Does Use of Fall Protection System Eliminate Need for Guardrail?



SITUATION

An employer installs a platform running the length of the cargo hold of its shipping vessel for workers to use as a catwalk. The platform is five metres high. The OHS law requires a guardrail for structures from which workers could fall more than 1.2 metres. Although the employer could install a guardrail, it decides not to do so. Instead, it provides a fall protection system that workers must wear while accessing the catwalk. The system includes safety harnesses that connect to four fall arrestors. A Health and Safety Officer inspects the vessel, finds the employer in violation of the OHS law and orders it to put in a guardrail. The employer objects, arguing that the fall protection system it installed adequately protects workers.

QUESTION

Should a tribunal uphold the violation’
A. No, because the fall protection system is sufficient to protect workers.

B. No, because no worker was hurt despite the lack of a guardrail.

C. Yes, because guardrails are required for any raised platform.

D. Yes, because the OHS law specifically required a guardrail in these circumstances.

ANSWER:

D. The violation should be upheld because worker access to a platform of this height required a guardrail regardless of any fall protection system in use.

This scenario is based on an actual decision of the Occupational Health and Safety Tribunal Canada in which a federally regulated employer challenged an OHS officer's direction to add a guardrail to a catwalk inside the cargo hold of a vessel. The tribunal explained that the *Maritime Occupational Health and Safety Regulations* specifically require a guardrail for structures accessible by workers that allow for a fall greater than 1.2 metres. The Tribunal commended the employer for installing the fall protection system. But it said because there was no dispute about the height of the platform or workers' access to it, the structure met the criteria for requiring a guardrail. Thus, the Tribunal confirmed the direction.

WHY WRONG ANSWERS ARE WRONG

A is wrong because the law expressly requires guardrails for structures that meet certain criteria'regardless of other fall protection measures taken or PPE provided to workers. Because guardrails prevent workers from falling, they're generally the preferred safety measure unless they're not reasonably practicable. Fall protection systems and other PPE such as harnesses only protect workers *after* they fall. (See, 'Fall Hazards: Complying with the Hierarchy of Fall Protection Equipment,' Oct. 2012, p. 1.) Here, the platform met the criteria for requiring a guardrail. And because the employer could install a guardrail on the platform, he should've done

so and not chosen a second tier method of fall protection.

B is wrong because employers can't wait until a worker is hurt before complying with the OHS laws, such as by installing required guardrails. Worker injuries don't trigger the need for safety measures. Instead, the OHS laws mandate safety measures such as guardrails to *prevent* injuries. In this case, the employer is fortunate that no one was injured due to the lack of a guardrail. But this good luck isn't an excuse for its noncompliance with the guardrail requirement.

C is wrong because not all raised structures automatically require a guardrail. In this case, the OHS law sets a height threshold of 1.2 metres for the guardrail requirement. Because the platform was five metres high, it triggered that requirement. The regulations may provide exceptions to guardrail requirements, particularly when a guardrail isn't practical or effective, such as for very short term projects. But there's nothing in the facts to suggest that such an exception would apply here. (For more information about what to do when safety measures aren't practicable, see '[When Are Safety Measures Not Required Because They're Not 'Reasonably Practicable]"' Dec. 2008, p.1.)

SHOW YOUR LAWYER

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