Employer Bulletin

Our Weekly News Digest for Employers

Friday, 18 September 2020

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Cases

Employment Court: One Case

Application for leave declined due to unreasonable delay in application

Ms Savrim applied for leave to extend time to challenge a determination of the Employment Relations Authority (the Authority). Ms Savrin was offered employment with Wellington Hospitality Group Ltd (Wellington Hospitality). Immigration issues prevented Ms Savrim from starting when expected. Wellington Hospitality remained open to employment however disagreements arose in relation to the employment agreement. Ms Savrim sought an application to the Authority in 2017, she claimed that Wellington Hospitality breached her employment agreement by not allowing her to commence work. Ms Savrim sought remedies for specific performance and damages as well as reimbursement of lost wages and damages for non-economic loss and costs.

There were delays in setting the matter down for an investigation meeting, it was eventually set for 10 October 2018. Despite notification of this, Ms Savrim failed to attend the meeting. The Authority's determination was issued on 16 July 2019 and found against Ms Savrim. Ms Savrim filed for her application for leave on 20 December 2019, four months past the date.

The Employment Court (the Court) can grant a discretion to extend time for filing. When exercising this, the Court must act with the overarching consideration being the interests of justice. Factors the Court should consider are length of the delay, reasons of the delay, conduct of the parties, prejudice or hardship to the respondent and the significance of issues raised.

The longer the delay in bringing the appeal, the stronger the case for an extension will need to be. Four months was stated to be significant. Ms Savrim's argument to this was that she was unaware that the determination had been issued. Ms Savrim was deported to Mauritius on 9 May 2019. She claimed she did not receive a copy of the determination prior to 3 December 2019 as her email address had been locked shortly after she returned to Mauritius. She added that she no longer had access to her New Zealand mobile to access the code to unlock it. The Authority noted that had Ms Savrim's address for receipt of documents changed, it was her responsibility to advise the Authority of that. The Authority also noted that the document would have been available online shortly after its release. The Authority held there was no adequate explanation for Ms Savrim failing to review the determination and challenge it sooner.

Ms Savrim had a history of considerable delay during the proceedings. She had failed to attend the Authority's investigation meeting which meant she did not properly co-operate with the Authority. Ms Savrim's affidavits in support of the application were unpersuasive and evasive. There were discrepancies between the two affidavits filed,

as well as supporting documentary evidence. There was no specific prejudice claimed regarding the delay between the end of the 28-day period in August 2019 and the application for leave being filed in December 2019. Ms Savrim never started working for Wellington Hospitality, largely due to her own circumstances, therefore any award or compensation likely would be relatively small. The Court noted that the strength of this case was not strong but not exactly hopeless.

The Court considered that the length of the delay and reasons for it, together with Ms Savrim's conduct in the Authority and the Court. Accordingly, the overall justice did not support the leave being granted and was therefore declined. The Court held Ms Savrim to pay Wellington Hospitality costs of $7,000 within 14 days of this determination.

Savrim v Wellington Hospitality Group Ltd [[2020] NZEmpC 118; 10/08/2020; Judge Holden]

Employment Relations Authority: Five Cases

Failure to abide by good faith obligation resulted in unjustified dismissal

Ms Bennett was employed by Mr Bolstad and his wife Mrs Bolstad, as a Farm Manager for their farm in Te Aroha. Ms Bennett was employed from 11 November 2017 until her dismissal on 25 March 2019. Ms Bennett's role included the provision of accommodation for herself and her son on the farm. Ms Bennett said she enjoyed her work for the first couple of months but for the rest of her employment she alleged that she was verbally abused by Mr Bolstad. Ms Bennett said because of Mr Bolstad's abuse she gave notice of resignation on 1 March 2019 to take effect on 29 May 2019, at the end of the dairy milking season. Ms Bennett said following her resignation, Mr Bolstad's verbal abuse accelerated. Incidents were witnessed by her daughter and other employees. On 24 March 2019 Ms Bennett received an email with a letter attached from Mr Bolstad, the email and letter stated termination of her employment with effect from 25 March 2019. Ms Bennett was informed she would be paid two weeks' salary in lieu of notice. Ms Bennett was given 14 days to vacate the farmhouse she had been occupying. Ms Bennett said her dismissal by letter on 24 March 2019 came as a complete shock and was unjustified both procedurally and substantively.

