CERTAIN INFORMATION REDACTED FOR COMMERCIAL SENSITIVITY

IN THE DISTRICT COURT
AT PUKEKOHE

I TE KŌTI-Ā-ROHE
KI PUKEKOHE

CRI-2018-057-001637
[2020] NZDC 3629

WORKSAFE NEW ZEALAND
Prosecutor

v

FALL STOP SCAFFOLD LIMITED
and
QJB ROOFING LIMITED
Defendants

Hearing:	25 February 2020
Appearances:	J Blythe and E Smith for the Prosecutor R Monigatti and S Stead for the Defendant Fall Stop Scaffold Ltd B Harris for QJB Roofing Ltd
Judgment:	5 March 2020

RESERVED DECISION OF JUDGE R J McILRAITH
[On Sentence]

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[1] Both defendants have plead guilty to two charges under the Health and Safety at Work Act 2015. First, failing to comply with a duty to ensure the health and safety of workers, so far as reasonably practicable. Second, failing to comply with a duty to ensure the health and safety of other persons, so far as reasonably practicable. Charges are pursuant to ss 36(1)(a), 48(1), and 48(2)(c) and 36(2), 48(1) and 48(2)(c) of the Act respectively.

Background facts

[2] Mr and Mrs Smith own a home at 397 Hillview Road, Pukekohe. There are two sets of power lines connecting to, or in the vicinity of, that home. First, a set leading directly into the house from the road and second, a set of overhead power lines (33kv) owned by Counties Power.

[3] Mr and Mrs Smith sought quotes from providers in 2016 and 2017 to replace the ColourSteel roof at their home. QJB Roofing Limited (QJB) provided a quote. It recommended Fall Stop Scaffold Limited (FSSL) to provide both scaffolding and roof edge protection for workers on the roof, so that they could safely undertake the roofing work.

[4] When quoting for the work, FSSL included a cost to sleeve the local power lines leading into the house. This was done before FSSL commenced work. There were no discussions between FSSL and QJB about the overhead power lines.

[5] The scaffolding was erected by FSSL workers on or about 25 October 2017. The scaffolding ran around the home including areas away from the power lines, and provided a platform for QJB's workers to replace the roofing and also for other workers engaged by Mr and Mrs Smith to undertake painting work and replace windows. The top platform on the scaffolding was more than four metres high with the overhead power lines approximately four to five metres above that. The scaffolding itself had a gap of approximately one metre to the walls of the house.

[6] The roofing work undertaken by QJB's workers appears to have proceeded without incident and was completed on 3 November 2017.

[7] On 10 November 2017, three of FSSL's workers returned to the home to dismantle and remove the scaffolding. While dismantling the scaffolding, Mr Hozea Pokai was standing on the top platform. When Mr Pokai was passing down a six metre length of scaffolding pipe to another worker below, the scaffolding pipe inadvertently made contact with the 33kv overhead power lines and the scaffolding still surrounding the property. He suffered a significant electric shock and fell from

the platform but was caught by his brother, who was the site foreman at the time, before he hit the ground.

[8] Mr Pokai temporarily lost consciousness. He was hospitalised for two months, requiring surgery for his electrical burns (including skin grafts). He is still employed by FSSL and was able to resume his normal work hours in September 2018, but undertaking light duties. He has not been able to return to his previous role.

[9] The electric shock also caused extensive damage to the interior of Mr and Mrs Smith's home and started a fire underneath the house. This was able to be extinguished. Mr and Mrs Smith were both at home at the time of the incident. Mr Smith was thrown out of his chair by the force of the electric shock.

[10] With respect to FSSL, it accepts that it failed to comply with its duties to its workers. It exposed its workers to a risk of death or serious injury from the hazard of electricity. It failed to comply with its duties by failing to take the following reasonably practicable steps:

(a) Adequately identifying the risks associated with the overhead power lines, including the risks of electric shock and electrocution;

(b) Consulting with Counties Power about the risks associated with the overhead power lines and the steps required to eliminate, isolate or minimise those risks;

(c) Taking any steps recommended by Counties Power to eliminate, isolate or minimise those risks;

(d) Ensuring workers were trained and competent for the relevant work;

(e) Ensuring there was a competent supervisor on site; and

(f) Ensuring all work was carried out in compliance with industry standards.

