[2025] JMSC Civ.154

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. SU2023 CV 03106

BETWEEN DELROY BARRETT CLAIMANT

A N D DESNOES & GEDDES LTD. DEFENDANT

IN OPEN COURT

Mr. Jason Jones Attorney-at-Law instructed by Jason Jones Legal for the Claimant

Mr. Jamaiq Charles with Ms. Nicole Taylor instructed by Myers, Fletcher & Gordon for the Defendant

HEARD: November 25, 2025 and December 19, 2025

Negligence – Employers Liability – Whether Claimant has established breach of duty of employer to provide safe system of work, sufficient staff and equipment – duty of claimant to provide sufficient evidence of breaches.

DALE STAPLE J

BACKGROUND

[1] Sometime in or about December 30, 2017, the Claimant alleges that he suffered an injury to his back after lifting some kegs of beer in place of a co-worker whilst doing work on the Defendant's production line.

[2] The Claimant alleges that he was hired as a technical operator by the Defendant company. The Defendant makes and distributes alcoholic and non-alcoholic beverages, including the iconic Red Stripe Lager Beer.

[3] The Claimant contends that he was assigned to lift kegs onto a conveyor belt and that he was injured whilst lifting a keg over a barrio. He said that as he was lifting same, he felt a pain in his back.

[4] The Defendant claims that they breached no duty of care to him as an employer and maintain;

a) that the task was a simple one;
b) the Claimant was given sufficient tools and training to do the job;
c) The injury suffered by the Claimant, if any, was as a result of him taking on a task not assigned to him and employing poor lifting techniques;
d) In any event, the Claimant had recovered from whatever injuries he had sustained from at least 2 years before instituting this claim.

[5] In the circumstances, they did not breach their duty of care to him.

[6] The Court is therefore tasked with deciding whether or not the Defendant is liable to the Claimant in negligence for his injuries.

FACTS

[7] The facts in this case are relatively straightforward. The Claimant gave his witness statement and filed it on the 2nd December 2024. It was allowed to stand as his evidence in chief.

[8] According to the Claimant he started working for the Defendant in or around 2016 on the keg line. He was around 25 years old when he started.

[9] His duties included doing quality checks, checking codes printed on the kegs, checking concentration of the solution used to sanitise the kegs, sanitizing the line, putting empty kegs onto the conveyor and removing full kegs from the conveyor and placing them on pallets **[sic] (whilst the contractors were on break).** This latter sentence will become important later on.

[10] He said he was required to manually lift the kegs onto the belt and push, pull and lift the loaded kegs from the jib crane onto the pallets. According to him he never received any **formal** (emphasis mine) training on how to carry out his task on his

arrival at the company nor throughout his tenure. He said that his predecessor showed him the basics, but there was no lesson or guidance on the safe way of carrying out the tasks.

[11] He claims he was never given a back brace or any other machine to him to assist in making the area safer. He claimed there were no safety meetings held and that they did not supervise or ensure that the tasks were carried out in a safe manner.

[12] On or about December 30, 2017, the contractor, who was working with the Claimant, went on a break and failed to return for about 3 hours. The Claimant says he was carrying out his task of putting kegs onto the conveyor and removing them and placing them on the pallet when he felt a pain in his back, shoulders and wrists. According to him, he had to reach over a barrier to put the kegs onto the conveyor and this placed pressure on his back.

[13] The Claimant was seen and treated by the company's doctor – Dr. Fisher as well as Drs. Dundas, Dixon and Barnes. He also saw a chiropractor as a consequence.

[14] The Defendant called one witness. This witness was Ms. Annalia Bucknor Black, the Occupational Health Advisor and Officer Services Manager of the Defendant. Nothing much, it was my finding, turned on her evidence.

[15] The Defendant's other witness was not able to be found in time for the trial as he had left the company and the Defendant's counsel opted to proceed without calling him or seeking to put his witness statement into evidence as a hearsay document.

ISSUES

[16] The core issue in this case is whether or not the Defendant has breached their duty of care to the Claimant as an employer. Has he established, on a balance of probabilities, the several breaches he avers in his Particulars of Claim? He alleges as follows:

(i) That they failed to set up and implement a safe working environment.

