

Prosecutions

Network Rail Fined £3m over Fatal Potters Bar Crash

Network Rail has been fined £3 million for safety failings over the 2002 Potters Bar train crash which claimed seven lives.

The rail infrastructure company had admitted breaching health and safety regulations in the May 2002 Hertfordshire disaster.

Its predecessor company Railtrack was the infrastructure company in charge at the time of the crash but NR has shouldered the responsibility.

The prosecution, at St Albans Crown Court under the Health and Safety at Work Act, was brought by the Office of Rail Regulation (ORR).

The now in-administration maintenance company Jarvis, which was responsible for the section of track at Potters Bar, also faced prosecution but the ORR decided in March not to proceed as the prosecution was "no longer in the public interest".

The sentence against NR was imposed by Judge Bright QC after Nicholas Hilliard QC, appearing for ORR, had said the poor state of a set of points on the track at Potters Bar had made the crash "inevitable".

Six passengers - Austen Kark, Emma Knights, Jonael Schickler, Alexander Ogunwusi, Chia Hsin Lin and Chia Chin Wu - were killed in the crash on May 10 2002.

They were on a West Anglia Great Northern express train travelling from London to King's Lynn in Norfolk which derailed at a faulty set of points just outside Potters Bar station.

The seventh victim was Agnes Quinlivan, 80, who was walking nearby and died after she was hit by debris.

All those killed were in the train's fourth carriage which became airborne after derailing and ended up getting wedged under the canopy of Potters Bar station.

NR is a not-for-dividend organisation, with no shareholders and with its debt guaranteed by the Government.

This means that any fine imposed on the company effectively comes out of the public purse.

Speaking after the court case today, Perdita Kark, the daughter of Austen Kark, said: "It's offensive that I pay a fine for something that killed my father.

"Directors of the two companies should have been in the dock as individuals and they should have paid out of their own purses."

Ms Kark, whose mother, author Nina Bawden, now 86, was badly injured in the crash, added: "This fine is going to be paid by the taxpayer and will mean there is less money to be spent on the rail network.

"The crash has made my mother's old age desperately difficult."

NR admitted failings over the installation, maintenance and inspection of adjustable stretcher bars which keep the moveable section of a track at the correct width for train wheels.

The ORR brought the prosecution after the jury at the long-awaited inquest into the crash in July last year found that unsafe points caused the accident.

Director of rail safety at ORR Ian Prosser said: "Today marks the end of a long process in which we have sought to gain a sense of justice for the families of the victims of the Potters Bar derailment.

"It is welcome that Network Rail, as the successor to Railtrack, pleaded guilty to health and safety breaches, demonstrating that, under its new management, it is now an organisation willing to take responsibility and learn from past mistakes.

"Safety on Britain's railways has improved significantly over the last nine years and, today, statistics show we have one of the safest railways in Europe.

"But there can be no room for complacency. The safety culture of the rail industry can be significantly strengthened.

"As long as the regulator continues to have to step in to enforce improvements or bring prosecutions where things have gone wrong - as we have done many times this year - then, despite progress, it is clear that the industry has significant work still to do."

Mrs Smith said: "I just hope that other families in the future are not treated as shabbily as we were by the rail companies, and I include Network Rail in that.

"There has been total disregard for the bereaved families. We finally got our apology from NR yesterday. They should have put their hands up right away. That would have eased our pain."

Mrs Smith, from Potters Bar, said she felt the railways had got safer since the crash and she hoped lessons would be learnt and improvements implemented.

Sentencing NR and ordering the company to pay £150,000 costs, Judge Andrew Bright said the crash had been 'catastrophic.'

Supermarket Failure led to 'Disastrous Results'

A supermarket worker required his big toe to be amputated after being involved in a pallet-truck collision at a store in Rotherham.

Adam Roper, then assistant manager at Morrisons' Catcliffe store, was operating a pallet truck when it collided with a protection post in the storage area, on 18 October 2009. His left foot was crushed between the truck and the post and he required surgery to amputate his big toe.

Rotherham Borough Council investigated the incident and discovered that the vehicle's 'dead man's pedal', which cuts off the vehicle's power and brings it to an almost immediate halt, failed to work, so Mr Roper was unable to stop the truck before it struck the post.

The investigation also learned that the defect had been identified a week before the incident but the company had failed to take the truck out of service until it had undergone maintenance.

