



INSURANCE | Issue No. 58 | Court of Appeal picks Woolworths worker and reverses Lower Court Decision

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The Court of Appeal reversed a District Court Decision in the matter of *Berhane v Woolworths Limited 2017 QCA166*.

Mr Berhane was employed by Woolworths Limited as an Order Selector in a large warehouse. He was required to lift and stack heavy cartons up to a thousand times per day. Mr Berhane had a pre-existing asymptomatic degenerative condition in his shoulder when he commenced work with Woolworths. The injury was an aggravation to his pre-existing condition.

Woolworths had conducted a medical examination of Mr Berhane before he commenced employment and he was declared suitable for the role of order selection.

Mr Berhane complained of a shoulder injury on 22 June 2011. It was agreed in the District Court that the Plaintiff suffered subacromial bursitis and impingement of the left shoulder.

Key facts and evidence

Key evidence analysed in this case included in relation to:

- **Weight of the cartons:** There was evidence that the heaviest carton weighted 17kg, but most of the cartons weighted between 13kg and 16kg.
- **Technique of the employee:** There was also evidence during the Trial regarding the lifting and reaching required when stacking the pallets. That evidence indicated that Mr Berhane would on average prepare 15 orders per day.
- **Speed of the task:** There was evidence that the Plaintiff felt it was necessary to work faster as, at his recent review, his employer had indicated he was working below optimal level.
- **Training provided:** There was also evidence concerning Mr Berhane's training, which he received when he commenced work with Woolworths. This

training appeared to indicate specific things that a stacker was required to do when performing his duties on a day-to-day basis.

Argument

Notwithstanding the initial training instructions, the evidence before the Court seemed to establish that workers "*picked up more than one carton at a time*".

A retired Team Manager for Woolworths stated there was no hard and fast rule as to whether an employee lifted more than one carton or crate at a time.

It also appeared from the evidence that workers could decide how to pack a pallet, even though the training appeared to indicate that it should be done in a particular fashion.

There was evidence that the Supervisors had limited opportunity to keep a close eye on up to 100 workers at the warehouse each day and that workers could choose to reach across or walk around a pallet as they considered appropriate, notwithstanding the directions that were given on commencement at the warehouse.

Findings

The Primary Judge found that a system of work requiring "*so many manual transfers, gave rise to the risk of musculoskeletal, including shoulder injury*".

Woolworths was aware of the risk of harm signified by the fact that it put in place systems of pre-employment examination, training policies and supervision. The training and induction programme was comprehensive and an adequate response to the risk of musculoskeletal injury.

In view of the risk of injury, it was imperative that a response founded primarily on training and supervision be diligently implemented.

The primary Judge determined that the failure to properly implement the system was a breach of duty. This was not challenged by Woolworths in the Appeal.

Causation

The central issue in this case related to whether the Mr Berhane's injury could have been prevented by the implementation of the counter measures put forward by Intersafe.

The primary Judge appears to have come to a wrong conclusion when considering the evidence of reputable shoulder surgeon, Dr Blenkin, on this issue.

The Court of Appeal said his Honour's reasoning could not be sustained and was contrary to the evidence as a whole.

Conclusion

It is imperative employers to effectively control the workplace and ensure their training and induction programs are adhered to and implemented.

In this case, Woolworths failed to do this and therefore breached their duty of care to Mr Berhane.

The Court of Appeal found that causation had in fact been established on the facts.

When hiring new employees for manual labour, employers should consider the foreseeability of an injury for someone with a degenerative condition, such as Mr Berhane's shoulder condition.



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