

Prosecutions

Worker's Leg Amputated After Crush Incident

A Gateshead steel firm has been fined a total of £40,000 after a worker's feet were crushed in a rolling mill.

Alan Dixon, 62, from Gateshead, was part of a team carrying out routine maintenance at Spartan UK Ltd's site in the Teams area of the town.

The Health and Safety Executive (HSE) brought the prosecution after investigating the incident which took place on 28 August 2009.

Gateshead Magistrates heard the maintenance team was removing large mill rollers used to reduce the thickness of slabs of steel at very high temperatures to make them into flat plates.

The rollers were removed weekly to be cleaned. This involved Mr Dixon standing on the outgoing side of the mill with his feet in between several hot conveyor rollers in order to attach a hydraulic ram to aid the removal of the rollers.

However, on this occasion a co-worker in the control room was unaware Mr Dixon was standing on the mill and activated hydraulic side arms used to position steel plates through the mill rollers.

Before he could escape, one of the sidearms moved inwards crushing Mr Dixon's right foot and part of his left foot against the conveyor rollers.

Unable to place his crushed feet on the hot conveyor rollers, Mr Dixon grabbed on to the mill and in doing so, received burns to his forearms.

He was rushed to Queen Elizabeth hospital, but surgeons had to amputate his right leg below the knee. He is still undergoing treatment to repair his left heel and may need a future operation to relieve pain. It is unlikely he will be able to work again.

Spartan UK Ltd, of Ropery Road, Teams, Gateshead was fined a total of £40,000 and ordered to pay £9,757.99 in costs after it pleaded guilty to three breaches of the Provision and Use of Work Equipment Regulations 1998 and a breach of the Management of Health and Safety at Work Regulations 1999.

After the case, HSE Inspector Jonathan Wills, said:

"Alan Dixon suffered extremely painful and permanent leg injuries because Spartan UK Ltd failed to ensure dangerous parts of the mill could not be activated while workers were carrying out maintenance work in those areas.

"The rolls were removed almost every weekend, yet the company failed to assess the risks associated with the process, and failed to provide instructions on how it should be done safely.

"Spartan UK Ltd also failed to take adequate measures to ensure workers were protected from the intense heat radiating from the hot conveyor rollers on which the maintenance team had to stand.

"Simple and inexpensive measures would have prevented this incident from occurring. All workers involved in the process could have had individual keys to be inserted before the mill could be restarted."

£400,000 Fine for H&S Breaches

Two companies have been fined a total of £400,000 for breaches of health and safety legislation that resulted in the death of a stonemason's labourer at a Glasgow construction site.

James Kelly, a labourer employed by Stirling Stone Ltd, was working on the third level of a loading tower of scaffolding that had been erected as part of construction work taking place at Glasgow Academy, Colebrook Street, Glasgow. Stirling Stone had been contracted as stonemasons on the site by Robertson Construction Central Ltd.

On 26 April 2007, Mr Kelly fell to the ground from the scaffold loading tower platform. He died later from his injuries. A single guard rail was found on the ground close to where Mr Kelly was discovered.

Following the incident, inspectors from the Health and Safety Executive (HSE) discovered that there was no safe system of work in place for loading materials onto the loading tower, nor had a suitable assessment of the risks involved been made. The investigation also revealed that the loading tower did not have sufficient guard rails and toe boards and that neither company had ensured that the tower and access scaffolding was properly inspected on a regular basis.

Both companies were found guilty of health and safety breaches at an earlier trial. At Glasgow Sheriff Court, Robertson Construction Central Ltd of Perimeter Road, Elgin, Moray, was fined £200,000 for breaching Section 3(1) of the Health and Safety at Work etc. 1974 Act. Stirling Stone Ltd was fined £200,000 for breaching Section 2(1) of the Health and Safety at Work etc. Act 1974.

John Shelton, HSE Inspector for Construction, said:

"What happened to Mr Kelly was entirely preventable and would not have happened if the proper steps had been taken.

"Loading up operations at scaffold loading towers are repeated on construction sites across Scotland probably thousands of times a day.

"There is no excuse for the contractors not to have agreed procedures as to how this work was to be done and ensured that this routine work was carried out safely.

"Where vital edge protection is removed temporarily to allow loading up to take place steps must be taken to ensure persons cannot fall during that work."



Issue	1
Date:	18/04/11
Page:	3 of 8

Worker Broke Back in Fall

A worker from Halifax plunged from the roof of a two-storey house because the firm he worked for paid scant attention to safe systems of working at height, a court has heard.

The worker, who does not wish to be identified, broke his back in the seven-metre fall from the roof of a house in Cookridge, Leeds, on 19 February 2010. He was in hospital 15 days and suffered serious back injuries that will affect him for the rest of his working life.

