting points that outcomes become too

low.[21] A higher discount should only be expected in cases that exhibit all the mitigating factors to a moderate degree, or one of them to a high degree.

[88] The Court accepts that further discounts for good character and remedial steps taken should be given, given that the previous convictions were incurred in the 1970s and prior to the current shareholders purchasing the company, and in light of the substantial steps taken to remedy safety in its workplace. The defendant has done what it reasonably could to show contrition and remorse, as well as cooperation. Steps have been taken to remedy the situation with urgency and at cost. A total discount of 50 per cent would be appropriate in this case.

[89] The defendant has stated that it has no capacity to pay issues and is willing to pay the full sum imposed by the Court. It has requested an allowance for the fine to be paid in instalments to accommodate its expenditure on improving safety in its workplace.

[90] Therefore, these considerations result in an end fine of $200,000 to be paid in instalments over a 24-month period.

Sentence

[91] The final sentence imposed on Anglo Engineering Limited is as follows:

(a) Emotional harm reparation of $35,000;

(b) Consequential loss reparation of $337.94;

(c) An end fine of $200,000 to be paid in instalments over a 24-month period;

(d) Anglo Engineering Limited will pay the costs of the prosecutor in the sum of $2,613.40.

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21 *Stumpmaster v WorkSafe*, above n 3, at [64] and [66].

[92] Finally, there will be an order for suppression of [redacted] name and her Victim Impact Statement. All other components of the decision may be published.

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Judge L Tremewan
District Court Judge | Kaiwhakawā o te Kōti ā-Rohe
Date of authentication | Rā motuhēhēnga: 02/04/2024