The Bolstad's denied Ms Bennett's claims. They said their working relationship with Ms Bennett was a good one. They accepted there were three occasions on which Mr Bolstad became angry and swore when speaking with Ms Bennett about her work as he was frustrated and angry about Ms Bennett's three failures to follow his instructions in relation to pasture management and her handling of the stock. The Bolstads said there were regular reviews with Ms Bennett during her employment and had a Human Resources Consultant conduct each of the reviews and keep records. When she resigned Ms Bennett did not mention abusive behaviour by Mr Bolstad or say she was leaving because of it. Mr Bolstad said while on the farm Ms Bennett made a comment to him which he took to be a threat that she had the ability to accuse him of sexual harassment. Ms Bennett denied making such a comment. Mr Bolstad said he never sexually harassed Ms Bennett. In the circumstances, Mr Bolstad decided he could no longer continue employing Ms Bennett and have her living on the farm. Mr Bolstad accepted that Ms Bennett was dismissed by letter without consultation beforehand.

The Employment Relations Authority (the Authority) found that the Bolstads did unjustifiably dismiss Ms Bennett. The Bolstads said any remedies should be significantly reduced because of Ms Bennett's contributing behaviour.

After an investigation, the Authority viewed that the Bolstads gave a more credible and reliable account than Ms Bennett of what occurred during her employment. On points of conflict in the evidence, this determination generally preferred and relied on what the Bolstads claimed. The Authority did not accept Ms Bennett's version of events. Arguments erupted between Ms Bennett and Mr Bolstad about how work on the farm was being done. The Authority held that Ms Bennett was not an "*innocent*" party on those occasions and did not suffer an unjustifiable disadvantage during her employment.

There was no evidence that prior to dismissal, the Bolstads spoke with Ms Bennett about her claiming threat of sexual harassment. A fair and reasonable employer acting in accordance with the duty of good faith, as set out in section 4 of the Employment Relations Act 2000, would have discussed these concerns and provided her an opportunity to explain. The Authority determined that Ms Bennett was unjustifiably dismissed by the Bolstads on 25 March 2019. Ms Bennett had already resigned from her employment to take up a better position and she was working out a period of notice when she was dismissed. The Authority considered an award of $7,000 for distress compensation in respect of the unjustified dismissal to be appropriate.

Bennett v Bolstad [[2020] NZERA 292; 29/07/2020; A Fitzgibbon]

Wage arrears sought by employee who was dismissed under invalid trial period

Mr Guan worked for Jay.Co Limited (Jay.Co) as a restaurant manager from 12 July 2019 until 18 August 2019. Mr Guan claimed arrears of wages for hours not paid, payment of the notice period and reimbursement of a premium he said he was required to pay Jay.Co to retain his employment.

Mr Guan sought payment for work performed on 20 and 21 May 2019, which Jay.Co denied he worked. Mr Guan told the Employment Relations Authority (the Authority) that he received a request from the Director of Jay.Co, Ms He, to attend the restaurant on 20 May 2019 to start work. Mr Guan relied on a message sent to him by Ms He as evidence of this. The message sent by Ms He was a template to show him how to place orders if he was successful in being employed in the manager's role. Ms He said that she did message Mr Guan on 19 May 2019 asking him to be at the restaurant. However, upon realising she could not be there herself, she rang him and asked him to come later in the day. The Authority preferred the evidence of Jay.Co and found that on the balance of probabilities, it was more likely than not Mr Guan did not work on 20 or 21 May but rather attended the restaurant to familiarise himself with the restaurant. Mr Guan's request for wage arrears for those two days was declined.

Mr Guan's claimed he was not paid for working on 17 and 18 August 2019. The wages and time record for 17 and 18 August 2019 showed that Mr Guan received payment for four hours worked on each day but not at his ordinary rate of pay. The Authority was satisfied that Mr Guan was not paid at the correct rate of pay for each hour he worked and was owed wage arrears for the balance of $34 gross.

