

IN THE CROWN COURT IN NORTHERN IRELAND

OMAGH CROWN COURT

(sitting at Belfast)

THE QUEEN

v

OFFICE OF THE CHIEF CONSTABLE OF NORTHERN IRELAND

Icos No: 07/14821

HART J

[1] The defendant has pleaded guilty to a single count of failing to take reasonable care of visitors to the workplace, contrary to Article 31(1)(a) of the Health and Safety at Work (Northern Ireland) Order 1978, an offence punishable with an unlimited fine. As the particulars of offence make clear, the nature of the offence is that the defendant as an employer failed to conduct its undertaking in such a way “as to ensure as far as reasonably practicable that persons not in your employment who may be affected thereby were not exposed to risks to their health or safety”.

[2] The circumstances giving rise to this charge are that for some years prior to the 17 March 2003 there were sliding security vehicle gates at the front of Strabane police station operated by a civilian security guard from an adjoining sangar. On the leading edges of each side of the gates were fixed rubber safety edges designed to bring the gates to a rapid halt if the safety edges were struck. There were sensors inside the safety edges, and touching the strip should break a circuit and the gate should stop closing.

[3] In the early hours of 17 March 2003 a reserve constable and a civilian security guard on duty in the sangar saw a male outside the station being chased by a crowd clearly intending to assault him. In an effort to protect this person from being assaulted the civilian security guard proceeded to open the

vehicle gates and the reserve constable moved through the opening, grabbed the person who was being pursued, and pulled him through the opening into the station grounds. Several of the pursuers followed, obviously determined to assault the injured party, whereupon the civilian security guard operated the control button to close the vehicle gates. When there was a gap estimated at some two feet remaining between the gates, one of those who had entered the station grounds in pursuit of the man who had been rescued tried to move sideways through the gap back towards the street, but unfortunately became trapped between the leading edges of the two gates as they closed. Although the reserve constable struck the rubber safety edges in an effort to bring the gates to a stop, the gates continued to close and the trapped person died as a result of being crushed between the gates. He was Kieran Gerard Connolly, a 28 year old man from Strabane.

[4] Subsequent investigations by the Health & Safety Executive of Northern Ireland ascertained that the wiring which controlled the gates had been tampered with in such a way as to bypass the safety device on the leading edges of the gates. Subsequent enquiries have not ascertained when, or by whom, the wiring was altered. This was a deliberate action on the part of someone, rather than the result of a defect arising over the passage of time.

[5] The PSNI had in place a system whereby sub contractors paid regular visits to inspect the gates, as well as sending workmen when there was a report of a fault. On 30 August 2002 a workman who came to inspect the gates because of a fault discovered that the wiring of the safety system had been bypassed.

[6] Although steps were put in hand to remedy this problem it appears that no further work was in fact carried out on the wiring.

[7] On 12 November 2002 there occurred an incident similar to that which occurred on 17 March 2003. A reserve constable dealing with a female trying to enter through the opening was struck by the gates closing, but fortunately, although he suffered bruised ribs, the injuries were not more severe because the operator put the gates into reverse.

[8] Because of that incident a further instruction was issued but it seems that the work form wrongly recorded that the safety button was not working, whereas in fact it was the wiring that was the cause of the difficulty.

[9] The gates were refurbished in December 2002 and inspected on 13 January 2003. The engineer carrying out the inspection again commented that the safety edges had been disabled, and a work sheet was signed by a PSNI representative, who shortly afterwards contacted the relevant contractor asking for the necessary repairs to be carried out. Unfortunately, the work was not completed because when an operative attended on 21 January the

matter addressed was a leak from hydraulic piping, and not the specific matter of the safety strips having been bypassed.

[10] The prosecution is therefore based upon the evidence that shows that the gates had a succession of problems which alerted the PSNI to this difficulty. Whilst there were contractual arrangements and procedures in place for the maintenance of the gates and associated safety components, these arrangements and procedures failed to secure the objective of the provision of safe equipment.

[11] Mr Gerald Simpson QC on behalf of the defendant pointed out that the incident has been the subject of an exhaustive enquiry by the Health & Safety Executive, by the Police Ombudsman and by the Health & Safety Branch of the PSNI itself. As a result of these enquiries a considerable number of recommendations were made and he described how these had been implemented. I do not propose to go through these in detail, I am satisfied that the PSNI have put in place a wide range of different precautions to ensure, so far as is humanly possible, that an episode of this kind does not occur again, and the Health & Safety Executive accepts that these precautions have been taken to their satisfaction.

[12] Mr Kerr QC on behalf of the prosecution, who has appeared in a number of prosecutions of this type, suggested that the relevant considerations when assessing the culpability of the defendant are –

- (a) the severe consequences of the failure which occurred in this instance,
- (b) the degree of negligence on the part of the defendant, and
- (c) whether there had been any deliberate breach on the part of the defendant of its obligations, such as would occur in the case of a commercial organisation where safety measures had been deliberately bypassed in order to increase or maintain profits.

[13] I accept that there was not a deliberate breach in this case, and that the defendant should be sentenced upon the basis that although systems were put in place by the police, the problem had not been resolved and as a result this fatal episode occurred. The consequences were of course severe as in any health and safety prosecution where there has been a fatality.

[14] Mr Kerr QC helpfully provided me with a schedule of penalties imposed by Crown Court judges in Northern Ireland in cases of this type involving single fatalities in recent years. At one end of the spectrum were cases involving Farrans Constructions Ltd where the total fines were £100,000, and Mowlem Railways where the total fines were £75,000. The Health &

Safety Executive accepts that the circumstances of the present case were not comparable to those cases. Towards the lower end of the spectrum were cases where the fines were as low as £15,000 so far as an individual defendant was concerned. In other cases somewhat higher fines were imposed. In the cases of R Hogg & Sons Ltd the total fine was £25,000; in the case of P&O Ferrymasters Ltd the fine was £20,000; and in the case of J Kennedy & Co (Contractors) Ltd the fine was £25,000. The prosecution accepted that the defendant's culpability in the present case is towards the end of the spectrum represented by the fines in those cases.

[15] Whilst I accept that in the present case the defendant put in place a system to remedy problems of this sort with the gates, nevertheless the incident in November 2002 should have ensured that more rigorous investigations by the appropriate person or persons should have been carried out to ensure that the sub contractors had in fact remedied this problem. As in any case where there is a fatality and the penalty which can be imposed is a fine, the fine must properly represent the degree of culpability of the defendant and the failure on the part of the defendant that give rise to the circumstances which occurred resulted in someone's death.

[16] I take into account that the defendant pleaded guilty, although the plea was not entered at the arraignment stage. The defendant will be fined £30,000.