

Case Note

CROWE v TREVOR ROLLER SHUTTER SERVICES PTY LTD (NO 2) [2011] VSC 28

Lifting injuries, not only an issue for employers but also “Host Employers”, and their liability insurers.



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The recent decision of *Crowe v Trevor Roller Shutter Services Pty Ltd (No 2) [2011] VSC 28* (“Crowe”) is instructive to employers, “host employers” and liability insurers in relation to some of the considerations that should be taken into account to avoid liabilities arising from lifting injuries.

On Saturday, 16 November 2002 and Saturday, 11 January 2003, the plaintiff was performing overtime work for the defendant that required him to lift and move a large number of metal springs. When compressed, the springs were 1.5m in length and different evidence was given about their respective weights. On one view, some weighed 25kg and some 45kg. On another view, they varied in weight between 10-50kgs.

The plaintiff gave evidence that:

- He was required to move these springs from pallets into stillages;
- The springs were quite awkward objects to carry;
- The springs had been placed “as close to the stillages as possible” and it was difficult for the plaintiff to get his feet around them;
- He was not offered any assistance to do the work, either in respect of an overhead crane which was present or by 2 other men in the factory;
- The plaintiff said he worked “flat out pretty much” for a 5 hour period with “one, 10 or 15 minute break”;
- A similar work pattern occurred on the second occasion.

While there was significant debate over the extent to which this work caused the plaintiff’s injuries, His

Honour Justice Beach found that the 2 episodes of work did cause injury to his back.

Key Messages

An employer owes a non-delegable duty of care to its employees to take reasonable care to avoid exposing them to unnecessary risks of injury.

While this was an employee vs employer case, it is important for public liability insurers and “host employers” to be aware that they may also be found to be in breach of their duty of care. Although they may not be the direct employer, “host employers” are often the occupier of a work place and predominantly responsible for the system of and supervision of work systems, which puts them at risk when workers are injured.

While an initial workers compensation claim may be made against the employer, and statutory, no fault, benefits paid by the Victorian WorkCover Compensation Authority (VWA) pursuant to the Accident Compensation Act 1985 Vic (“ACA”), this will not stop the VWA seeking to recover those benefits paid from a negligent host employer and/or other negligent third party (pursuant to its recovery right in s.138 of the ACA) or from the worker joining the “host employer” to a common law claim.

Therefore, where there is a risk of chronic work place injuries such as backs, “host employers” need to ensure that both employees and contractors are properly:

- inducted in relation to any manual handling techniques;

- supervised;
- provided with appropriate support for the activities they are engaged in, both human and mechanical;
- provided with appropriate rest breaks during the day.

If in the case of litigation, there is a good document trail in relation to implementation of the above steps, this will always assist in defending an allegation that a work place has, so far as is reasonably practicable, ensured that the risk of a musculoskeletal disorder associated with a hazardous manual handling task affecting a worker, is eliminated.

The consequences of not taking such precautions can be expensive. In this case, the worker, who was at the time of the injury 23 and subsequently found to retain only a third of his pre-injury work capacity, was awarded:

- Pecuniary Loss Damages - \$810,941
- Pain and Suffering Damages - \$250,000

The payments made by way of statutory benefits would have to be deducted from this amount, and the claim did not include medical and like expenses paid by the VWA.

If a "host employer" or other liable party was found to be liable for these injuries, then they would also be additionally facing a claim for those statutory benefits (including medical and like expenses) by way of a VWA recovery.

Host employees and insurers of such entities need to be aware of such risks and should not only be taking steps to minimise them, but considering the possibility of accounting for such occurrences at the risk assessment/survey stage when assessing a risk.

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