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*Judgment: approved by the Court for handing down  
(subject to editorial corrections)*

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**1999 No. 5144**

**IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND**

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**QUEEN'S BENCH DIVISION**

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**BETWEEN:**

**JAMES ALEXANDER WARKE**

**-AND-**

**BRITISH TELECOMMUNICATIONS PLC**

**MORGAN J**

**Background**

[1] The plaintiff started work with the defendant in 1978 as a mechanic. In 1994 he transferred into the engineering department. The majority of his work in that department was concerned with laying cables and connecting them to poles on the defendant's overhead network.

[2] In order to prepare him for that work he spent a week at the defendant's training department at Fortwilliam in October 1994. Although some of that training week was spent introducing the trainees to the technical terms with which they would become familiar in their new positions a large part of the time was spent training the group in the safe use of ladders.

[3] The trainer, Mr. Russell, explained that he would have prepared a lesson plan for the course but that the detailed information upon which he relied was contained in a document entitled "Safe Use of Ladders" published in May 1981 by the defendant (the 1981 document) and the Engineering Safety Guide 1 issued by the defendant in July 1993. Both of these documents were made available to employees in the course of their work and were carried by

them in their vans in order to ensure that they could be reviewed as necessary.

[4] The relevant portions of the 1981 document are to be found in paragraphs 8, 9 and 10 as follows:

#### “8. LEVELLING THE FOOT OF A LADDER

8.1 Dig in the bottom of one stile wherever this is practicable; be sure to check that the excavation bottom is firm.

8.2 If this is not possible use the approved system of flat packing pieces under one stile.

The packing pieces should be at least 9 ins square ( $\frac{1}{4}$ ,  $\frac{1}{2}$  and  $\frac{3}{4}$  in thick preferably of WBP ply treated with non-greasy preservation) and issued in sets of 3 (1 slab of each thickness) from supplies purchased locally. Replace packing pieces when their condition deteriorates. Do not use the  $\frac{1}{4}$  in packing piece alone to bridge a depression. Fill the depression in first or move the ladder.

DO NOT USE ODD BRICKS OR SCRAP BITS OF WOOD. They may move or collapse with the movement of the ladder as a man climbs.

#### 9. RECOMMENDED LADDER ANGLE

The recommended slope for a ladder is shown diagrammatically in Fig 18 – 1 foot out at the base for every 4 feet of height to the ladder top with the foot of the ladder resting on a flat or levelled surface.

#### 10. LASHING LADDERS

Always lash a ladder top and bottom, wherever practicable.

##### 10.1 Bottom Lashing

Lashing the bottom of a ladder in no way reduces the need for levelling its base. A ladder *MUST* be lashed at the bottom or if this is not practicable, equivalent

action taken (see pars 13 and 14) in the following circumstances.”

[5] The 1993 document does not add anything material for the purposes of this action.

[6] Towards the beginning of the training week the first practical demonstration of ladder work was at a pole situated in a level area of grass. The trainees were taught how to set the ladder at the appropriate angle, dig in the feet of the ladder and lash it top and bottom. Bottom lashing is achieved by taking one end of the rope one and a half times round the pole and securing each end of the rope to the fourth rung of the ladder.

[7] The trainees subsequently worked on a makeshift wall erected on a level part of the training field and late in the week worked on a wall where the ground was metalled and sloping along the side. In that exercise the difference in level of the feet of the ladder was compensated by the use of packing pieces in accordance with the instructions given at paragraph 8 of the 1981 document.

[8] In his evidence Mr. Russell stated that he had advised the trainees of the danger that a ladder would twist at a pole or slide at a wall if the feet were not level. The plaintiff had no recollection of such a warning or advice. I conclude on the balance of probabilities that Mr. Russell did say something of that sort in the course of the week but I am also satisfied that it was very much in passing. Firstly the training documents available to Mr Russell did not make any reference to the risk of twisting or sliding and Mr. Russell’s principal task, which I am sure he did conscientiously, was to alert the trainees to the content of the training material rather than to re-write or materially expand upon its content.

[9] Secondly in December 1994 the defendant issued a revised directive on the safe use of ladders. That directive contained explicit advice on the risks of sliding, twisting or toppling. Mr. Russell did not recollect having a copy of that advice in any form at the time of the training session in October 1994 and could not recollect conveying the advice contained in the 1994 document to the trainees.

[10] The evidence indicates that the 1994 document was never provided to the plaintiff prior to his accident.