Environmental health officer for the Council, Adrian Monkhouse, issued an Improvement Notice to the supermarket, which required it to implement a safe system of work, to ensure that defective rider-trucks and forklifts are removed from service until they are repaired.

WM Morrison Supermarkets plc appeared at Rotherham Magistrates' Court on 5 May and pleaded guilty to breaching s2(1) of the HSWA 1974. It was fined £15,000 and ordered to pay £12,500 in costs.

In mitigation, the firm said it did have written procedures for removing faulty vehicles from service, and it had trained staff how to identify and report faults. But it went on to say it could not account for the failure of staff to follow their training or the correct procedures.

The court also heard that the company had entered an early guilty plea and had fully cooperated with the investigation.

Following the hearing, the council's cabinet member for environmental health, Councillor Jahangir Akhtar, said: "Where appropriate, we will prosecute any company, no matter how large or how small, which fails to fulfil their legal duties to protect the welfare of their workers. Despite the pallet truck being found in a dangerous condition on a number of occasions in the week leading up to the accident, appropriate action was not carried out with disastrous results for the employee."

Scaffolder Worked without Harness

A Hastings scaffolder has been fined for endangering himself and others after working on a four-storey scaffold with no harness.

Hastings Magistrates' Court heard Gareth Roser was spotted by a passing Health and Safety Executive (HSE) inspector working without a harness at the building in East Parade, Hastings, on 14 October 2010.

The court was told that when the inspector initially saw Mr Roser, who was contracting for Battle-based Giant Scaffolding Ltd, he was approximately eight metres in the air, balancing on scaffolding tubes. However, it emerged that harnesses were available for the workers to use in their van.

Well-established industry guidance requires scaffolders to wear and use a fall arrest harness when more than four metres above ground without a safe platform to stand on and edge protection in place.

Mr Roser, a self-employed scaffolder from St Mary's Terrace, Hastings, was fined £750 and ordered to pay £643 in costs after admitting a breach of Regulation 4(1) of the Work at Height Regulations 2005.

The court was also told that Giant Scaffolding had repeatedly failed to reply to written questions put to them by the inspector despite a number of warnings.

Giant Scaffolding Ltd, of Ringlets Farm, Whatlington Road, Battle, pleaded guilty to a breach of Regulation 4(1) of the Work at Height Regulations 2005 and a breach of Section 20(2)(j) of the Health and Safety at Work etc. Act 1974. It was fined a total of £15,000 with costs of £5,000.

Fire Safety Fine

The owners of a Cornwall hotel have been fined £80,000 and ordered to pay £62,000 costs for breaching fire safety regulations.

O & C Holdsworth were fined following a fire at the Penhallow Hotel in Newquay in August 2007, which destroyed the building and killed three people. It was described by firefighters as "the worst British hotel fire in 40 years".

The investigation by Cornwall Fire and Rescue Service revealed a number of breaches of fire precautions, the most serious of which related to the fire risk assessment, which had not been carried out in accordance with the Regulatory Reform (Fire Safety) Order 2005.

A spokesperson for Cornwall Fire and Rescue Services said:

"We hope that [this] sentence will send out a very clear message to the hotel and leisure industry where sleeping accommodation is provided of the importance of adhering to fire safety legislation and ensuring the management of fire precautions is a high priority."

A spokesman for O&C Holdsworth Ltd, said:

"The fire at the Penhallow Hotel was a tragedy and we continue to express our deepest sympathies to all those that have been affected. As a family business with a long history in hotel management everyone at the company has been devastated by what happened."

News

Corporate Manslaughter Appeal Rebuffed

The Court of Appeal has recently refused an application from Cotswold Geotechnical (Holdings) Ltd for leave to appeal against its conviction and sentence imposed in February, following the first corporate manslaughter trial.

The company, which was found guilty of corporate manslaughter over the death of employee Alexander Wright in September 2008, was fined £385,000, to be paid in equal instalments over a 10-year period.

QEB Hollis Whiteman Chambers, whose members Mark Ellison QC and Adrian Darbishire helped prosecute the company, said in a statement: "The Lord Chief Justice said the applicant's arguments did not show any possible basis for criticising the way in which the judge had approached the question of whether it was unfair to try the company in the absence of its managing director, who was too ill to participate in the proceedings.

