

# Update Mazengarb's Employment Law

## Service 277 — June 2023

### Commentary

#### Selected topics

##### *Redundancy*

- Whilst originally intended to be passed before the September 2023 election, the Government announced in February 2023 that the Income Insurance Scheme would not proceed in the current term in order to focus on the cost of living. At the same time, it was indicated that a significant improvement in economic conditions would then be required before the scheme was advanced further.

#### Practice and Procedure

##### *Employment Court Directions*

- The Employment Court practice directions have been updated with the latest version.

#### Health and Safety at Work Act 2015

- Costs of \$40,000 were awarded against WorkSafe New Zealand, after a charge relating to alleged duties around the volcanic eruption on Whakaari (White Island) was dismissed (*WorkSafe New Zealand v National Emergency Management Agency* [2023] NZDC 5863) (see [HWSA36.9]);
- Failure to train stevedores in a standard operating procedure for loading an excavator into a ship's hold was a feature of sentencing after an incident involving the excavator falling into the sea (*Maritime New Zealand v C3 Ltd* [2022] NZDC 2106) (see [HWSA36.17.4]);
- Where a defendant had been charged under s 49 (where risk of death or injury is not an element of the charge) Judge Sainsbury expressed reluctance to read an alleged risk of injury or death as an aggravating feature of the s 49 offence (*Maritime New Zealand v C3 Ltd* [2022] NZDC 2106) (see [HWSA49.9]);
- A conviction for breach of s 55 was entered after a single plank temporary platform (which was non-compliant in having no guard rail, toe board or mid-rail) could not be inspected (*WorkSafe New Zealand v KB Project Management Ltd* [2022] NZDC 12618) (see [HWSA55.8]);
- Section 56 was accepted to be a strict liability offence (*WorkSafe New Zealand v KB Project Management Ltd* [2022] NZDC 12618) (see [HWSA56.11]);
- Major trauma from crush injuries led to an award of \$45,000 reparation (*WorkSafe New Zealand v Lanyon and Le Compte Construction Ltd* [2022] NZDC 25215) (see [HWSA151.13.4.2]);

- Reparation of \$60,000 was awarded where loss of eyesight in one eye resulted from loose wire during a maintenance operation, seriously impacting the victim's life (*WorkSafe New Zealand v Mapua Avocados Ltd* [2023] NZDC 3760) (see [HWA151.13.4.2]);
- “Near-fatal” head and brain injuries, including multiple fractures, gave rise to an order for \$80,000 reparation (*WorkSafe New Zealand v Horne* [2023] NZDC 3655) (see [HWA151.13.4.2]);
- Where a worker fell from a height after stepping on a part of roof which lacked covering or edge protection, fracturing a vertebra which compressed his spine and resulted in continuing long term and short term pain, reparation of \$40,000 was awarded (*WorkSafe New Zealand v 360Group Ltd and Shakthi Construction Ltd* [2022] NZDC 26076) (see [HWA151.13.4.2]);
- Failure to monitor the use of provided safety glasses by a 20-year-old casual worker, who suffered loss of eyesight in one eye after a loose wire entered it, gave rise to a finding of medium band culpability (*WorkSafe New Zealand v Mapua Avocados Ltd* [2023] NZDC 3760) (see [HWA151.27.7]);
- Where two school pupils suffered “ongoing emotional injuries” after being trapped in a cave whilst engaged in kayaking during an outdoor education activity, the diving company which was supervising the activity, as a specialist organization with experience of the area, were held to have had the primary responsibility with apportionment of reparation then 60 per cent to that company and 40 per cent to the school (*WorkSafe New Zealand v Tauraroa Area School Board of Trustees* [2022] NZDC 25331) (see [HWA151.21]);
- The full 25 per cent discount for a guilty plea was allowed where a significant amount of time elapsed between the charge being laid and a guilty plea entered, but the defendant had initially made an application for an enforceable undertaking which had been declined after discussion (*Maritime New Zealand v C3 Ltd* [2022] NZDC 2106) (see [HWA151.35.2]);
- A potential fine of \$220,000 was reduced “for impecuniosity” to \$60,000 (*WorkSafe New Zealand v 360Group Ltd and Shakthi Group Ltd* [2022] NZDC 26076) (see [HWA151.42]);
- A submission for 60/40 apportionment was rejected where a worker fell from a height after stepping on a part of roof which lacked covering or edge protection after his employer, the first defendant, had been sub-contracted to carry out painting at a site where the second defendant was the overall contractor (*WorkSafe New Zealand v 360Group Ltd and Shakthi Construction Ltd* [2022] NZDC 26076) (see [HWA151.49]);
- A defendant who was a partner in a business with her husband, but played no active role in it, was discharged without conviction after her husband was convicted of contravening s 36 and s 48 (*WorkSafe New Zealand v Horne* [2023] NZDC 3655) (see [HWA151.50.1]).

### Accident Compensation Act 2001

- The Supreme Court has tentatively concluded that coverage for work-related mental injury under s 21B(1)(a) was met when a junior member of the Armed Forces was sexually assaulted and falsely imprisoned in a tyre cage by a sergeant (*Roper v Taylor and Attorney-General* [2023] NZSC 49) (see [IPA21B.6.1]);
- The Supreme Court held unanimously that the s 317 bar on civil proceedings applied to injury following the false imprisonment above (*Roper v Taylor and Attorney-General* [2023] NZSC 49) (see [IPA317.8.2]).