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Target Audience:
All HSE Inspectors

ABSTRACT OF DECIDED CASE

Ian Peter McKay v Unwin Pyrotechnics Limited

Queen's Bench Divisional Court dismissed an appeal by HSE and cleared Unwin Pyrotechnics Ltd of charges under HSW Act s.6(1)(a) and s.6(1)(b) in relation to a prototype dummy mine; it was held not to have been designed or manufactured for use at work.

Issue: Meaning of "article for use at work" -

Test of a prototype article.

Act: Health and Safety at Work etc Act 1974 - s.6(1)(a) and s.6(1)(b).

Circumstances: On 23 March 1988, Michael Stone was injured as a result of the detonation of a prototype dummy mine (area denial munition simulator) that he was testing. All the components of the mine, the explosives, the electrical detonator and metal stand had not been assembled together before 23 March 1988 and Michael Stone was carrying out the first trials and demonstration of the dummy mine in place of Unwin's General Manager.

Michael Stone was a self-employed explosives expert engaged by a written agreement between Unwin Pyrotechnics and himself to act as a consultant in the design, testing and manufacture of the dummy mine. He would receive a commission on any future sales of the dummy mine. On 23 March 1988 he was carrying out tests on behalf of Unwins to ascertain whether or not the dummy mine would explode when hit by a flail attached to a mine clearing vehicle. The dummy mine was conceived and constructed by the joint enterprise of Michael Stone, Aardvark Clear Mines Limited, Tilnorth Limited and Unwin Pyrotechnics Limited.

On the day of the test it was intended to lay out 4 dummy mines and drive the flail machine over them causing them to explode one after the other. (The noise would be such as to prepare the machine operator for the "real thing" without the attendant risks.) Whilst Stone was in the process of

"arming" the dummy mines, one of them exploded injuring his eyes and hands. HSE laid 3 informations against Unwins alleging contravention of HSW Act s.6(1)(a), (b) and (c).

On 4 December 1989, the justices at Dover Magistrates' Court tried the case. The information alleging contravention of s.6(1)(c) was dismissed on a concession by HSE. The other 2 were dismissed at the end of the prosecution case on the basis that there was no case to answer. The justices were of the opinion "... that Unwins Pyrotechnics Limited had not at the date of the alleged offences with this dummy mine 'manufactured an article for use at work', that Michael Stone was conducting a trial of a dummy mine which he had helped develop and he was not on the 23 March 'using the article as a person at work' as required by section 6 of the Act if any offence was to have been committed ...". HSE appealed to the High Court by way of case stated.

Held: Queen's Bench Divisional Court.

Lord Justice Mann and Mr Justice Simon Brown dismissed the appeal.

In the opinion of the magistrates the questions posed by their decision were as follows:

"... were we correct in our opinion of the law that section 6(1) of the Health and Safety at Work Act 1974 does not create offences in respect of persons injured in testing and developing a pre-production prototype article for use at work and further were we also correct in our opinion that Michael Stone was not using the article as a person at work".

After examining the relevant section and listening to the submissions of both parties, Lord Justice Mann concluded that whilst he had no doubt that the injured party was a person at work,

"... to focus upon that, is in my judgement, to approach the problem from the wrong end. One has first to ascertain whether a person; that is to say the respondent, [Unwins], is one who has manufactured an article for use at work. If the answer to that be yes, then one can proceed through the paragraph. If the answer to that be no, then further progress is unnecessary ... I cannot see how it can be said that this prototype mine was designed or manufactured for use at work. It was designed and manufactured in order that it might be determined whether it could be used at work. That being the case, the matter is concluded. Whether the operation which Michael Stone was engaged upon ought to be protected by the legislation is another matter. For my part, I am satisfied that in the particular circumstances of this case there was no contravention of the section. Accordingly, I would dismiss this appeal".

Type of Case: Criminal: departmental.

References: The Times Law Report - 5 March 1991.

Solicitors Journal (Vol 135 No 10) p.313 - 15 March 1991.

Transcript by Marten Walsh Cherer Ltd CO 284/90.

LIBCAT: This item will have an entry on HSE database (LIBCAT).

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ASI headings

Court decisions: decided cases: explosives - use of: HSW Act s.6.