"As far as sentence was concerned, the fine imposed was appropriate. To limit a fine to the level which this company was capable of paying would have resulted in a ludicrous penalty. The trial judge correctly applied the Sentencing Guidelines, had regard to the need to consider the means of the company, but also had regard to the recognition in the guidelines that, in some cases, putting the company out of business may be inevitable, as it was in this case."

The company had also been charged with a separate health and safety offence but this was dropped by the prosecution in January 2011. Peter Eaton, the company's managing director, had been charged with manslaughter by gross negligence and a health and safety offence in his own personal capacity. However, these personal charges were stopped after a successful application by the defence team on the grounds of Mr Eaton's poor health.

Kevin Bridges, partner at Pinsent Masons, which represented the company, said: "The decision to uphold the sentence given for this conviction brings home with full force the severity with which such cases will be judged. It should serve as a stark reminder to businesses and their directors that now is the time to get their houses in order, as anyone who falls foul of this Act will be harshly punished. Small businesses may find themselves unable to continue trading, while larger organisations can expect multi-million-pound fines."

Cotswold Geotechnical (Holdings) and Mr Eaton stated they held Alex Wright in the highest regard and deeply regret the tragic incident.

HSE Announces how to Report RIDDOR

Work-related injuries and incidents reportable under RIDDOR will have to be notified to the HSE via its website from September this year.

However, those reporting fatal or major incidents will still be able to do so by phone, in recognition of the need for a more personal response in such circumstances.

The announcement was made by the regulator a day after the close of the consultation on amending the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 in line with proposals made by Lord Young in his review of health and safety.

From 12 September, a suite of seven forms will be available on the HSE's website to make the statutory reporting of work-related injuries, dangerous occurrences, disease, and gas-related incidents quicker and easier. Online reporting is also likely to fulfil the main aim of RIDDOR reform, which is to reduce the administrative and cost burdens on both business and the regulator.

Director of strategy, Trevor Carlile said, "More than half of reportable injuries are already notified to the HSE through the website and this proportion has been increasing steadily over the past seven years. Taking advantage

of the growing use of the Internet allows the HSE to be more efficient in the way it works."

He emphasised that because people reporting a traumatic event, such as a workplace death or serious injury, "still need that personal interaction", the notification of such incidents can still be done over the phone.

Changes to HSE's Reporting Arrangements

Businesses will still be able to notify fatal and major incidents and injuries by phone following changes to reporting arrangements, the Health and Safety Executive (HSE) has confirmed.

From 12 September 2011, all other reportable work-related injuries and incidents under RIDDOR (the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995) will move to a predominantly online system, with a suite of seven forms available on the HSE's website to make the statutory reporting process quick and easy.

Trevor Carlile, HSE's Director of Strategy, said:

"More than half of reportable injuries are already notified to the HSE through the website and this proportion has been increasing steadily over the past seven years. Taking advantage of the growing use of the internet allows the HSE to be more efficient in the way it works. We do recognise, however, that people reporting a traumatic event still need that personal interaction so the notification of fatal and major incidents and injuries will still take place by phone."

In a move to improve efficiency further and deliver value for taxpayers, the HSE's Infoline telephone service, which currently provides a basic information service to callers, will end on 30 September 2011.

Guidance

Agency Workers – H&S Advice

The Government has published guidance to help employers and the recruitment sector prepare for the introduction of the Agency Workers Regulations.

The guidance, which has been produced in partnership with a wide range of businesses, trade unions and recruitment agency representatives, aims to help hirers and agencies understand the requirements of the Regulations. Separate guidance for agency workers will be published shortly.

The Regulations implement the EU Agency Workers Directive as agreed in 2008 following social partner agreement between the CBI and TUC. These will come into force in the UK on 1 October 2011. They will give agency workers the right to the same basic employment and working conditions as if they had been recruited directly by the hirer - if and when they complete a 12 week qualifying period in a job.

Advice on Business Link includes information about the health and safety of agency workers. It notes that businesses who supply or use agency workers need to be aware of health and safety responsibilities.

Agency workers can face particular problems because, for example, they may not be familiar with the business they are working in or its particular hazards. The risks can be reduced through effective partnership and co-operation between the employment business and the user business, and by following good practice in areas such as risk assessment and communicating health and safety information.

The advice covers:

- health and safety risk assessment for agency workers
- co-operating to protect agency workers' health and safety
- agency workers and health and safety information and training
- monitoring agency workers' health and safety.