In his employment agreement Mr Guan worked 40 hours each week on five days of the week. Mr Guan claimed he worked six days each week and claimed payment for the additional day. This claim was denied by Jay.Co. Jay.Co provided the time record book used by the company to record hours worked by each of its employees including Mr Guan. The entries showed that Mr Guan worked five days each week with starting and finishing times being consistent with those set out in his employment agreement. His application for payment for hours worked over 40 hours was declined.

On 18 August 2019, Mr Guan was given one weeks' notice that Jay.Co was exercising its right under the trial provision to terminate his employment. Mr Guan was advised his last day of work would be Sunday 25 August 2019. Mr Guan claimed that he was removed from the group chats with staff and suppliers during the notice period and was unable to do his job. For this reason, he notified Jay.Co he would not work out the remainder of his notice period. The Authority held that Mr Guan's trial period was invalid because it did not specify that the trial period was to start at the beginning of his employment. For this reason, the general notice period under the employment agreement applied. Jay.Co was ordered to pay Mr Guan the sum of $4,080 gross as wage arrears.

Mr Guan claimed he was required to repay Jay.Co a cash sum of $240 on four separate occasions totaling $960. He claimed the payments were a premium which was required to pay to Jay.Co to guarantee his employment. Section 12A of the Wages Protection Act 1983 prohibits an employer from seeking or receiving any premium in respect of the employment of any person. Mr Guan provided the Authority with a copy a document which he said recorded the payments he made to Ms He. He said that Ms He signed the document, in English, each week when he paid her the money. The Authority was not satisfied that the signature was Ms He's. The document was set out in Mandarin and when Ms He signed the employment agreement with Mr Guan, she signed in Mandarin. Given that the document presented by Mr Guan was largely in Mandarin, the Authority held that it was improbable that Ms He would sign the document in English. The Authority was not persuaded that the document was authentic and therefore could not be relied upon.

Guan v Jay.Co Limited [[2020] NZERA 297; 31/07/2020; V Campbell]

Constructive dismissal on multiple breaches

Mr Lloyd claimed he was constructively dismissed from his employment with PJ Vapes Limited (PJ). He attributed his departure to two things, PJ's failure to pay correct wages and Mr Forster's, PJ's sole director and shareholder, actions as

the employment was nearing its end. The employer position was unknown as their participation was limited to one telephone conversation and they did not file a statement in reply or respond to further correspondence. The Authority said all relevant documents had been served and Mr Forster was cautioned about the consequences of non-participation.

Mr Lloyd and Mr Forster were once friends. Mr Lloyd initially began performing some work on a voluntary basis while Mr Forester set up his business before he was offered a job in a supervisory/managerial capacity. The business struggled over the first few months and Mr Lloyd's pay was both erratic and deficient. He initially accepted the situation hoping things would improve but having struggled to meet his personal commitments he raised the issue with Mr Forster. From that point some regularity returned to the frequency of payments, but the amounts remained variable. The arrears were not addressed and there were additional deficiencies. That caused the relationship between Mr Lloyd and Mr Forster to deteriorate with the situation escalating when Mr Lloyd, who lived with his parents, raised with them the issue of his board, and sought a reduction. That led to queries from Mr Lloyd's father about the reason a reduction was needed and he then started making inquiries of Mr Forster.

In early November Mr Forster sent a text to Mr Lloyd advising he take a week off which Mr Lloyd did and travelled to Palmerston North, but Mr Forster immediately sought the return of Mr Lloyd's business keys. He then chose to try to enforce the request by visiting Mr Lloyd's parents' home late one night accompanied by what the father described as undesirable elements. That led to Mr Lloyd senior seeking a trespass order against Mr Forster. From there the relationship quickly deteriorated with Mr Forster sending threatening and disparaging text which led to the Police advising Mr Lloyd he should not, for reasons of his own safety, return to work. He didn't. There was also evidence Mr Forster then engaged in a prolonged attack via social media aimed at denigrating both Mr Lloyd and others associated with him. This eventually resulted in a comprehensive restraining order being issued by the District Court against Mr Forster precluding any interaction with or about Mr Lloyd.