### **The accident**

[11] On 29 November 1996 the plaintiff was tacking cable to a telegraph pole at Kilhoyle Road, Garvagh in the course of his employment. In order to access the top of the pole he needed to use a ladder. The pole was situated in a

field just off the metalled surface of the road and separated from it by a fence constructed from sheep wire topped with barbed wire. The road sloped sideways to the pole and the gradient was one in nine.

[12] The plaintiff realised that if he put the ladder face on to the pole the stiles of the ladder would not have been level. He accepted that paragraph 10.1 of the 1981 document identified the need to level the base of the ladder and that he was aware of that need. He adjusted the position of the ladder by moving the stiles down the metalled road and round towards its edge. Although this manoeuvre reduced the difference in level of the stiles it still left the ladder with a propensity to twist.

[13] The plaintiff also considered how he could bottom lash the ladder in light of the fence at the side of the road. He concluded that it was impracticable to do so because of the height of the fencing. It is common case that the plaintiff was in error in coming to that conclusion. The purpose of bottom lashing is primarily to prevent the ladder sliding outwards from the pole. If the ladder has a propensity to twist bottom lashing would be of some limited assistance in preventing such a movement at a pole.

[14] The plaintiff ascended the ladder and successfully top lashed it. When he had completed his work he unlashd the ladder at the top and made his way down. As he did so the ladder started to twist and he fell as a result of which he sustained a comminuted fracture of the left os calcis.

### **The negligence**

[15] The essence of the plaintiff's case was set out in an amended particular of negligence contending that the defendant failed to highlight the dangers associated with a ladder on sloping ground, especially that of rotating.

[16] The evidence of Mr. Niall Cosgrove consultant engineer was that the defendant had provided considerable detailed information in relation to working from ladders. His criticism was that the plaintiff still had to make an assessment of the situation and in order to make that assessment it was vital that the plaintiff understood the nature of the dangers that he faced. In particular he pointed out that the top rung of the ladder supplied by the defendant was constructed from wire so as to facilitate the top of the ladder wrapping round the pole when erected. Where, as here, the difference in level of the stiles was three quarters of an inch it was possible to place the top rung of the ladder against the top of the pole with the two stiles firmly on the ground giving the appearance of stability. Accordingly it was necessary to explicitly draw to the plaintiff's attention the danger of twisting associated with a ladder in respect of which the stiles were not level.

## **Conclusion**

[17] I accept Mr. Cosgrove's opinion on this point which was not challenged by any other expert evidence. Explicit advice of this nature was contained within the 1994 document that was never provided to the plaintiff. Such advice and warning would have focussed the plaintiff's attention on getting the stiles level rather than securing an apparently acceptable three point contact between the two stiles and the top of the ladder.

[18] For the same reason I consider that the plaintiff has established a breach of Regulation 8(1) of the Provision of Use of Work Equipment (NI) Regulations 1993 which provide as follows:

### **Information and instructions**

“8.—(1) Every employer shall ensure that all persons who use work equipment have available to them adequate health and safety information and, where appropriate, written instructions pertaining to the use of the work equipment.”

[19] I now turn to the issue of contributory negligence. The evidence indicates that the plaintiff made two material misjudgements in setting up the ladder. Firstly he asserted in evidence that the ladder stiles were level. That clearly was not accurate. Secondly he concluded that it was impracticable to bottom lash the ladder. It is apparent that his judgment on this issue was obviously flawed. Although I have no reason to think that the plaintiff was generally other than meticulous in the way in which he carried out his work there is in my view clear evidence that he did not give this task anything like the consideration that he should. He must, therefore, bear a heavy responsibility for what happened and I assess contributory negligence in this case at 50%.

### **General damages**

[20] The plaintiff sustained a comminuted fracture of the os calcis. He was 53 years old at the time. He was in plaster for something over 3 months and thereafter had physiotherapy. He got back to work after 10 months but was unable to return to his previous department because of his injuries and thereafter worked as a handyman and cleaner at reduced remuneration. He has suffered stiffness and soreness in the left hind foot. Even now he sometimes has pain when walking and his hind foot sometimes becomes puffy and swollen. He has, however, been extremely fortunate in that there is no sign of degenerative change and this is now unlikely. Taking into account

the persistence of problems at a modest level in the future I assess general damages in this case at £27,500.

**Financial loss**

[21] Financial loss was agreed in the sum of £33,500.

[22] I award interest at the rate of 2% on the general damages and 6% on the financial loss from the date of issue of the Writ of Summons. The plaintiff is entitled to a decree being 50% of the assessed sums.