[11] With respect to its duties to other persons, FSSL failed to comply with its duty, exposing the homeowners, Mr and Mrs Smith, to a risk of death or serious injury. FSSL's failure also exposed QJB's workers who were intended to work on the scaffolding, to a risk of death or serious injury.

[12] With respect to QJB, it accepts that it failed to comply with its duty to workers by failing to take the following reasonably practicable steps:

(a) Adequately identifying the risks associated with the overhead power lines, including the risks of electric shock and electrocution;

(b) Contacting and consulting with Counties Power about the risks associated with the overhead power lines and the steps required to eliminate, isolate or minimise these risks and to have taken any steps or requirements expected by Counties Power (such as obtaining a close approach permit); and

(c) Ensuring all work was carried out in compliance with industry guidelines.

[13] With respect to its duties to other persons, QJB was also required to ensure that the health and safety of other persons was not put at risk from work it carried out. It failed to comply with that duty, exposing Mr and Mrs Smith to a risk of death or serious injury.

Sentencing approach

[14] The approach to sentencing in health and safety prosecutions is now well settled. In *Stumpmaster v Worksafe New Zealand* the High Court confirmed a four step process:[1]

(a) Assessing the amount of reparation;

[1] *Stumpmaster v WorkSafe New Zealand* [2018] NZHC 2020.

(b) Fixing the amount of the fine by reference first to guideline bands and then having regard to aggravating and mitigating factors;

(c) Determining whether further orders under ss 152-158 of the Act are required; and

(d) Making an overall assessment of the proportionality and appropriateness of the total imposition of sanctions under the first three steps.

Assessing reparation

[15] Reparation may be imposed in relation to loss or damage to property, emotional harm and relevant consequential loss or damage.[2]

[16] There were three victims involved in this case. Mr Pokai and the homeowners, Mr and Mrs Smith. Reparation was sought by WorkSafe in relation to all.

[17] A victim impact statement was provided by Mr Pokai. He suffered serious electrical burns after coming into contact with the 33kv power line. His statement records that he suffered burns to both right and left forearms and both left and right feet. He also had burns to his right calf muscle. He spent two months in hospital undergoing a number of surgeries including skin grafts. He still experiences limited feeling in both his feet on a daily basis, a sensation in his feet requiring him to sit down until his feet feel normal, difficulties in walking and blurred vision at times. There has been an understandable effect on Mr Pokai's daily activities. He no longer attends the gym but has been able to continue with kickboxing as it assists his rehabilitation. He has also suffered emotionally. He notes that the incident has impacted upon his personal relationships.

[18] Mr and Mrs Smith both suffered physical damage to their property, however, this was covered by insurance. Mr Smith records that he suffered a burn to his hand as a result of the fire. In respect of emotional harm, both Mr and Mrs Smith noted that

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[2] Section 32 Sentencing Act 2002.

they had to reside in a self-contained cabin for three months due to the damage to their property.

[19] No reparation was sought from QJB with respect to Mr Pokai. That was appropriate. It was, however, sought from FSSL.

[20] FSSL acknowledged that Mr Pokai had suffered harm and that an order of reparation was appropriate. Its apology, which had been set out by Mr Mildwaters in an affidavit, was formally confirmed in Court. This apology was tendered not only to Mr Pokai but also to Mr and Mrs Smith.

[21] $10,000 has already been paid by FSSL's insurer as an emotional harm payment to Mr Pokai. WorkSafe sought an additional emotional harm payment of $40,000. For its part, FSSL submitted that an additional $30,000 ought to be imposed.

