

IN THE BRADFORD COUNTY COURT

BETWEEN

PETER SCOTT

Claimant

AND

PROCESS MECHANICAL LIMITED

Defendant

JUDGMENT

1. In this action the Claimant, Peter Scott, claims damages against his employer, the Defendant Process Mechanical Limited as a result of an accident at work on 21st April 2004. The claimant's case is that the accident was caused by the negligence and/or breach of statutory duty of Process Mechanical Limited and the Claimant claims damages for personal injury and other consequential losses. There is no dispute that as a result of the accident Mr Scott sustained a ruptured Achilles tendon to the right ankle. Damages have been agreed between the parties subject to the issue of liability.

2. Mr. Scott has been employed by Process Mechanical since about June 2000 as a mechanical engineer. His duties involved pipe fitting, plumbing and associated installation work. When Process Mechanical was first set up in 2000 it traded from premises at Crosslea Hall Works in Bradford but it moved from that site to an office and workshop at Bolling Road, Bradford in January 2004.

3. When the company moved sites, some of the equipment from the previous site was moved into container storage at the new site. In particular 2 large and very heavy steel work benches and a large steel framework or metal racking were stored in the containers in the yard at Bolling Road.

4. Following the completion of certain works at Bolling Road and in particular the installation on 19th April 2004 of a roller shutter door to the workshop, the company wanted to move the 2 large steel benches and the metal racking from the containers in the yard into the workshop. Mr Alan Haworth, the Managing Director of Process Mechanical, made arrangements to borrow a forklift truck to move the benches and the racking from the containers into the workshop and once in the workshop the benches and racking were to be moved manually by a number of employees, including Peter Scott. The accident occurred in the course of the movement of the

benches within the workshop. The details of exactly what happened are in dispute between the parties.

5. Mr Scott's case as set out in the pleadings and in his witness statement is as follows. The forklift truck placed the first bench in the workshop and Mr Haworth and Peter Scott pushed that workbench across the floor away from the roller shutter door while the forklift truck collected the second workbench. The second workbench was placed in the workshop and then the forklift truck collected the steel framework and placed that also inside the workshop.

6. In the Particulars of Claim at paragraph 3 it is pleaded that "Due to the restricted space within the workshop, the Claimant had to push the first workbench away from the door to create more space. As the Claimant did so he ruptured his Achilles tendon." He expands on this in his witness statement, stating in paragraphs 8 and 9, as follows "In order to accommodate the framework we had to move the first bench further along the floor so that the second bench could be moved out of the way. As I was now stuck in a gap between the two benches I therefore went to push the first bench further along the floor but it would not move. As I was in the course of trying to move it, the Achilles tendon in my right ankle suddenly went..."

7. Mr Scott gave evidence and in examination in chief he told me that the reason he was forced to try and move the first bench on his own without assistance was as follows. He told me that after both benches had been placed into the workshop, the forklift truck came back with the metal racking which was also to be placed in the workshop. Mr Scott said he could see the metal racking coming in on the forklift and he panicked because he thought that if the racking was placed into the workshop it would push the second bench into him. In fear of being hit by the second bench, Mr Scott told me he panicked and tried to push the first bench out of the way because he was trapped and had nowhere to go.

8. Under cross examination Mr Scott agreed that there was no prior suggestion by him of any fear or urgency in having to move the bench out of the way. He agreed that there was no mention of this in the Particulars of Claim or in his witness statement both of which, of course, carry a Statement of Truth and both of which have been signed by him personally. He further agreed that there had been no mention of such fear or urgency in the pre-action correspondence. Although I have not seen that correspondence, Mr Foster who appeared on behalf of Mr Scott, did not challenge that assertion. Accordingly the first time Mr Scott mentioned the urgency and fear as to his own safety was in the witness box at trial. However he denied making this up at trial in order to try and explain why he tried to move a bench which he knew to be very heavy on his own.

9. In my judgement if Mr Scott had been in fear of being hit by the second bench this is something which he would have explained from the outset. It is a fundamental part of what he claims happened. In evidence he told me that he had not mentioned this before on the basis that the longer this goes on the more he recalls. Mr Foster in his closing speech on behalf of Mr Scott suggested that far from being an issue as to Mr Scott's credibility, this was merely a question of the detail being lost in the translation.

