



INSURANCE | Issue No. 65 | Truck driver scoots to victory

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The recent decision of *Cincovic v Blenner's Transport Pty Ltd* [2017] QSC 320 is a reminder to employers they can be found legally responsible for the foolish actions of their employees.

What happened?

Mr Cincovic was working for Blenner's Transport as a truck driver. On 30 March 2014 he fell backwards off a pallet jack at Blenner's Transport's freight transport depot and suffered spinal fractures.

Mr Cincovic was riding the pallet jack like a scooter. He had two hands on the handle and was traveling "at faster than a walking pace" but felt secure. He told the Court he rode the pallet jack in this way approximately once a week and other workers rode it this way to get across the depot floor quickly.

As Mr Cincovic was riding the pallet jack, a co-worker, Mr Starling, kicked the tynes of the pallet jack to push it along faster. Mr Cincovic's position was that "If Starling had not pushed him he would not have [fallen and] suffered injury". The Court accepted Mr Starling's actions caused Mr Cincovic's injuries.

In Blenner's Transport's defence, they argued it had a safe system of work which did not permit workers to ride pallet jacks like scooters, and the incident would not have occurred if Mr Cincovic refrained from doing so. Blenner's Transport also argued it was not 'vicariously liable' (i.e. not responsible) for Mr Starling's casual, spontaneous act of "horseplay" of kicking the pallet jack with his foot.

As it was accepted that Mr Starling's actions caused Mr Cincovic's injuries, to succeed at trial, Mr Cincovic was required to prove those actions were wrongful and that Blenner's Transport was vicariously liable for them.

When is the employer responsible?

An employer will be vicariously liable for its workers' wrongdoing that occurs in the course or scope of employment.

Mr Cincovic had to establish Mr Starling's act of kicking the pallet jack was in the scope or course of his employment as opposed to an unforeseeable act of "horseplay".

Evidence before the Court

The Court found Mr Cincovic exaggerated his evidence and overall considered him to be an unreliable witness.

The Court did not accept Mr Cincovic's evidence that he received no training or induction, or that skylarking or horseplay was condoned in the workplace. Three of Mr Cincovic's managers gave evidence this behaviour was rare and was addressed seriously. The judge appeared to accept this.

The Court's decision

The Court found Blenner's Transport:

- 1 Breached its duty of care by failing to implement/direct and enforce the safe and proper use of the pallet jacks; and
- 2 Was vicariously liable for Mr Starling's wrongful actions of kicking the pallet jack.

In relation to the first finding, the Court accepted the management at Blenner's Transport did not give general instruction or formal prohibition to workers that pallet jacks were not to be ridden as scooters. The Court considered it was foreseeable to Blenner's Transport that its workers would ride pallet jacks as scooters putting them at risk of injury, and the burden to prevent injury was minimal (e.g. implementing a Safe Work Method

Statement for the use of pallet jacks containing a specific warning not to ride them as scooters, and enforcing safe methods of use in tool box meetings etc.). In light of this, the Court found Blenner's Transport's failure to provide instructions or enforce a system of work, which prohibited "scooter riding", breached its duty of care to Mr Cincovic.

In relation to the second finding, the Court found Mr Starling's intentional and wrongful act of kicking the pallet jack was connected to Mr Starling's employment as it occurred in the course of his shift. The judge reasoned the act of kicking the pallet jack was to assist in the work task of moving the pallet jack across the depot floor and on this basis, "...it was not completely devoid of any relationship to that employment".

Blenner's Transport was ordered to pay Mr Cincovic damages of \$791,514.71.



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