[22] I was provided with submissions by both WorkSafe and FFSL regarding the applicability of a number of recent cases. These included *Broad Spectrum (New Zealand)* and *Electrix*.[3] After a review of those decisions my view is that an additional order of emotional harm reparation of $30,000, bringing the total payment to Mr Pokai to $40,000, is appropriate. I agree with FSSL's submissions that the injuries suffered by the victim in *North Power* were similar to those suffered by Mr Pokai, but that Mr Pokai's time spent in hospital such that his recovery was more severe than the victim in *North Power* ought to be reflected. I am satisfied that this amount fairly recognises the emotional harm suffered by Mr Pokai and provides consistency with other cases.

[23] With respect to Mr and Mrs Smith, an emotional harm reparation payment has already been offered by FSSL in the amount of $5000. I formally order that this is to be paid by FSSL. It is an appropriate amount.

[24] While addressing an emotional harm payment for Mr and Mrs Smith, I note that while no reparation was sought from QJB with respect to Mr Pokai, WorkSafe did seek a modest emotional harm payment for Mr and Mrs Smith from QJB. While it was accepted before me that the causal link between QJB's actions and the harm to

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[3] *WorkSafe New Zealand v Broad Spectrum (New Zealand) Limited* [2017] NZDC 25499; *WorkSafe New Zealand v Electrix* [2015] NZDC 20545.

Mr and Mrs Smith was somewhat tenuous, it was accepted that this payment is an appropriate payment to be ordered. I do, accordingly, order that $500 be paid by QJB to Mr and Mrs Smith as an emotional harm payment.

[25] Turning to reparation for consequential loss, FSSL accepted that it was appropriate for it to "top up" Mr Pokai's ACC entitlements. Mr Pokai had received an entitlement of 80 percent of his weekly wages from 10 November 2017. The shortfall had been calculated to the date of hearing. The amount of $9793.14 has been agreed to be the top up required. I was advised that FSSL's insurer has already paid half this amount. Accordingly, FSSL is ordered to pay the remainder, being $4896.57, as a consequential loss reparation payment to Mr Pokai.

Assessing fine

[26] The second step is to fix the amount of the fine to be paid by FSSL and QJB. While there is an issue in this case as to the financial capacity of each of the defendants and their ability to pay any fine that may normally be imposed, there was agreement that it is appropriate for me to nevertheless work through the usual process with respect to the setting of a fine.

[27] In *Stumpmaster* the High Court confirmed that the assessment of a starting point for the fine involves an assessment of a defendant's culpability. The High Court set out four guideline bands for culpability:

(a) Low culpability – a fine up to $250,000;

(b) Medium culpability – a fine between $250,000-$600,000;

(c) High culpability – a fine between $600,000-$1 million; and

(d) Very high culpability – a fine over $1 million.

[28] In terms of relevant considerations for assessing culpability, the High Court referred to the well known list of relevant factors from the guideline judgment under earlier legislation, *Hanham and Philp*.[4]

FSSL – fine

[29] WorkSafe submitted that FSSL's culpability was in the high culpability band. It sought a starting point for a fine in the vicinity of $650,000, being a fine at the lower end of the high culpability band. For its part, FSSL submitted that its culpability sat in the medium culpability band and submitted that an appropriate start point for a fine was $500,000.

[30] In terms of identification of the operative acts or omissions overlooked, WorkSafe noted that it was reasonably practicable for FSSL to have ensured the health and safety of both its workers and people in the immediate vicinity of the scaffolding by taking the following steps:

(a) Adequately identifying the risks associated with the overhead power lines, including the risks of electric shock and electrocution;

(b) Consulting with Counties Power about the risks associated with the overhead power lines;

(c) Taking any steps recommended by Counties Power (this would likely have required the lines to be de-energised and earthed prior to the commencement of work);

(d) Ensuring workers were trained and competent for the relevant work;

(e) Ensuring there was a competent supervisor on site; and

(f) Ensuring all work was carried out in compliance with codes of practice.

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[4] *Department of Labour v Hanham and Philp Contractors Ltd* (2008) 6 NZELR 79.