In Wellington Clerical Workers Union v Greenwich the Court stated that for a dismissal to be constructive "*It is not enough that the employer's conduct is inconsiderate and causes some unhappiness to the employee. It must be dismissive or repudiatory conduct."* The Authority considered the reasons tendered by Mr Lloyd. The claim that wage payments were both inconsistent and deficient was supported with the evidence of all three of Mr Lloyd's witnesses. PJ's failure to provide remuneration was in the Authority's view a fundamental breach which warranted the response of resignation once concerns had been raised but not addressed. That the response of resignation was foreseeable was also established with Mr Lloyd's representations to Mr Forster about the problems he was facing because of inadequate remuneration.

That alone established there was a constructive dismissal but there was a second claim that Mr Forster's behaviour in the employments final days was such Mr Lloyd could no longer return and consider himself safe. The texts from Mr Forster were in the Authority's view disturbing with the inclusion of threats along with other forms of intimidation. The Authority concluded they also supported a conclusion ongoing employment was no longer tenable and that was also the conclusion the Police reached. Added to that the fact the texts included notice Mr Lloyd would, if he returned, be unilaterally demoted from manager to shop employee constituted a further breach.

The Authority concluded Mr Lloyd had established he was constructively dismissed given multiple serious breaches by Mr Forster in his capacity of director and owner of PJ. The onus was then on the employer to justify the dismissal. Their absence meant there was no justification and the evidence left the Authority doubting one was even possible. The dismissal was unjustified.

PJ was ordered to pay Mr Lloyd, $20,800 gross as lost wages and $20,000 as compensation, as well as outstanding wages, holiday pay, and repayment of further money due to him. The Authority also ordered that should PJ fail to make the payments Mr Forster would become personally liable.

Lloyd v PJ Vapes Limited & P Forster [[2020] NZERA 333; 24/08/2020; M Loftus]

Flawed redundancy procedure led to unfair dismissal

Navigator Accounting NZ Limited (Navigator) operates a small, single-principal accounting practice. Mr Griggs is the sole director of that company. Navigator operated offices in Auckland and the Hawkes Bay. Navigator employed Mr Liu on 13 May 2019 as an intermediate-level accountant to work in its Auckland office. Mr Liu and Mr Griggs were the only

employees who operated from these offices. On 30 October 2019, Mr Liu's position was disestablished, and he was made redundant. He claims his dismissal was unjustified and he suffered an unjustified disadvantage when he was suspended from 8 to 30 October 2019. Navigator denies Mr Liu's claims and argued Mr Liu was not suspended and, in terms of his dismissal, the process it followed was fair and the decision reached was genuine.

On the 7 October 2019, Mr Griggs invited Mr Liu to a quick meeting. In this meeting a letter was read that said Navigator was having cash flow issues and proposed disestablishing Mr Liu's role, closing the Auckland office, consolidating its office requirements to its Hawkes Bay office, and absorbing Mr Liu's senior accounting duties within the Managing Director's role. The letter also requested feedback and other solutions Mr Liu may think of, as well as informing him to bring representation to any future meetings.

Mr Liu responded the following day and advise that he would meeting with his lawyer on the 10 October 2019. Mr Griggs responded suggesting a meeting on Friday 11 October or Monday 14 October and advised "I am also happy for you to continue on paid special leave until the end of this week". On 11 October, Mr Liu's lawyer emailed Mr Griggs suggesting a meeting on 16 October. Mr Griggs did not reply. Monday 14 October 2019 Mr Liu returned to the office to find his computer was not there. Mr Griggs then approached Mr Liu and asked why he was back at work as he understood he was on paid special leave until things were sorted out. Mr Liu responded with words to the effect that he had only agreed to take special leave until the end of the week before, which he understood meant he was to return to work that day. After reaching Mr Liu's lawyer a decision was made that he would stay on paid leave "until this was all sorted".

