

<b>Health and Safety Executive</b>		<b>Operational Circular</b>	
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**Target Audience:**  
All HSE Inspectors

### ABSTRACT OF DECIDED CASE

#### R v British Steel plc

The Court of Appeal (Criminal Division), in dismissing an appeal against conviction and sentence, rejected the application of a defence based on *Tesco v Natrass*. HSW Act s.3(1) is framed to achieve a result, the duty is cast in absolute terms subject to a defence that it was not reasonably practicable to do more, which relates only to the measures necessary to avert the risk. A corporate employer is criminally liable even if the potentially harmful event is committed by an employee who is not the directing mind of the company.

**Issue:** Application of *Tesco Supermarkets Ltd v Natrass* [1972] AC 153 to prosecutions under HSW Act ss.2 and 3.

**Act:** Health and Safety at Work etc Act 1974 s.3.

**Circumstances:** British Steel wanted to reposition a 7.5 tonne section of steel platform by cutting the platform free of its supports and moving it by crane. Sub-contractors provided 2 men on a labour only basis to carry out the job. Equipment and supervision were provided by a section engineer in the employment of British Steel. The 2 men cut the platform free of nearly all its supports but neglected to secure it. It collapsed and killed one of them. At Crown Court the prosecution stated that British Steel's delegation of

responsibility for supervision was acceptable, however, because the section engineer did not plan and supervise the operation properly they had failed in their duty under HSW Act s.3. British Steel argued that the decision in Tesco v Natrass meant if, at the level of its directing mind, they had taken all reasonably practicable steps to delegate supervision to an employee, they were entitled to be acquitted.

The judge gave a ruling that the decision in Tesco was inapplicable. British Steel was found guilty and appealed.

**Held:**

The Court of Appeal dismissed the appeal. The decision in Tesco did not provide the answer to the construction of s.3 (1). Tesco involved consumer protection, whereas health and safety required more stringent protection. The legislative techniques of the 2 statutes were quite different, the presence of a 'due diligence' provision in the Trade Descriptions Act 1968 indicates that the purpose of that Act was to penalise those at fault, not those who were in no way to blame. There is no due diligence defence in the 1974 Act. The 1974 Act is, prima facie, cast in absolute terms. The defence of so far as is reasonably practicable is a narrow one, analogous to the defence under s.29(1) of the Factories Act 1961, and simply referable to the measures necessary to avert the risk. It does not matter for the purposes of s.3(1) at what level in the hierarchy of employees that break down of the system occurred, corporate criminal liability does not arise only for the acts of the "directing mind".

The point that subject to the defence of reasonable practicability, s.3(1) created an absolute prohibition was also covered by the direct authority of 2 decisions of the Court of Appeal: R v Board of Trustees of the Science Museum [1993] 1 WLR 1171 and R v Associated Octel Co Ltd [1994] 4 All ER 1051 (affirmed by the House of Lords - The Times, 15 November 1996).

It was also recognised that the interpretation of the construction of s.3(1) must have relevance to the interpretation of s.2(1) which provides for the employer's duty

to his own employees.

**Type of Case:** Criminal.

**References:** The Times 31 December 1994. [1995] 1 WLR 1356

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**ASI headings**

Court decisions: decided cases: Health and Safety at Work etc Act 1974 s.3.