[31] FSSL accepted that these steps had been reasonably practicable, however, emphasised the steps that had been taken with respect to health and safety in this job. I was referred to detail in Mr Mildwater's affidavit.

[32] With respect to the nature and seriousness of the risk of harm, there was agreement that there was potential for harm that could have resulted in electrocution of workers or persons in the vicinity. The realised risk caused to Mr Pokai was of course serious, and Mr and Mrs Smith were put at risk. FSSL took no issue with that point. It did however note that it had practices and policies in place to understand and address the risks posed by overhead power lines which reduced the likelihood of harm. It submitted that it had taken steps to mitigate and isolate hazards when they were recognised, including sleeving the power lines at the front of the property.

[33] With respect to departure from industry standards, FSSL accepted that it had not complied with best practice guidance provided by the Department of Labour.[5] It accepted that there had been practical guidance provided for working in the vicinity of live power lines and provided for distance to be maintained from overhead power lines.

[34] With respect to the obviousness of the hazard, WorkSafe submitted that the hazard was obvious. Mr Mildwater had confirmed at interview with WorkSafe that FSSL had experience with power lines connecting to properties being worked upon, but little experience with power lines running in close proximity but not connected to a property. WorkSafe submitted that as a specialised scaffolding company, FSSL should have been well aware of the risks associated with the construction of scaffold near power lines and the methods to eliminate or minimise that risk. FSSL for its part accepted that the overhead power lines were an obvious hazard but submitted that it had appropriate systems to control the hazard as evidenced by its approach to the power lines present at the front of the site. I do not accept that this step identified by FSSL was adequate and this failure was at the heart of the issue.

[35] With respect to the means necessary to avoid the hazard that were available and effective, there was no dispute that the steps which could have been taken were

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[5] "Best Practice Guidelines for Working on Roofs", pub. June 2012; "Best Practice Guidelines for Working at Height in New Zealand" pub. April 2012.

readily available. The most obvious point is that FSSL did not consult with Counties Power and accordingly the power line was not de-energised prior to work commencing.

[36] I was referred to a number of recent authorities. Particular focus was placed on the decision in *Dibble*.[6]

[37] In that case the defendant was a trustee of a trust which undertook the management and maintenance of work in respect of a property. This included tree trimming work. That work was undertaken by a worker of the defendant. Trees were located near multiple power lines which ran at multiple heights along the front of the property. As a result of trying to clear a branch which had fallen on a power line, the victim received an electric shock, falling to the ground and sustaining further injuries. FSSL submitted that the failures in *Dibble* were quite distinct from those of FSSL. It submitted that its culpability could not be seen to be any higher than that of *Dibble*, if in fact it was higher.

[38] Another decision to which I was referred was *Dong Xing*.[7] In that case culpability was found to be at the upper end of medium and the Court set a starting point of $580,000. FSSL submitted that its failings were generally similar to that in *Dong Xing*. Both cases involved scaffolding that was too close to power lines. FSSL submitted that its culpability should not be assessed as being any higher than that of *Dong Xing*.

[39] In my view, after considering the failures of FSSL and taking into account other authorities, the appropriate start point for a fine for FSSL is at the upper end of the medium culpability band and should be $550,000.

QJB – fine

[40] WorkSafe accepted that QJB's culpability is less than that of FSSL. It accepted that QJB did identify the overhead power lines as a hazard and, of course, that none

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[6] *WorkSafe New Zealand v Dibble* [2019] NZDC 9728.
[7] *WorkSafe New Zealand v Dong Xing Group Limited*, North Shore District Court, 26 October 2018.

of QJB's workers were harmed. It submitted that QJB's culpability was in the upper middle of the medium culpability band.

[41] QJB submitted that in the absence of any actual harm it would be wrong to place QJB's culpability anywhere near the cusp of medium/high culpability as WorkSafe submitted.

[42] QJB noted that only a small part of the entire roofing area encroached within the four metre minimum approach distance to the overhead power lines. It submitted that a starting point for a fine ought to be in a much lower part of the medium culpability band and be in the vicinity of $275,000-$300,000.