His employers at the time, Fluotech Ltd, pleaded guilty last week at Leeds Magistrates' Court to three health and safety offences in a prosecution brought by the Health and Safety Executive (HSE). The company, of Drakes Industrial Estate, Shay Lane, Halifax, was fined a total of £13,500 and ordered to pay costs of £3,873.

The court heard that the worker was on the roof and just about to install a flue liner down the inside of the chimney. He had put up a roof ladder and stepped onto it when it gave way, sending him falling all the way to the ground below. He did not know there was a dormer extension on the other side of the roof so the roof ladder had failed to hook over the ridge properly.

The HSE investigation showed that the company failed to assess the risks properly before the work started, failed to find out there was a dormer window on the rear of the roof, failed to make sure workers were provided with the correct equipment for the job and to take suitable measures to ensure workers were not exposed to risks to their safety.

News

'Landmark' PPE Case

Employers should provide employees working in damp conditions for prolonged periods with protective clothing, the High Court has ruled.

Employers will now have to reconsider their policies and procedures relating to the use of personal protective equipment (PPE) and what level of risk of injury will necessitate its use, lawyers have warned.

In what has been called a 'landmark case', the High Court in London said that the Personal Protective Equipment at Work Regulations 1992 should cover employees who are required to work in damp conditions for long periods, even if there is no expert or other evidence to confirm a risk of injury.

The court upheld a decision by Norwich County Court to award compensation to John Spalding, a plumber employed by the University of East Anglia. He had been repairing a leaking radiator in the University's library and had to lie under a desk to get to it. He was not supplied with an anti-slip mat or waterproof protective clothing by his employer and so used a couple of plastic bin bags to lie on in order to avoid lying on the sodden area surrounding the radiator. After completing the repair, as he got to his feet, he slipped on the bin bags and fell, striking his face on the nearby desk. He suffered serious facial injuries and lost three teeth.

The County Court agreed with his union and lawyers that the PPE regulations required that Mr Spalding should have been provided with waterproof clothing and a mat in order to work in damp and wet conditions which could have exposed him to injury or illness. He was awarded damages but the University appealed on the grounds that there was no risk of injury without specific evidence and that the provision of waterproof clothing was just a question of comfort and convenience. The University maintained that they were, in effect, found liable for failing to prevent a plumber getting wet.

The appeal hearing focused on the interpretation of the PPE regulations and the nature of the risk of personal injury required to engage the Regulations. Mr Justice Spencer dismissed the University's appeal.

Sukhdev Gill, of Thompsons Solicitors in Derby and who represented Mr Spalding, said: "The High Court has provided important clarification in the application of the PPE regulations, bearing in mind that PPE should always be a last resort if the risk to health and safety cannot be removed."

The University of East Anglia told Workplace Law: "We have a very good record of safety for our employees and we have reviewed our training regime for maintenance staff. We believe that all necessary equipment is available for colleagues to do their jobs safely and efficiently."

Noise-Induced Deafness – Landmark Ruling

In a recent decision, the Supreme Court has allowed the appeals brought by employers and their insurers against a 2009 Court of Appeal decision on noise-induced deafness.

The 2009 ruling made employers liable from 1978 onwards for noise-induced deafness in employees caused by long-term exposure to regular workplace noise levels in excess of 85 decibels.

In *Baker v Quantum Clothing Group Limited and others*, the Supreme Court restored the original 2007 High Court judgment of His Honour Judge Inglis. In that decision, seven test case claimants from the East Midlands garment industry failed to establish employers' liability for their alleged noise-induced deafness at either common law or under Section 29 (1) of the Factories Act 1961.

The Supreme Court has held that the Court of Appeal was wrong to overturn the original decision that employers generally would not be liable for employees' deafness shown to be caused by regular workplace exposure below 90 decibels before The Noise at Work Regulations 1989 came into effect in 1990.

Darren Smith, partner at Hill Hofstetter LLP, who acted for a defendant and their insurers throughout the case, said: "The Supreme Court's decision establishes a clear framework for employers' liability for noise induced deafness claims involving relatively low levels of workplace noise, removing the uncertainty for employers caused by the Court of Appeal's decision in 2009". He said it established that:

- for most employers there will be no liability at common law or under the Factories Act for exposing employees to noise levels below 90 decibels prior to the introduction of the Noise at Work Regulations 1989 in January 1990
- for larger, more pro-active employers with "special knowledge" there may be earlier liability at common law and under the Factories Act, depending on the state of their knowledge. The Supreme Court restored the finding of HH Judge Inglis at first instance that two of the Defendants did have such special knowledge and were therefore fixed with liability from 1985 (although in the event, the claims failed against those Defendants for other reasons)
- since January 1990, employers have been required to make available hearing protection to all employees exposed to daily noise levels of 85 decibels and above and where the noise levels are 90 decibels or above, ensure that the protection is worn. Since 6 April 2006, those levels have been moved down to 80 decibels and 85 decibels respectively by the Control of Noise at Work Regulations 2005. Employers will be liable for noise induced deafness if it can be shown that they failed to comply with either set of regulations.