On 16 October 2019, Mr Griggs met with Mr Liu and his lawyer. Mr Griggs presented all documents are reasoning to the proposal of a restructure and requested feedback from Mr Liu by 18 October and advised he was happy for Mr Liu to remain on special paid leave until that time. On the 18 October Mr Liu raised a personal grievance and the letter raised concerns about how Mr Liu had been told of the proposed redundancy, how his computer had been removed from the office, how he had been treated on 14 October, and how he was suspended because Mr Griggs felt awkward having him in the office. On the 29 October Navigator responded and wished to meet with Mr Liu to end all of this. On 30 October all parties met and Mr Griggs read out a letter that advised of Navigator's decision to terminate his employment on the ground of redundancy.

There was genuine reasoning for Mr Liu's position to have been made redundant, but the Authority found the procedure that was followed by Navigator was flawed, even with the small size of the company. Navigator failed to provide Mr Liu with all information upon which it relied in making its decision to make his position redundant and, in doing so, failed to provide him with an opportunity to provide feedback. Navigator's failures were not minor and did result in Mr Liu being treated unfairly. The Authority found that Mr Liu was unjustifiably dismissed from his employment with Navigator. Where the process was flawed the lost remuneration that an employee is entitled to should be limited to the amount of time it would take to get the process right. The authority believed a further two weeks would have been sufficient to complete the consultation process correctly. Therefore, Mr Liu was entitled to two weeks' lost remuneration.

Lui vs Navigator Accounting Limited [[2020] NZERA 293; 30/07/2020; J-M Trotman]

Raising a personal Grievance outside of the 90-day statutory period

Ms Oliver had raised a personal grievance for an unjustified dismissal against Spotless Facility Services (NZ) Limited (Spotless) outside of the 90-day statutory period. The 90-day statutory period given to raise a personal grievance had ended on 24 December 2019, Ms Oliver had raised her grievance later on the 6 January 2020.

Under section 114(3) of the Employment Relations Act 2000 (the Act) Ms Oliver had applied for leave to raise a personal grievance outside of the 90-day statutory period. She claimed that the delay was due to exceptional circumstances and had requested that her grievance be upheld. Under section 115(b) of the Act, Ms Oliver had also maintained that she made reasonable arrangements to have the grievance raised within 90 days, and that an agent had unreasonably failed to ensure that the grievance was upheld. Spotless had replied that there were no exceptional circumstances to allow for a grievance to be raised outside of the 90-day statutory period.

The Authority first considered whether Ms Oliver had made reasonable arrangements to raise her grievance within the 90-day statutory period. After Ms Oliver's dismissal, she had sought advice from a union representative (AM) who had acted

as the agent in the case. AM had questioned the nature of Ms Oliver's employment as a casual employee and had considered whether Ms Oliver had actually been *"fired"*. After submitting an Authority to Act on behalf of Ms Oliver, AM then requested that Spotless provide him with Ms Oliver's previous wage and time records, to determine the nature of her employment. Ms Oliver's work records were then sent to AM from Spotless. On the 15 October 2019, Ms Oliver had received the work records from AM, she then collated a summary of hours and dates for the total hours worked each week over the period of her employment. The Authority determined that Ms Oliver had made reasonable arrangements to have the Union pursue a claim for unjustified dismissal.

Ms Oliver previously stated that she would check in with AM each week initially to get updates on the progress of her personal grievance. She advised that phone calls and texts messages went unanswered. Ms Oliver had felt that she was left uncertain about the progress of her grievance and that she did not hear further from the Union until 17 December. By this point, Ms Oliver had explained that this only gave her a week to prepare her personal grievance and that she was expecting to go on holiday in three days. From 15 October, AM stated in an affidavit that he had received advice from a union representative, and then informed Ms Oliver that she was a casual employee and would not need to raise a grievance.

According to AM, Ms Oliver had further asked whether she could raise a grievance against Spotless for a breach of Privacy in relation to a negative Facebook post seen by Spotless. After advising with two senior colleagues AM recalled advising Ms Oliver that the union would not be able to assist her further. In November, AM recalled receiving messages from Ms Oliver, but has claimed that she would not listen to what he had to say. Although there was no evidence that the matter was specifically addressed by the union, the Authority had concluded that it is likely that there was some engagement between Ms Oliver and the union between 15 October and 17 December to the effect that the union would not pursue her case. The Authority also do not believe that AM had unreasonably failed to raise Ms Oliver's grievance.

