



www.theengine.biz | admin@theengine.biz | (09) 869-3990

Lessons from WorkSafe Prosecutions

By Andrew Skinner – Ulrich Milne Lawyers

Two prosecutions that were reported at the end of 2023 provide a sobering reminder regarding the duties of PCBUs in the building and construction industry. These incidents involve high risk activities with devastating consequences for the workers and families affected. PCBU's must remain vigilant by continually reviewing and monitoring their health and safety systems. This article summarises these two recent prosecutions.

Poor Traffic Management

In February 2017 a trucking company was engaged to load and unload palm kernel at a warehouse in Southland. One of the drivers was standing behind his truck when he was struck and killed as another driver was reversing a front-end loader. Mobile vehicles operating in close proximity to people is one of the key risks that many businesses face, including those in the building and construction industry where trucks and hi-abs commonly deliver building materials.

It is essential that there is a clear separation of workers and moving vehicles in the workplace. Designated safety zones for people, providing clear signage, bollards and barriers to control the traffic flow are cost effective ways to keep workers safe.

The WorkSafe investigation found that the trucking company should have had a more effective traffic management system in place and should have consulted with other third party contractors on the site. There was an over-reliance on workers themselves to be vigilant as opposed to managing the risks and preventing incidents from occurring.

In this case the trucking company was convicted and ordered to pay a fine of \$577,500 and reparations of \$115,896.

Scaffolding Training Failure

In April 2022 a scaffolding worker was dismantling scaffolding near power lines on a site in Auckland when the scaffolding touched the overhead power lines. As a result of the incident, the worker received high voltage electric burns to his body and both of his arms were amputated to the upper bicep.

In November 2023 the worker's employer, CPA 2022 Limited, was sentenced for its health and safety failures. The scaffolding work had been given a close approach consent, which is required

when work is being done near overhead power lines. The subsequent investigation found that the consent required the scaffolding crew that put up the scaffolding to be the same crew that took it down as these workers were to receive a safety briefing. However, as it transpired, none of the dismantling crew were the same as those who put the scaffolding up so did not receive the briefing on operating near the high voltage lines. This failure to follow the safety system had tragic consequences for the worker.

This incident emphasises that health and safety is not a “tick the box” procedure. Obtaining the consent was the administrative task but understanding the consent, training the workers and ensuring their safety was the duty of the employer.

Both of these incidents highlight the need for businesses to assess and give greater scrutiny to the most serious risks in their business. Once the systems and processes are put in place, they then need to be actively followed to prevent serious injuries from occurring.

Andrew Skinner has over 20 years of experience as a commercial lawyer and as a partner in the Auckland firm Ulrich Milne as well as being Vice Chair of the Frame and Truss Manufacturers Association. Andrew's email address is andrew.skinner@uml.co.nz.

This article is not intended to be relied upon as legal advice.

Resource supplied by The Engine's provider:

