

OHS Quiz: When Is a Worker Guilty of an OHS Violation?



Situation

Rip, who works for a lumber company with a lousy safety culture in which workers are untrained and dangerous tree felling procedures are followed, causes a tree to fall the wrong way into an electrical wire. The wire falls on a supervisor and fatally electrocutes him. The exact same incident occurs at another lumber company. But this company has an active OHS program that requires workers to follow safe work procedures. The incident happens only because the worker who cut down the tree, Buzz, took a shortcut and didn't follow the required procedure.

Question

Which, if either, worker could be potentially guilty of an OHS violation'

1. Just Rip
2. Just Buzz
3. Both
4. Neither since a worker can't be guilty of an OHS violation

Answer

3. Both workers could be liable.

Explanation

It is a violation for a worker to follow an unsafe work practice even if that practice was set by the employer. This scenario is based on an actual Ontario case called *R. v. Campbell* in which a worker was found guilty of 2 OHS violations: not clearing the area where a tree was being cut down and not using ropes to guide the falling tree. The worker claimed the incident was entirely the company's fault. The company did in fact plead guilty to not providing safety training and not requiring workers to use safe work practices. While acknowledging that the worker had a point, the Ontario court found that he had still endangered a co-worker and sentenced him to 18-months' probation.

Why Wrong Answers Are Wrong

1) is wrong because, as illustrated by the *Campbell* case, following an unsafe company procedure doesn't necessarily shield a worker from OHS liability'although it would probably cut the resulting punishment.

2) is wrong because Buzz has no moral defence; he could and should have followed a safe work procedure but deliberately chose not to.

4) is wrong because, although it doesn't happen very often, workers who work unsafely can be prosecuted for an OHS violation, especially if somebody gets hurt as a result.