Reports

Safe Transport of Roll Cages

This research looked into the best ways of loading, securing, transporting and unloading roll cages in single and double-deck trailers, to ensure their safe movement by the UK's freight transport industry. The HSE report provides general advice on ways to improve the transportation of roll cages, but stresses that freight companies must conduct a full risk assessment of their entire transport operation.

Legislation and guidance governing roll cage safety

The issue of roll cage safety is controlled by road traffic legislation and health and safety at work legislation. Both the Construction and Use Regulations 1986 and the Road Traffic Act 1991 make it a legal requirement to properly secure loads transported on Britain's roads. These regulations seek to ensure that the condition of a vehicle, its weight, distribution and load securing mechanism(s) are such that it poses no danger to anyone.

BS EN 12195-1:2003 specifies the number of lashings required to secure a load, whilst BS EN 12674-2:2002 gives detailed guidance on factors to be considered when designing and using roll cages and roll containers for transporting goods. BS EN 12642:2006 details standards for the construction of trailers, to include performance criteria for sidewalls and headboards.

Methodology

The researchers used a variety of methods to determine current practice for the loading and securing of roll cages. They conducted a review of current UK legislation, standards, guidance and previous research accident and near-miss data. In addition, they visited and held informal discussions with sample haulage, warehousing and distribution companies using roll cages and also contacted industry groups.

Key messages

This report delivers some key messages which are intended to promote roll cage safety awareness and reduce accidents:

- most accidents in the UK involving roll cages are the result of cages and/or drivers falling from delivery vehicles during loading/unloading operations
- between 2001/02 and 2004/05 there were 59 such accidents, 18 of these classified as 'Major'. Falling objects were noted as the main cause of 44 RIDDOR-reportable accidents, with falls from height accounting for 15 such incidents. Many of these accidents involved the use of a tail lift
- if roll cages are being unloaded in public areas, there is a risk to the safety of the public
- near-miss incidents can prove costly to companies (product losses, equipment and vehicle damage, and damage to reputation and business relationships). Drivers should be encouraged to report near-misses and learn from these incidents
- both accidents and near-misses are most commonly caused by cages moving out of control during loading or unloading operations. Cage movement during transit is likely to increase the risk of this happening
- roll cages must be secured at least in accordance with the minimum requirements set out in the Department for Transport guidance, *Safety of Loads on Vehicles*, to avoid load shifts which can cause the transporting vehicle to become unstable and, potentially, roll-over. The entire weight of the load must be prevented from moving in the forward direction, and half the weight of the load prevented from moving in the sideways and rearwards directions
- items falling from a vehicle can injure pedestrians and/or cause following drivers to take evasive action, thereby causing an accident
- roll cage loading tends to happen in dedicated areas (warehouses/distribution centres) whilst unloading activities may take place almost anywhere with the associated risks (weather, access difficulties, movements of other vehicles, presence of the public, uneven ground)

- time constraints placed on drivers and distribution centre staff should not discourage them from raising safety concerns or using the appropriate load securing measures
- good communication and clear lines of responsibility are vital to reduce roll cage accidents and near-misses. Drivers should be fully aware of the load(s) they are transporting and it should be made clear who has responsibility for properly securing and safely discharging the load. If not involved in the loading operation, drivers should be informed about their load and how it has been secured inside the trailer. Delivery sites should forewarn drivers about hazards such as restricted access and camber to delivery areas
- care should be taken to avoid introducing modified safe systems of work that create new risks.

Conclusion

This report provides an overview of current practice on safe transport of roll cages. It sets out the relevant legislation and guidance, identifies the problems associated with transporting roll cages and offers advice on how to improve their loading, securing, transport and unloading; the aim being to avoid associated accidents.

Influencing Dutyholders Behaviour Regarding the Management of Noise Risks

The Health and Safety Executive (HSE) has published the findings of research undertaken by the Health and Safety Laboratory (HSL) into the factors which influence employers' decisions and practices in relation to occupational noise management. This research forms part of the HSE's long-term strategy to address the challenge of long-latency noise-induced hearing loss (NIHL). Its report concludes that a dutyholder's knowledge of noise management, the health and safety culture of the organisation, plus its size, are likely to be the three key factors influencing behaviour - the cultural factor being the most significant.

