



<b>Health and Safety Executive</b>		<b>Operational Circular</b>	
		<b>OC 183/3</b>	
<b>Review Date</b>	11/11/2001	<b>Open Government Status</b>	Fully Open
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**Target Audience:**  
**All HSE Inspectors**

**ABSTRACT OF DECIDED CASE**

**Whitfield v H & R Johnson (Tiles) Ltd**

The Court of Appeal held that a claimed breach of the Factories Act, 1961 s.72 could not be supported when the injury occurred due to an unsuspected medical condition.

**Issue:** "Likely to cause injury to him".

**Act:** Factories Act, 1961 s.72.

**Circumstances:** The plaintiff had worked for the defendants H & R Johnson Ltd for 11 years. She had a congenital weakness in her spine. H & R Johnson Ltd had no reason to suspect her condition.

Her job involved unloading tiles from a conveyor. One day while doing so she injured her back. She was subsequently unable to resume her work and left the firm.

It was argued that because of the use of the words "to him" in s.72 the occupier of a factory would be in breach of the section if a person lifting even the lightest load suffered injury because of an unsuspected condition.

**Held:** Court of Appeal.

The plaintiff's appeal was dismissed. Beldam L J (see [1990] 3All ER 426 at 434J-435A) was "unable to agree that Parliament by adding those 2 words [to him] intended so unreasonable or unlikely a result. I consider that full meaning can be given to those words read in the context of the section as a whole by holding that they were intended to make sure that the weight of the load was appropriate to the sex, build and physique, or other obvious characteristic of the employee in question. To construe the section in this way does not detract from the strict nature of the prohibition against employing persons to lift loads which are so heavy that they are likely to cause injury. Nor does it depart from an objective standard. Once it is shown that the weight of the load he is employed to lift is likely to cause injury to the particular employee, having regard to his obvious characteristics, a breach would be established. It would be no defence to an occupier or employer to argue that he personally did not foresee the

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likelihood of injury. \_\_\_

In short, it seems to me clear from the language of this section that the mischief at which it was aimed was employing persons to lift or move objects of excessive weight, or put in another way, that the likelihood of injury to the employee must arise from his being employed to lift an object of a weight which in all the circumstances, including the nature of the object, the grip he can take of it, the foothold he has, the space available and all the other relevant circumstances, is excessive for him". \_\_\_

**Type of case:** Civil; non-departmental. \_\_\_

**References:** [1990] 3 A11 ER 426.

**LIBCAT:** This item will have an entry in the \_\_\_

11 November 1991

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**ASI headings** \_\_\_

Court decisions: decided cases: Factories Act, 1961 s.72.

