Saskatchewan Court Convicts & Fines Supervisor for Worker's Electrocution

Most safety prosecutions involve OHS charges against a company or organization. But individuals such as owners, directors, supervisors and even workers can also be prosecuted. And when individuals *are* prosecuted, they may raise a due diligence defence just as a company might. A court in Saskatchewan recently convicted a supervisor of two safety offences related to the electrocution of a worker. Here's a look at that case.

THE CASE

What Happened: A SaskPower worker, his supervisor and two other crew members were repairing a broken shield wire. They had a detailed job plan for this task, which didn't include cutting any wire. But it became clear the job couldn't be done as originally planned because the bucket truck was too short. So the crew discussed a new plan. Following the revised plan, the worker picked up the broken shield wire with both hands. The supervisor taped the wire where a cut was to be made. A co-worker cut the wire but without placing a jumper cable on it first. As a result, the worker holding the wire was electrocuted. The supervisor was charged with OHS violations, including failing to follow the SaskPower Safety Rule Book procedure to review and revise the job hazard identification and risk assessment when the job conditions changed, and failing to ensure a jumper cable was used before the cutting

of the energized wire.

What the Court Decided: The Provincial Court of Saskatchewan convicted the supervisor of the above charges, rejecting his due diligence defence. (It acquitted him of a PPE charge.)

The Court's Reasoning: The court noted that the Safety Rule Book said that if job conditions change, the job hazard identification and risk assessment must be reviewed and revised as required. Here, the job conditions changed when the workers discovered the bucket truck couldn't reach the required height. But the crew didn't review and revise the original hazard and risk assessment form during the second meeting when they discussed the overall changes to the job plan. And we don't know exactly what was discussed in that second meeting because it wasn't documented, noted the court. None of the witnesses could articulate all the steps required in the new plan, including the need to use a jumper cable before cutting the shield wire. The court concluded that the jumpering and cutting of the shield wire wasn't discussed or reviewed by the crew members in the second meeting.

The court concluded the supervisor didn't actually review and revise the job hazard identification and risk assessment form when the job conditions changed and, in doing so, failed to follow the Safety Rule Book procedures. In fact, the risk assessment form says, '**PREPARE, DISCUSS AND REVIEW THE JOB PLAN WITH THE CREW DAILY AND WHENEVER A CHANGE IS INTRODUCED TO THE JOB.**' He failed to take the necessary time to review and update the job steps from the original plan once he determined that the bucket truck was too short to do the job as originally planned. And he failed to provide a reasonable explanation as to why he didn't do so. The court also rejected his due diligence argument that he reasonably believed he wasn't required to physically present and review the initial form or document the changes to it as they were only 'minor.' But the changes *weren't* minor: New tasks were added to the original plan'including the cutting of the wire'and the

sequence of tasks was changed. Plus, the added task of cutting old shield wire and adding new wire brought with it the new risk of cutting wire with a current on it and putting a worker in serious danger if not safeguarded by a properly installed jumper cable beforehand. The failure to properly perform this task resulted in the worker's death. And there wasn't sufficient evidence that it wasn't practicable or reasonably practicable for the supervisor to review and revise the original plan in writing and do more than he'd actually done to satisfy his safety duty towards the workers he was supervising, and thus the defence of due diligence fails.

The court also expressed concern that the supervisor was adamant that he would never need to tell workers to jumper a line first before cutting it as this was 'linemen 101.' But people can, and sometimes do, still forget, explained the court, which is why all tasks need to be assessed to identify the risks'especially when the risk involves life or death. And that's why SaskPower has a Safety Rule Book in the first place. The supervisor simply assumed the shield wire wouldn't be cut without a jumper cable being installed first because of the basic training everyone received at SaskPower. In addition, the supervisor was doing the work with the crew members and in fact was the 'directing mind' in the work being performed. But he didn't clearly direct and supervise them to manage the safety risks.

Bottom line: The supervisor actively participated in steps leading up to the cutting of the wire, but didn't take reasonable and practicable steps beforehand to discuss the cut and hazards associated with it in the second meeting and to document the changes, said the court. Nor did he communicate before the cut that it shouldn't be made until after the jumper cable was installed. As a result of these failures, the worker was electrocuted [*R. v. Rowlett*, [2017] SKPC 012 (CanLII), March 1, 2017]. The court later fined the supervisor $20,000 [Govt. News Release, March 9, 2017].

ANALYSIS

The court in *Rowlett* concluded that the supervisor didn't exercise due diligence. He should've taken more time to ensure the revised plan was documented and communicated clearly, and the risks were evaluated fully. And he should've clearly communicated when performing the work how the cut would be made and simply told the crew members that he was going to get a jumper cable or not to make the cut until after it had been jumpered first. Such steps were 'basic and simple reasonable steps' that should've been taken to avoid injury or death to anyone. They weren't so onerous as to outweigh the benefit of saving the life of a co-worker.

The case also illustrates the importance of documentation. SaskPower required tailboard meetings and risk management plans to be documented to protect workers by preventing any confusion or conflict over the steps to be taken to manage safety risks. Essentially, such documentation ensures everyone involved in a job is on the same page. Also, these matters are documented in writing so there can be no dispute down the road as to what was discussed or not discussed and thus these documents can be invaluable evidence in a safety prosecution.

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