Legal Briefing

R (on the application of Health & Safety Executive) v Shah Nawaz Polz

[2009] EWCA Crim 655, Court of Appeal, Moses LJ, Hedley J, Judge Russell Recorder of Preston

The Facts

This was an appeal from a conviction of an offence under Section 33(1)(a) of the Health and Safety at Work Act 1974 (the "Act") in failing to discharge a duty pursuant to the Act and of contravention of the Work at Height Regulations. Shah Nawaz Polz ("Polz") took charge of the building of an extension to a detached house in Bradford. Polz employed a number of unqualified Slovakian nationals to work at the site for between £25 and £30 per day. One of these nationals fell from a raised platform where he was demolishing a wall. When he fell, the wall collapsed and fell on top of him. The worker suffered severe brain injuries and was left with permanent disabilities.

Section 53 of the Act defined an employee as 'an individual who works under a contract of employment .. and related expressions shall be construed accordingly'. Various criticisms of the Judge's directions to the jury were made. Polz stated that the Judge, in summing up, merely considered the issue of control and erroneously failed to consider whether there was any evidence that when the workers turned up for work there were under any obligation to remain for any period of time. Polz argued that the workers were not employees within the meaning of the Act. However, Polz did not dispute that he was in breach of the Act if the workers were employees.

The Issue

Were the Slovakian workers Polz's employees within the meaning of the Act?

The Decision

The appeal was dismissed. Polz was an employer within the meaning of the Act as there was evidence of a contract between Polz and the Solvakian workers i.e. they both considered that they owed each other obligations. Further, it was proven that in return for payment the worker placed himself under an obligation to work and the contract was one of employment and not of services. Although no specific question was asked of any Solvakian worker, the court thought it would be fanciful to suggest that once a worker had turned up for work or had been brought to work in transport provided by Polz that he would have regarded himself as free to quit the site during the day, leaving others to get on with the work.

Therefore the jury could reasonably conclude that once the worker had turned up at the beginning of the day he was under an obligation to remain at work until the end of that working day i.e. from the circumstance of turning up for work the worker expected to work during that day and to be paid for that work at the end of it.

Comment

The judges considered that as, at times, Polz picked up the foreign workers, provided transport and brought them their lunch, this supported the inference both parties considered that they owed each other an obligation to work and

remain at work. It would be considered odd if when Polz bothered to do that, the workers then felt free to work for half an hour and then leave.

This case serves as an example of the strict requirements of the health and safety legislation and that even, in certain circumstances, casual employees are covered by the legislation.

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