Methodology

The researchers invited 215 managers ('dutyholders') in the manufacturing sub-sectors to complete a questionnaire on this topic. They also interviewed 15 manufacturers in person to gain a deeper understanding of practical noise management issues and they gathered further information from site tours and a literature review.

Influencing factors

This study identified that there are three main factors which influence a dutyholder's behaviour in relation to the management of noise risks at work. These can be summarised as:

1. a dutyholder's own knowledge/awareness of noise risks and associated controls
2. the company's health and safety culture
3. the size of the organisation.

A company's health and safety culture was noted as being the most significant of the three factors. Eight other factors were considered (business motivators, resources, information/communications, autonomy/competence, self-efficacy, attitudes, role of Director and Health and Safety Manager) but these were not proven to be of significant influence.

Key findings

In addition to the identification of influencing factors, the study's findings reveal that:

- dutyholders need a greater knowledge about the health significance of noise and the controls available to reduce or negate its effects. There is a general failure to recognise that hearing damage is a long-term health risk
- the size of a company was found to be a significant determinant in the effective management of noise risk, with larger companies tending to be high-performers and smaller companies tending to perform less

well. The former were found to adopt a more strategic and educational approach to the issue, whilst the latter tended to place their emphasis on trying to replace equipment

- health and safety advice and support to improve noise management should be targeted at smaller companies who tend to have less expertise in this field than their larger counterparts and face greater financial, time and environmental restraints. The HSE should assist with the provision of targeted training interventions, in association with inspections
- dutyholders should be encouraged to place greater emphasis on controlling rather than measuring noise at work, with the emphasis being placed on understanding what controls exist and work in practice
- dutyholders need to understand that noise controls extend beyond the provision of personal protective equipment (PPE) and every effort should be made to control noise at source. Experience shows that there is often some difficulty in persuading workers to deploy the necessary noise controls
- insurers appear to be driving health surveillance and the education of workers, with managers often failing to ensure that their workers receive the necessary training in the use of hearing protection
- interventions to improve noise management should take full account of the three main factors influencing dutyholders' behaviour.

Conclusion

There is still a failure to fully recognise the occupational health risks posed by noise at work. The identification of the main factors influencing dutyholders' response to noise management will facilitate the design of measures to increase the likelihood of this occupational hazard being properly addressed. The HSE now recognises that improving the health and safety culture of a company and raising awareness of the risks associated with noise at work are likely to be the most effective ways of generating performance improvements.

European Campaign on Safe Maintenance

Maintenance is carried out in all sectors and all workplaces. Therefore, maintenance workers are likely to be exposed to a variety of different hazards, including physical, chemical and biological hazards, and psychosocial risk factors. Maintenance is also associated with a high risk of all kinds of accidents.

The European Agency for Safety and Health at Work (EU-OSHA) has run European Campaigns since 2000, targeting the most common risks and the most vulnerable sectors of activity, associated with high accident rates and high exposure to occupational hazards. The theme of the Europe-wide Healthy Workplaces Campaign for 2010-11 is Safe Maintenance. Over these two years the campaign, which is coordinated by EU-OSHA and its partners in the 27 EU Member States, is supporting a wide range of activities at the national and European level, to promote Safe Maintenance.

The EU-OSHA campaign has two main messages. First, that maintenance is essential to keep the working environment safe and reliable – lack of maintenance or inadequate maintenance can cause serious accidents or health problems. Second, maintenance itself is a high-risk activity and it has to be performed in a safe way, with appropriate protection of maintenance workers and other people present in the work place.

With the campaign, EU-OSHA aims to raise awareness of the importance of maintenance for workers' safety and health and of the risks associated with maintenance. At the same time it wants to encourage employers to consider health and safety aspects in maintenance. The Agency is focusing on communicating the general principles of Safe Maintenance, and its importance for eliminating workplace hazards and providing safer and healthier workplaces. The ultimate aim is to help reduce the numbers of people who are being hurt or experiencing ill health as a result of their work.

As part of the Safe Maintenance campaign, EU-OSHA organised the European Good Practice Awards Competition (the tenth such competition), aiming to identify examples of good practice in the management of occupational safety and health during maintenance.

This report sets out examples of entries to the Competition 2010–2011. There are short summaries presenting the eight winning entries and 15 commended entries in the competition, describing the measures taken and the results achieved.