[43] QJB's strongest submission was that steps had been taken by QJB to ensure that work could be undertaken safely. This it was submitted, was contrasted starkly with the failures in cases referred to by WorkSafe, such as *Dong Xing*. QJB had requested and required edge protection to prevent roofers from falling from the roof at the same time as the scaffold was requested via FSSL. It had identified the risk of power lines at both the front and rear of the dwelling. In terms of the overhead power lines, there was an identification of the potential risk of these power lines and as Mr Harris submitted, unlike many cases the before the courts, there was not a complete failure to identify any risk at all. Accordingly, while QJB accepted that a further additional step could have been taken to approach Counties Power, it had undertaken a site specific and written safety methodology which dealt with the identification of power lines, appropriate safety controls and steps to minimise risk.

[44] I accept that these submissions were well founded. In my view, an appropriate start point for a fine for QJB is, as submitted, at the lower end of the medium culpability band and should be $300,000.

Should there be an uplift?

[45] WorkSafe submitted that with respect to both defendants, given that each defendant had pled guilty to two charges, the first with respect to its workers and the second with respect to people in the vicinity, a start point should be set for the lead

offence, protection of workers, with an uplift for the second offence. Both defendants took exception to this approach.

[46] In my view, it is not appropriate for there to be an uplift to the fine level in this case. The charges arise from the same set of facts. It is appropriate to set a start point taking into account the totality of the offending and that is the approach that I have taken in setting the start points above.

Mitigating factors

[47] With respect to FSSL, it submitted that it was entitled to discounts with respect to its co-operation with WorkSafe, its remorse, the remedial action taken after the incident, its offer to make amends/reparation and its good safety record. It submitted that a total discount of 35 percent should be available for these factors in addition to discount for a guilty plea. WorkSafe did, of course, draw my attention to the comments in *Stumpmaster* with respect to mitigating factors.

[48] A particularly noteworthy aspect of this case was the steps taken by FSSL to assist Mr Pokai since his accident. This has included showing support during his recovery, ensuring that voluntary payments have been made to him and perhaps most importantly, continuing to employ Mr Pokai.

[49] In my view, taking into account all the mitigating factors, a discount of 25 percent is available to FSSL.

[50] With respect to QJB, it also submitted that it should be entitled to discounts for willingness to pay reparation, its good safety record, its co-operation with WorkSafe and steps taken since the incident. In that regard, it particularly pointed to its review of its procedures, implementation of further staff training, consultation undertaken with Counties Power and its work with the Roofing Association of New Zealand.

[51] Consistent with my approach in respect to FSSL, I consider that a discount of 25 percent is appropriate for these factors for QJB.

Guilty plea discount

[52] WorkSafe accepted that FSSL was entitled to a discount of 25 percent for its early guilty plea. With respect to QJB, however, WorkSafe took a different view and considered that a significantly lesser discount was appropriate given the time involved in QJB's decision to plead guilty. For its part, QJB explained that it had appropriately sought particular disclosure of further documentation and investigated the background thoroughly prior to entering its guilty pleas. This had involved the obtaining of expert evidence from a 3D surveyor so as to assist QJB to understand the power line distances. Once it had undertaken that work, it accepted that it ought to plead guilty to the first charge it faced on 30 July 2019. There was then discussion regarding the other charge relating to a breach of the duty to ensure the safety of Mr and Mrs Smith. There was an understandable concern here given the issue of causation. Once causation allegations were removed from the summary of facts, a guilty plea to that charge was entered in September 2019. On that basis, Mr Harris submitted that any delay in entering a guilty plea was reasonable and a discount in the order of 15 to 20 percent ought to be provided for guilty plea.

[53] I accept Mr Harris' submission. An appropriate guilty plea discount for QJB is, accordingly, 20 percent.