HEALTH & SAFETY NEWS

Issue	1
Date:	18/04/11
Page:	6 of 8

Impacts of Corporate Manslaughter

There has been much discussion in risk management circles about the potential impacts of recent UK Corporate Manslaughter legislation. However, now that the first successful corporate manslaughter conviction has been made, the potential business continuity impacts can be clearly seen, according to Continuity Central.

It reports on a recently published briefing, which covered the Cotswold Geotechnical Holdings story; the firm recently became the first convicted since the Corporate Manslaughter Act of 2007 was introduced. Cotswold was fined around 115% (£385,000) of the company's turnover figure.

Such a fine would present a very serious threat to the survival of any business, irrespective of size; and highlights the importance of ensuring that all health and safety risks are taken extremely seriously.

According to Marsh, manslaughter charges, under this statute or the common law offence, can also arise from fatalities caused by any of a company's activities, including from the use of vehicles and the supply of alleged defective products.

Guidance

Guide to Good Practice in the Understanding and Implementation of Directive 92/57/EEC on Construction Site Safety

The European Commission's Directorate-General for Employment, Social Affairs and Equal Opportunities has published a non-binding good practice guide designed to facilitate understanding and implementation of Directive 92/57/EEC ('the Construction Sites Directive'). This directive sets out the minimum safety and health requirements to be adopted at temporary or mobile construction sites in Europe. The guidance aims to inform those working in the construction sector about the key health and safety issues in an effort to reduce the high incidence of accidents and ill-health for which this industry is unfortunately renowned. It will be of relevance to clients, coordinators, designers, employers, project supervisors, suppliers, self-employed persons, workers and their representatives.

Background

The EC is concerned about occupational health and safety in the construction industry for the following reasons:

- construction is an extremely large industrial sector which, in 2007, employed 16.4 million people and provided 7.2% of Europe's employment
- the European Construction Industry Federation (FIEC) estimates that 95% of businesses in this sector are small to medium-sized enterprises (SMEs) with less than 20 employees and limited access to health and safety resources
- about 1,500 workers in the construction industry are killed at work each year - this is twice the average of other sectors
- construction workers are twice as likely to sustain a non-fatal injury than are workers in other sectors
- in excess of 70,000 over-3-day absences occur among the EU-15 in the construction industry each year
- the Dublin Foundation for the Improvement of Working and Living Conditions identified in 2005 that the construction sector suffers the highest level of exposure to ergonomic, biological and chemical and noise/temperature risk factors.

Document content

This guidance is designed for ease of use by all stakeholders working in the construction sector and covers the following issues:

- general principles of prevention (GPP) on safety and health at work
- the safety and health requirements at temporary or mobile construction sites, as specified by the Construction Sites Directive
- the typical hazards and risks associated with each stage of a construction project from project preparation, through the construction process and into the post-construction stage
- how to manage risks during construction projects – including the all important risk assessment process
- the general duties of each stakeholder involved in a construction project under health and safety law and good practice.

The guidance is supported by a number of examples that relate to small, medium and large projects. These examples cover the following construction-related activities:

- alteration - conversion
- construction
- dismantling - demolition
- excavations - earthworks
- renovation - repair
- upkeep - maintenance
- prefabricated components
- fitting-out
- refurbishment
- access
- collapse
- contaminated ground
- confined spaces
- dust
- electricity
- ergonomics
- explosion
- falls from height
- falling material
- fire
- gas
- manual handling
- noise
- public safety
- slips
- traffic
- toxic substances
- vibration
- weather conditions.

As part of the Better Regulation agenda and with the aim of reducing the administrative burden of compliance on businesses in this sector, this guidance is supported by a series of annexes which include sample health and safety pro-forma documentation. This material includes a sample risk assessment record sheet, a design record sheet, plus the suggested contents for both a safety and health plan and a safety and health file.

Conclusion

Effective implementation of the Construction Sites Directive 92/57/EEC will help improve occupational health and safety in the construction sector. This one-stop non-binding guidance will assist those in the construction sector comply with the provisions of the Directive. It outlines good practice for the industry and explains how pertinent health and safety risks can be managed throughout any construction project.