Who’s Liable When Ship’s Cook Falls from Gangway?

SITUATION

A ship owned and operated by an Iranian company docks at a terminal and uses an automated gangway supplied by the terminal to connect the vessel’s deck to the terminal by a set of stairs on either end of the gangway. There are signs in English posted near the gangway indicating ‘when horn sounds clear stairs.’ But the signs don’t say where to go when the horn blasts or clearly explain that the gangway and stairs will lift after the horn blasts. Also, the signs are at waist level, below the handrail and aren’t visible from every angle and approach to the gangway. The ship’s Iranian cook and a co-worker return to the ship after buying supplies at the supermarket and are walking down the gangway’s stairs to reach the ship’s deck when the horns sound. They continue on their way down the stairs. But the gangway moves, throwing the cook onto the vessel’s deck. He breaks his right hip and sues the ship’s owner (his employer) and the gangway owner for negligence. The cook, who only speaks Farsi and has limited English skills, says he didn’t see the signs because the co-worker blocked his view of them and he didn’t understand what the horns meant.

QUESTION

Who’s liable for the cook’s injury’

A. The ship’s owner, because it has a duty to remove all safety hazards from the workplace.

B. The gangway owner, because it didn’t adequately warn of the gangway’s dangers.

C. The cook, because he disregarded the horn and warning signs.

D. No one, because the Canadian worker’s comp system will cover the cook’s injuries.

ANSWER:

B. The gangway owner is liable for the cook's injuries because its signs and horn didn't adequately warn of the gangway's dangers.

EXPLANATION

This hypothetical is based on a case in which a BC court found the gangway owner liable for a cook's injuries because it failed to adequately warn of the danger created by the gangway moving. The court noted the gangway owner had a duty to ensure the safety of the cook and others using the gangway. This equipment posed an unusual danger because it moved automatically. But its owner didn't adequately warn users of the dangers through the horns and signs. For example, the signs didn't clearly indicate which stairs to clear when the horns sound or that the horns meant the gangway would move and raise away from the deck. So they were confusing even to those who spoke English, much less to someone who wasn't fluent in English such as the injured cook. Thus, the gangway owner didn't fulfill its duty to adequately protect the cook from the gangway's hazards.

WHY THE WRONG ANSWERS ARE WRONG

A is wrong because although employers do have a duty to protect workers from workplace hazards, they don't necessarily have to eliminate all hazards completely. In fact, in many cases, elimination of hazards simply isn't possible. There's a hierarchy of preferred safety measures. Generally, the employer must first try to remove a hazard. If elimination isn't possible, it must take reasonable steps to protect the worker using engineering measures, such as machine guards. If such measures aren't practicable or adequate, the employer must then use administrative measures, such as safe work procedures. Lastly, the employer can turn to the use of PPE. So here, the vessel owner did have a duty to protect its employee (the cook) from hazards. But it wasn't required to do so by removing the hazards posed by the gangway.

Insider Says: For more information about taking reasonable steps to protect workers, see the Due Diligence Compliance Centre.

C is wrong because the cook didn't disregard the signs or the horns. The signs weren't visible to him. Even if he could see them, they weren't clearly worded or understandable because he isn't fluent in English. And because the cook didn't see and couldn't understand the signs, he couldn't know that a horn sounding meant the stairs and gangway would lift away from the vessel's deck. Therefore, the cook wasn't responsible for his injuries.

D is wrong because the cook and the employer in this case are Iranian and so not subject to the Canadian no fault workers' comp system. Canadian workers' comp would cover a worker's injuries that arise out of or occur in the course of employment. So if the cook and his employer were Canadian, the cook's injuries would likely be covered by workers' comp because he was hurt on the job, i.e., while returning from buying supplies. But workers' comp only covers injuries for employers and workers who are participating in the system. In this case, neither the injured worker nor his employer were Canadian and thus they don't participate in the Canadian workers' comp system. So although the cook was injured in Canada, workers' comp won't cover his injuries.

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Ranjbar v. Islamic Republic of Iran Shipping Lines, [2014] BCSC 1983 (CanLII), Oct. 22, 2014