Final fine level before final adjustments

[54] With respect to FSSL, the starting point of $550,000 is reduced by 25 percent for discount factors ($137,500), reducing the fine to a level of $412,500. From that is then deducted the guilty plea discount of 25 percent ($103,125), giving a final level of fine of $309,375.

[55] With respect to QJB, from a starting point of $300,000, a 25 percent discount for mitigating factors is $75,000. That reduces the fine to a level of $225,000 from which the guilty plea discount of 20 percent ($45,000) is deducted to give a final level of fine of $180,000.

Other orders

[56] The third step in the sentencing process requires consideration of whether any further orders are appropriate. In this context, WorkSafe sought an order for costs of $5803.21 from FSSL as an agreed contribution. FSSL took no issue with that figure and it is, accordingly, ordered.

[57] With respect to QJB, WorkSafe sought a contribution to its costs of $10,000. QJB proposed that this should be an amount of $3000.

[58] I accept QJB's submission that it has not delayed matters unreasonably or required WorkSafe to take unreasonable steps. Its assessment of its liability has been carefully undertaken and that cannot be criticised. I agree with its submission that a contribution of a figure less than that sought by WorkSafe is appropriate. However, in my view the amount ought to be $6000. WorkSafe has provided invoices setting out the costs it has incurred, which I accept are reasonable.

Proportionality assessment

[59] The last step involves making an overall assessment of the proportionality and appropriateness of the combined sanctions imposed by the previous steps. This step includes an assessment of a defendant's ability to pay. That is an issue in respect of both defendants in this case.

[60] With respect to FSSL, it has submitted that it is not able to pay a fine at all. Its business has been sold and its liabilities exceed its assets. I was advised that the company is likely to be placed into liquidation once sentencing has been completed.

[61] I have been provided with a great deal of financial and general information from FSSL in a number of affidavits. In particular, there have been a number of affidavits from Mr Mildwaters, including his third affidavit with respect to the financial position of FSSL and affidavits from [redacted] an accountant engaged by FSSL. During the sentencing hearing I was also provided with additional information from the company's accountant. Following the hearing, I have received further submissions from FSSL dated 28 February. Those submissions have attached updated financial information prepared by FSSL's accountants.

[62] I consider that these supplementary submissions helpfully summarise the financial position. That financial position has an important aspect for this process. FSSL's January 2020 draft balance sheet discloses a financial position whereby it has [redacted]

[63] The liabilities owed to FSSL trade and other creditors are [redacted]. That includes a debt owed by FSSL to Fall Stop Limited, a company with common shareholding and which hired scaffolding equipment to FSSL.

[64] Given the net asset position of FSSL, its creditors will not receive full payment in liquidation. However, one of those creditors is Fall Stop Limited. Indeed, it is the major creditor. The effect of a fine being imposed on FSSL, would be to reduce the amount that would otherwise be payable to trade and other creditors by FSSL on liquidation.

[65] An affidavit was filed by WorkSafe from Jay Shaw, a chartered accountant at Grant Thornton New Zealand Limited. Mr Shaw's affidavit concluded that FSSL had the funds available to pay a fine. That conclusion was based upon earlier financial information than has now been provided to me and referred to above. However, I do not consider that the new information detracts from Mr Shaw's basic conclusion.

[66] With respect to QJB, QJB has provided financial information to WorkSafe. WorkSafe has accepted that QJB has limited funds and will not be in a position to pay a significant fine. WorkSafe has filed an affidavit from Sandra Lee stating that QJB is able in her assessment, to pay a fine of up to $50,000. QJB accepts that it is in a position to pay a fine however emphasises that the fine should be at the level of between $30,000-$50,000. Any greater level of fine would, in its submission, severely endanger its business.

[67] The circumstances of QJB are, in my view, relevant to observe at this point. QJB initially understood that it held insurance cover for defence costs and any reparation orders made by the Court. It has, however, discovered that its insurance broker failed to place that cover. As a result it has had no assistance with investigation

and defence costs, including obtaining expert evidence. QJB is a small company. Its shareholders are understandably fearful of the loss of their business.

