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WRULD

THE GOOD, THE BAD AND THE UGLY

Allison v London Underground Ltd [2008] EWCA Civ 71.

- underground train driver on Northern Line
- moved to Jubilee Line
- ergonomist consulted re design of seat and traction brake controller (TBC)
- two experienced drivers suggested chamfering
- Claimant given no advice as to positioning of thumb
- developed tenosynovitis as a result of holding her thumb on the chamfered end of the TBC
- advice subsequently given to drivers
- expert evidence at trial - an ergonomist would have noticed the potential problem created by the chamfered end of the handle and given advice about its use.

Regulation 9(1) of the Provision and Use of Work Equipment Regulations 1998:

"Every employer shall ensure that all persons who use work equipment have received adequate training for purposes of health and safety, including training in the methods which may be adopted when using the work equipment, any risks which such use may entail and precautions to be taken."

Trial judge held that training was adequate as it dealt with the risks which the employer had actually foreseen. Claim dismissed.

Court of Appeal rejected the argument that Regulation 9 imposed strict liability. However, it accepted that the Claimant's training had not been adequate and that a breach of Regulation 9 was proven. Smith LJ said:

"the test for the adequacy of training for the purposes of health and safety is what training was needed in the light of what the employer ought to have known about the risks arising from the activities of his business. To say that the training is adequate if it deals with the risks which the employer knows about is to impose no greater a duty than exists at common law. In my view the statutory duty is higher and imposes on the employer a duty to investigate the risks inherent in his operations, taking professional advice where necessary.

What the employer ought to have known will be what he would have known if he had carried out a suitable and sufficient risk assessment.

Risk assessments are meant to be an exercise by which the employer examines and evaluates all the risks entailed in his operations and takes steps to remove or minimise those risks. They should be a blueprint for action.

It seems to me that insufficient judicial attention has been given to risk assessments in the years since the duty to conduct them was first introduced."

- a suitable and sufficient risk assessment before the TBC was introduced would have revealed that advice from an ergonomist was required

- that advice would have identified a risk of injury from prolonged use of the TBC if held in a certain way
- training would then have been given about how to hold the TBC so as to minimise the risk of injury and to grasp it with the thumb tucked underneath
- Breach of Regulation 9 was established.

Lessons

What was the trigger for the Claimant's symptoms?

What was unusual about the work?

Was it risk assessed?

What should the employers have done to prevent the injury?

Goodwin v Bennetts UK Ltd [2008] EWCA Civ 1374

- In April 2000 the Claimant started work as an insurance adviser using a computer with keyboard and mouse but no intensive keyboard use
- bilateral tenosynovitis in summer 2002
- off work in October 2002 for 2 weeks
- return to the same work in November 2002
- return of symptoms in January 2003
- GP told Defendants in February 2003 to minimise the Claimant's repetitive tasks
- symptoms continued until employment terminated in June 2003

Claimant alleged breaches of The Health and Safety (Display Screen Equipment) Regulations 1992.

Regulation 2 requires an employer to perform a suitable and sufficient analysis of workstations for the purpose of assessing health and safety risks. The risks identified in consequence of such an assessment must be reduced to the lowest extent reasonably practicable.

Regulation 3 provides that workstations must meet the requirements laid down in the Schedule to the Regulations. Of particular relevance is the requirement for a keyboard to be tiltable and separate from the screen so as to allow the user to find a comfortable working position.

Regulation 4 provides that:

"Every employer shall so plan the activities of users at work in his undertaking that their daily work on display screen equipment is periodically interrupted by such breaks or changes of activity as reduce their workload at that equipment."

Regulation 6 requires an employer to provide adequate health and safety training to users of display screen equipment before the employee becomes a user.

Regulation 7 requires an employer to provide adequate information about all aspects of health and safety relating to workstations and about the measures being taken by the employer to comply with his duty under Regulation 4.

- Judge rejected diagnosis of tenosynovitis and held that no breach of the Regulations was causative of the Claimant's symptoms
- Court of Appeal considered the correct approach to the Regulations
- the fact that the Claimant's daily routine was in fact interrupted by breaks and changes in activity did not excuse the Defendants' failure to devise a plan under Regulation 4 but the breach was not causative as no change in routine would have been required
- the period off work in October 2002 should have alerted the Defendants to the fact that the Claimant was particularly vulnerable to WRULD from moderate use of the keyboard

- it was foreseeable that a return to the same work would lead to personal injury
- Defendants were liable in negligence for recurrence of symptoms in January 2003 and for failing to act on GP's advice in February 2003
- breach of Regulation 2 was not causative of injury
- breaches of Regulations 6 & 7 were of no causative effect prior to November 2002
- breaches of Regulations 6 & 7 were causative of the recurrence of symptoms in January 2003 as the Claimant's keyboard use needed to be reduced

Lessons

What was the trigger for the Claimant's symptoms?

What was unusual about the work?

Was it risk assessed?

What should the employers have done to prevent the injury?

What was the employers' response to symptoms?

What should the employers have done to prevent further injury after symptoms developed?

Did a failure on the part of the employers cause injury to the Claimant?

Hadoulis v Trinatours Ltd [1st October 2002] Recorder Warren QC

- Claimant worked as a booking clerk in a travel agents
- used computers to make bookings
- Claimant developed upper and lower back pain having worked for 3 years without any problem
- then developed stiffness in her hands
- 1 year later she developed pain and uncontrollable shaking in her arms and hands
- 5 months later her arms began to swell
- then provided with an ergonomic chair and moved to a perfectly safe workstation
- symptoms substantially deteriorated with pains in her chest and further back pain
- gave up all keyboard work but 1 year later she complained that she was worse than ever

The judge held that the Claimant's workload was varied and not excessive. There was nothing remotely unusual or exceptional about her workload and working practices. Although her symptoms were real and not fabricated, they could not be ascribed to any breach of duty on the part of her employers.

Lessons

What was the trigger for the Claimant's symptoms?

What was unusual about the work?

Was it risk assessed?

What should the employers have done to prevent the injury?

What was the employers' response to symptoms?

What should the employers have done to prevent further injury after symptoms developed?

Did a failure on the part of the employers cause injury to the Claimant?


After passing a signal at Danger expect to find a train ahead
Do not pass semi-automatic signals at Danger without authority
Unauthorised persons are not allowed in this driving cab
1996 Tube stock - Cab A

Photograph 1

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