The Authority accepts that Ms Oliver may not have understood that the union would not pursue her grievance before the 17 December, and that the time of year and holiday season in December may have created complications. However, the Authority did not deem those difficulties as exceptional circumstances within "the meaning of being unusual or outside of the common run", as stated previously by the supreme court in Creedy v Commissioner of police. Therefore, the Authority did not determine whether it would be just to allow Ms Oliver to raise her grievance outside of time.

There were no issues of cost. However out of caution Ms Perry, a Human Resources employee from Spotless, was given the right to determine otherwise within five working days from the date of determination.

Oliver v Spotless Facility Services (NZ) Limited [[2020] NZERA 327; 20/08/2020; H Doyle

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For further information about the issues raised in this week's cases, please refer to the following resources:

Good Faith

Employment Relations Act 2000

Trial and Probationary Periods

Restructuring and Redundancy

Casual Employees

Employer News

Procurement to promote jobs, Māori and Pasifika businesses and sustainability

As part of the COVID-19 recovery, the Government has strengthened its procurement rules to ensure its annual $42 billion spend creates more jobs, uses more sustainable construction practices and results in better outcomes for Māori and Pasifika, Government Ministers announced today.

Economic Development Minister Phil Twyford says the $42 billion annual spend on goods and services by government departments and agencies is a significant amount that can be directed into businesses and practises which can improve the wellbeing of our whanau, workers, communities and climate.

“The economic impacts of COVID-19 are being felt nationwide. The pandemic has created uncertainty for many businesses and is likely to lead to more job losses. But government has the spending power to channel its resources into where they are needed most.

“Cabinet last week agreed on a new rule that when procuring goods or services, 138 departments and agencies must consider how they can create quality jobs, particularly for displaced workers and traditionally disadvantaged groups such as Māori, Pasifika, people with disabilities and women.

“Cabinet has also agreed that when constructing new buildings, mandated departments and agencies will be required to assess the greenhouse gas emissions resulting from the materials and construction processes used. Agencies should choose those which have the lowest upfront carbon emissions.

“There will also be an accelerated procurement process in sectors such as construction to help get projects up and running quickly to generate economic stimulus as soon as possible.

“The construction sector will play a big part in New Zealand’s COVID-19 recovery and departments and agencies will now need to consider the use of more sustainable building materials.

“The use of raw materials such as wood offers a chance for the government to reduce its carbon emissions, boost our wood processing sector, create jobs in the regions and utilise a sustainable resource – our forests,” Phil Twyford said.*

Māori Development Minister Nanaia Mahuta says international evidence shows increasing the diversity of government contracts held by indigenous small to medium companies (SMEs) helps increase innovation, builds greater economic resilience and creates regional opportunities.

“In countries such as Canada, Australia, the United Kingdom, the United States and South Africa this has resulted in increased wealth, financial stability and employment opportunities, as well as wider social and community wellbeing benefits for indigenous peoples.

“We know Māori businesses and workers, particularly Māori women in the hospitality and tourism sectors, have been hit hard by the impacts of COVID-19. Government procurement of goods and services offers the economic stimulus to boost Māori SMEs and help create a resilient Māori economy.

“Māori businesses already have strength across food and fibre industries and tourism. Expanding into manufacturing processes, ICT, or pivoting into new markets will provide jobs and support new enterprise, as well as building business capability and increasing skill levels

“Te Puni Kōkiri is working with the Ministry of Business Innovation and Employment to prototype social procurement approaches over the next two years to reduce barriers to engaging with government procurement processes and support Māori businesses to compete for contracts,” Nanaia Mahuta said.

Pacific Peoples Minister Aupito William Sio says work is already underway to support Pacific businesses gain work by effectively bidding for procurement contracts following a $6.25 million investment over four years in Budget 2020.