[68] WorkSafe has referred me to two relevant authorities. First, *YSB Group* and second, *Mobile Refrigeration Specialists*.[8] In *YSB*, the High Court noted that important principles in assessing the effect of financial capacity upon the level of fine that should ultimately be imposed are:

(a) It is important to determine a provisional fine or starting point before adjustment to reflect a defendant's financial capacity;

(b) Fines may be paid in instalments but should not be ordered for any undue length of time and that 12 months is normally an appropriate lengthy maximum period;

(c) A fine ought not to place a company at risk;

(d) A fine should be large enough to bring home the message do directors and shareholders of corporates; and

(e) One must avoid a risk of overlap that in a small company the directors are likely to be the shareholders and therefore the main losers if a severe sanction is imposed on a company. The Court must be alert to make sure it is not in effect imposing a double punishment.

[69] In this case, after consideration of the financial material provided to me, I am of the view that it is appropriate that the fines I have set earlier be significantly reduced in respect of both defendants.

[70] With respect to FSSL, it has already left this industry and is shortly to be liquidated. Its financial circumstances have been set out above. I do not accept its submission that no fine should be imposed. I do, however, accept that any fine must be dramatically lower than the fine level previously identified. I accept that FSSL is

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[8] *YSB Group Limited v WorkSafe New Zealand* [2019] NZHC 2570; *Mobile Refrigeration Specialists Limited v Department of Labour* (2010) 7 NZELR 423.

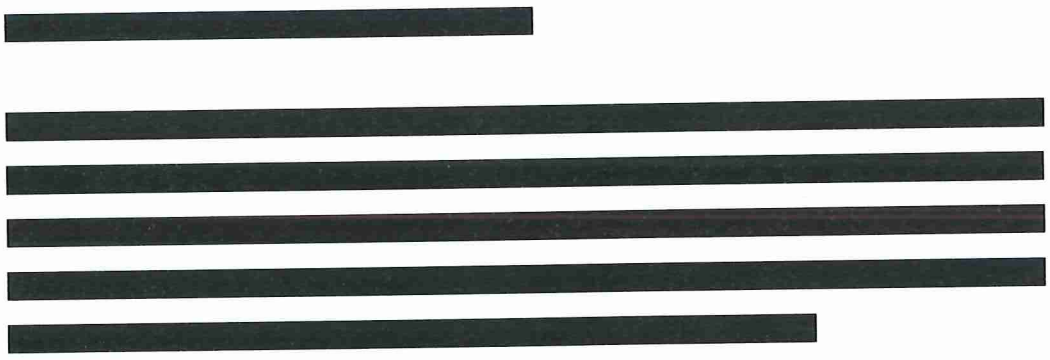
not in any financial position to pay the fine of $309,375. That fine will be reduced to a fine of $30,000 to reflect its financial position. I consider that is an appropriate level of fine reflecting its financial position but also taking into account the principle of sentencing in s 8(e) Sentencing Act 2002, that in sentencing an offender the Court must take into account the general desirability of consistency with appropriate sentencing levels and other means of dealing with offenders in respect of similar offenders committing similar offences in similar circumstances. It is not appropriate, in my view, for FSSL to be ordered to pay a lesser fine than that to be imposed on QJB.

[71] With respect to QJB, I accept that its financial position is such that it is unable to pay the fine of $180,000. The appropriate fine is $30,000 given its financial capacity.

[72] Accordingly, the final outcome is that FSSL is ordered to pay a fine of $30,000, an additional payment of emotional harm reparation of $30,000 to Mr Pokai, an amount of $4896.57 consequential loss reparation to Mr Pokai, and $5803.21 to WorkSafe as a contribution to its costs.

[73] With respect to QJB, it is ordered to pay a fine of $30,000, an emotional harm payment of $500 to Mr and Mrs Smith and $6000 to WorkSafe as a contribution to its costs.

[74] I am satisfied that these sanctions are proportionate and appropriate.



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Judge McIlraith
District Court Judge

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