Whilst it is often the case that accident details are reported slightly differently by attending doctors, in the pleadings and the witness statements I do not consider the difference between the account in the witness statement and pleading and the rather different account in the witness box to be a matter of minor variation or mere translation. As I have already said, the suggestion that the Claimant acted out of fear of being hit and in a panic is, in my judgement so fundamental to explain his actions that it is inconceivable that the first time he would recall or mention is this at trial some two and a half years after the accident.

10. In support of his case, the Claimant relies upon the witness statement of Trevor Taylor who was not called as a live witness as he now lives abroad. Trevor Taylor was a fellow employee and was on site on the date of the accident. At paragraph 6 of his witness statement (Bundle p35) Mr Taylor describes the second bench being placed on the workshop floor "...which resulted in Peter Scott being left in a gap between the two benches". Trevor Taylor goes on to explain that he then went outside to help bring in the racking and as he did so he saw Peter Scott trying to move the first bench. He goes on to say that when he returned with the forklift truck as it brought in the racking he saw Peter Scott sitting on a chair in obvious pain. On this account by Trevor Taylor whose evidence is relied upon by the Claimant, the accident occurred before the forklift had returned with the racking.

11. A further witness Brian Butterworth, who was called by the defence, times the accident in a similar way. At paragraphs 8 and 9 of his witness statement (Bundle p46) he also describes Peter Scott as being in the gap between the two benches and states that everyone apart from Peter Scott went outside to get the metal racking. Brian Butterworth states that the forklift truck driver got the racking and put it down just outside the workshop. Brian Butterworth goes on to say "I came into the workshop by the normal access door to make sure that everything was clear to bring the racking in when I saw that Peter Scott had got out from between the two benches. He had obviously hurt himself and was in a great deal of pain". This evidence was not challenged and, like the evidence of Trevor Taylor, suggests that the accident had occurred before the forklift truck attempted to place the racking in the warehouse.

12. Considering the evidence as a whole and in particular my finding that it is inconceivable that Mr Scott would not have mentioned these matters sooner, I reject his evidence that he attempted to move the bench on his own in circumstances where he feared being hit by the second bench as a result of the delivery into the workshop of the metal racking which he claimed he believed would push the second bench into him. I find as a fact on a balance of probabilities that the accident occurred before the forklift truck placed or began to place the metal racking into the warehouse. I accept that the Claimant tried to move the bench in order to free himself from the confined space between the two benches but I further find on a balance of probabilities that the accident did not occur as a result of any fear or urgency or necessity on the part of Peter Scott to move the bench.

13. I now turn to consider whether these findings are capable of sustaining the Claimant's claim for damages for negligence and/or breach of statutory duty. The Claimant alleges a breach by the Company of the Manual Handling Operations

Regulations 1992. Regulation 4 deals with the duties of employees and provides as follows: -

"Each employer shall

(a) so far as is reasonably practicable, avoid the need for his employees to undertake any manual handling operations at work which involve a risk of their being injured; or

(b) where it is not reasonably practicable to avoid the need for his employees to undertake any manual handling operations at work which involve a risk of their being injured -

(i) make a suitable and sufficient assessment of all such manual handling operations to be undertaken by them, having regard to the factors which are specified in column 1 of Schedule 1 to these Regulations and considering the questions which are specified in the corresponding entry in column 2 of that Schedule.

(ii) take appropriate steps to reduce the risk of injury to those employees arising out of their undertaking any such manual handling operations to the lowest level reasonably practicable..."

14. Mr Woodhouse who appeared for the Defendant accepted, in my judgement correctly, that the movement of the benches within the workshop was a manual handling operation to which the Regulations apply. Mr Foster for the Claimant argued that there is a clear breach of Regulation 4(1)(a) or, if I am against him on that, a breach of Regulation 4(1)(b)(i) and (ii). He does not rely on Regulation 4(1)(b)(iii).

