

JERSEY / JUDGMENT

AG -v- Nixon and McKenna Building Contractors Ltd [2012] JRC 046 (02 March 2012) [2012] JRC 046

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JUDGMENT

THE BAILIFF: 1. Mr Makin suffered an injury to his right leg because he had not been given any proper training by his employer in the use of an angle grinder. In particular he had not been told that positioning the auxiliary handle horizontally rather than vertically could lead to something known as "kickback". That is what happened on this occasion resulting in the angle grinder becoming embedded in his leg. Mr McKenna, one of the two directors and shareholders in the company, had shown Mr Makin, who had used such a machine before although he had only been with the firm for about one month, how to use it but Mr McKenna himself did not know of this point concerning the positioning of the auxiliary handle and certain other safety measures designed to reduce the risk of kickback. Over his many years of experience in the building trade he had just accepted occasional kickback as an occupational hazard when using an angle grinder. 2. The accident caused a serious injury to Mr Makin but the medical evidence before us suggests that he should by now be fit for work in the building trade or other work and, in the absence of any evidence to the contrary, we assume this to be the case. The company has accepted however that it failed in its duty as an employer to provide adequate training for Mr Makin in respect of the use of the angle grinder. 3. None of the aggravating features present in some cases and as listed in the leading case of *R-v-Howe & Sons (Engineers)* [1999] 2 Cr. App. R. (S) 32 are present in this particular case. Conversely there is considerable mitigation; there was an early guilty plea on the part of the company; it cooperated fully during the investigation; it has no previous convictions of any nature, and in particular, none under this Law; nor, we were told, has it in fact had any accidents causing injury. It is a very highly regarded, small, local firm and we have seen the reference from Cameron's which speak highly of it. Furthermore it has taken steps now to rectify the position; one of the directors and two of the employees have taken courses on the use of the angle grinder since then and we have seen the relevant certificates. 4. Most significant for today's purposes is the company's financial position. As was said in the case of *Howe*, the means of the company are relevant when assessing the level of fine. The fine should not normally be such as to imperil the earnings of employees or create a risk of bankruptcy. Now in this case the Court has received an affidavit from Mr McKenna, one of the directors and shareholders. That has exhibited the financial accounts to 30 th January, 2011, though it is unfortunate that there are

not more up to date accounts but we understand why this is so. According to Mr McKenna the position has deteriorated since then. These are hard times for the construction industry and we are certainly willing to accept from our own knowledge that this is so. He says on oath that the company only has one contract at the moment; this provides intermittent work until June of this year. He says that the company was forced to take on this contract at a rate which is producing little or no profit; it would not normally have taken on the contract at this rate in better times but it wanted to preserve jobs for its employees. He has further pointed out that the company lost money at the time of the bankruptcy of Charles Le Quesne and we can well understand that small sub-contractors very often suffer in the event of the bankruptcy of a main contractor. He has also produced evidence of outstanding liabilities for GST, for arrears of ITIS, and for not insubstantial accountancy fees, all of which go to substantiate his assertion that the company is facing difficult times. 5. In all the circumstances, but mostly because of the financial position, we are willing to reduce the fine. The company will pay a fine of £6,000 and £2,500 in costs and we give the company 6 months in which to pay. We would urge the company to pay by instalments, not to leave this until the end of the period when it will have to pay a large sum. We do not make an order for specific monthly instalments but the advice we give is that this should be paid by instalments as promptly as the company is able. Authorities Health and Safety at Work (Jersey) Law 1989, as amended. R-v-Howe & Sons (Engineers)

[1999] 2 Cr. App. R. (S) 32. AG-v-Hamel Bros Ltd and Another

[2010] JRC 080 . AG-v-Flying Flowers Ltd

[2009] JRC 210 . AG-v-Amplus Ltd

[2010] JRC 132 . Page Last Updated: 13 Sep 2016 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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