“The Pacific Business Procurement Support initiative is helping Pacific companies build their capability so they can survive the immediate impacts of COVID-19 and over time grow their companies.

“To boost Pacific procurement, the Government is partnering with the Pacific Business Trust who will work across a range of key business networks nationwide. They will identify and access the professional services Pacific SMEs need to help them grow,” Aupito William Sio said.

New Zealand Government [16 September 2020]

Don't let your standards for operating machinery slip

Meat manufacturer Hellers Limited has been sentenced for health and safety failures at the Christchurch District Court this week after a worker lost four fingers in a machine used to process meat.

During the March 2019 incident while cleaning the machine a worker reached in to clear meat from between a rotating paddle and the inside wall of the machine, when his fingers became caught.

The machine hadn't been stopped correctly and it restarted as part of its cycle. Four fingers on the worker's hand were immediately amputated. The worker's fingers were unable to be reattached. The machine has since been removed from production.

WorkSafe's Chief Inspector Steve Kelly said a WorkSafe investigation found the method of operating the machine had been unsafely adapted.

"Instead of accessing the machine via its raised platform and from behind an interlocked guard, a step ladder was used to gain access to an unguarded area of the machinery, against best practice and the direction of the manufacturers operating manual.

"The company's standard operating procedure and risk assessment for the machine were neither monitored or reviewed allowing this adapted method of cleaning the machine to go unchallenged and uncontrolled.

"Hellers' failures to ensure employees were carrying out work safely put workers at very serious risk, and in this instance, led to a worker suffering from life changing injuries."

The company was ordered to pay a fine of $193,500 as well as $60,000 in reparation to the victim.

Notes:

- A fine of $193,500 was imposed.
- Reparation of $60,000 was ordered.
- Hellers Limited was sentenced under sections 36(1)(a), 48(1) and (2)(c) of the Health and Safety at Work Act 2015.
- Being a PCBU having a duty to ensure so far as is reasonably practicable, the health and safety of workers who work for the PCBU, while the workers are at work in the business or undertaking, namely while operating the Laska Mixer Grinder Machine, did fail to comply with that duty and that failure exposed the workers to a risk of serious injury.
- S 48 (2)(c) carries a maximum penalty of $1,500,000.

WorkSafe [16 September 2020]

Legislation

Note: Bills go through several stages before becoming an Act of Parliament: Introduction; First reading; Referral to select committee; Select committee report, Consideration of report; Committee stage; Second reading; Third reading; and Royal assent.

Bills open for submissions: 13 Bills

13 Bills are currently open for public submissions to select committees.

Overseas Investment Amendment Bill (No 3) (N/A)

Protected Disclosures (Protection of Whistleblowers) Bill (N/A)

Rights for Victims of Insane Offenders Bill (N/A)

Education (Strengthening Second Language Learning in Primary and Intermediate Schools) Amendment Bill (N/A)

New Zealand Superannuation and Retirement Income (Fair Residency) Amendment Bill (N/A)

Insurance (Prompt Settlement of Claims for Uninhabitable Residential Property) Bill (N/A)

Child Support Amendment Bill (N/A)

District Court (Protection of Judgment Debtors with Disabilities) Amendment Bill (N/A)

Arms (Firearms Prohibition Orders) Amendment Bill (No 2) (N/A)

Oranga Tamariki (Youth Justice Demerit Points) Amendment Bill (N/A)

Crown Pastoral Land Reform Bill (N/A)

Electoral (Integrity Repeal) Amendment Bill (N/A)

Land Transport (Drug Driving) Amendment Bill (N/A)

Overviews of bills - and advice on how to make a select committee submission - available at:

https://www.parliament.nz/en/pb/sc/make-a-submission/

Full text of bills available at: http://www.parliament.nz/en-nz/pb/legislation/bills

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The Employer Bulletin is a weekly update on employment relations news and recently published legal decisions. It is EMA's policy to summarise cases that contain legal issues relevant to employers. The purpose of the Employer Bulletin is to provide and to promote best practice in employment relations. If you would like to provide feedback about the Employer Bulletin, contact advice@ema.co.nz

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