15. The questions I have to decide are as follows:

1. Is there a breach of the regulations?

2. If so, did the breach or breaches cause the accident?

3. If so, did the Claimant contribute to the accident by his own actions?

So the first question is, is there a breach of the Regulations? Regulation 4(1)(a) requires Process Mechanical Limited so far as is reasonably practicable, to avoid the need for their employees to undertake any manual handling operation at work which may involve a risk of their being injured. I heard evidence from Mr Alan Haworth, the Managing Director of Process Mechanical Limited. It was in fact Mr Haworth who set the company up. Mr Haworth was entirely candid in his evidence. He has no specific training himself in health or safety matters generally or in manual handling in particular. He told me that no risk assessment was carried out in relation to the job of moving the benches into the workshop because he did not feel it was necessary in view of the size of the job and the short time the job would take. He agreed that the benches were heavy and awkward to move. When the benches were installed on the original site at Crosslea Hall Works pallet trucks were used to move them. Pallet trucks were again used to move the benches out of the Crossley Hall Works but Mr Haworth said the reason for using a pallet truck then was that the benches had to be taken up a slope.

16. Under cross examination Mr Haworth agreed that a pallet truck would have made it easier to move the benches around. However he was of the view it was not necessary in view of the number of people (5 in total) available to move the benches in the workshop. He pointed out that they had managed to slide the benches across the floor, adding that "...if they had not slid we would then have looked for another way to move them." In his view "man force" was sufficient in the circumstances.

17. In my judgement, Mr Haworth approached this matter in the wrong order. He decided to use "man force" and if that didn't work, to then find some other method of moving the benches. Regulation 4(1)(a) requires the employer to avoid the need for his employees to be involved in a manual handling operation involving a risk of injury, so far as is reasonably practicable. Moving benches weighing 2 - 3 cwt obviously carried a risk of injury and Mr Haworth should, in my judgement have considered whether it was reasonably practicable to use either a pallet truck or skates in the first instance. He did not do so and therefore failed to comply with his statutory obligation in Regulation 4(1)(a). Having failed to consider the matter Mr Haworth was unable to adduce any evidence to satisfy me that it was not reasonably practicable to use a pallet truck or skates and thereby avoid the need for a manual handling operation.

18. Had Mr Haworth been able to satisfy me in relation to Regulation 4(1)(a), I would then have had to consider whether there was a breach of Regulation 4(1)(b). I shall go on to consider this Regulation in case I am wrong about the breach of Regulation 4(1)(a). In my judgement there was a clear breach also of Regulation 4(1)(b) in that no suitable assessment of the job was undertaken and no sufficient steps were taken to reduce the risk of injury to the lowest level reasonably practicable. As I have already pointed out Mr Haworth admitted no risk assessment was undertaken. Mr Butterworth who was called as a witness by the Defendant told me that there was no plan for this job. There was no organisation and no-one took control. He agreed with the suggestion put to him by Mr Foster that the approach was rather "Heath Robinson". In my judgement proper organisation of this job could and should have avoided the situation where Mr Scott found himself in a tight spot between the 2 benches. Further a proper risk assessment might have identified the need for mechanical assistance in moving the benches within the workshop.

19. Whilst I am satisfied that the Defendant Company was in breach of the Regulations, I do not consider the breach, whether of Regulation 4(1)(a) or 4(1)(b) was causative of the accident. The Claimant agreed in evidence that he knew the benches were very heavy and that he knew he could not move them on his own. He agreed he would not normally try to move them on his own. I have, of course rejected his evidence as to there being any urgency in needing to move the benches to avoid a risk of being hit by the second bench. It follows that there is no reasonable explanation for the Claimant, with his knowledge that he could not move these heavy benches on his own, to try to do just that. Mr Scott was asked whether he could have climbed out of the space and he replied that he supposed climbing out was a possibility but at the time he went for the easiest possibility. He accepted that he knew 4 other men were available to help if necessary. Having rejected Mr Scott's evidence as to any urgency or risk which caused him to act in haste, in my judgement this accident was caused not by any breach of the Regulations but solely by Mr Scott's personal decision to try and move the bench on his own. I find that Mr Scott is solely responsible for the accident and injury he suffered.

20. It follows from that that I do not consider that the accident was caused by any negligence on the part of Process Mechanical Limited. In the light of my findings, I do not need to consider the issue of contributory negligence and I dismiss the Claimant's claim.