(ii) Failed to in all circumstances to take reasonable care of the safety of the Claimant;
(iii) Exposed the Claimant to an unreasonable risk of injury.
(iv) Failed to provide the necessary tools and/or equipment and/or gears to carry out the required tasks
(v) Occupier's Liability Act (particularly section 3);
(vi) Failed to provide the Claimant with any proper training;
(vii) Failed to provide sufficient workmen to carry out the tasks required.

[17] I will address each of these in turn in the analysis, but I must first examine the legal underpinnings of employer's liability.

THE LAW RELATING TO EMPLOYER'S LIABILITY.

[18] It is not disputed that the Claimant was employed to the Defendant. As his employer, therefore, the Defendant would owe a duty of care to the Claimant to have and maintain a safe place of work.

[19] The authority of ***Davie v New Merton Board Mills***[1] established that amongst the duties of an employer to an employee is the duty to take reasonable care for their safety in providing, amongst other things, a safe place of work and a safe system of work. An employer must also provide sufficient and proper tools for the employee to perform their task as well as a sufficient and sufficiently competent staff of workers to carry out the necessary tasks.

[20] The case of ***Ray McCalla v Atlas Protection et al***[2], as provided by the Claimant, also set out the duties of an employer viz their employee.

[21] The Claimant must satisfy the Court, that it was more likely than not, that the Defendant did not provide and maintain a safe system of work at their Spanish Town Road plant and as such they breached this duty of care to him.

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[1] [1959] 1 All ER 340
[2] Unreported, Supreme Court of Jamaica, 2006HCV04117, May 6, 2011

[22] Overall, the duty of the employer is simply a duty to take reasonable care for the safety of the employee. As Wolfe JA (Ag) (as he then was) said in the case of ***United Estates Limited v Samuel Durrant***[3], "This duty…was not an absolute one and could be discharged by the exercise of due care and skill."

[23] I look to the seminal case of ***Winter v Cardiff Rural District Council***[4]. In that case, Lord Oaksey set out the principle relating to the circumstances under which the duty of the employer would be properly discharged. He said as follows[5],

> *"In my opinion, the common law duty of an employer of labour is to act reasonably in all the circumstances. One of those circumstances is that he is an employer of labour, and it is, therefore, reasonable that he should employ competent servants, should supply them with adequate plant, and should give adequate directions as to the system of work or mode of operation, but this does not mean that the employer must decide on every detail of the system of work or mode of operation. There is a sphere in which the employer must exercise his discretion and there are other spheres in which foremen and workmen must exercise theirs. It is not easy to define these spheres, but where the system or mode of operation is complicated or highly dangerous or prolonged or involves a number of men performing different functions, it is naturally a matter for the employer to take the responsibility of deciding what system shall be adopted. On the other hand, where the operation is simple and the decision how it shall be done has to be taken frequently, it is natural and reasonable that it should be left to the foreman or workmen on the spot."*

[24] Therefore, the extent to which the employer is responsible for putting the system of work in place, is directly proportional to the complexity of the task to be performed. The simpler the task, the less direction required by the employer.

[25] The question of the nature and type of equipment required to complete a task, the training needed, the number of men to be assigned to the task and so forth all depend on the nature and complexity of the task being performed. Again, the

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[3] (1992) 29 JLR 468 at 470
[4] [1950] 1 All ER 819
[5] Id at p. 822-823

simpler the task, the less will be needed. So it is clear therefore that each case will and must turn on their own facts. This is because so much is dependent on what is to be done and by whom.

ANALYSIS

Failing to put in place a safe working environment

[26] The fundamental problem with the Claimant's case is the palpable lack of evidence of the fact that the environment for work was unsafe. There is no evidence from the Claimant that suggests that there was anything inherently unsafe about the working environment. Though the Claimant submitted that the Defendant failed to set up and implement a safe system of work, that was never pleaded by him. What he pleaded was a failure to set up and implement a safe working environment. These are two different concepts. In the absence of any evidence which showed that the working environment was unsafe or dangerous, I must say that the Claimant has not satisfied me, on the balance of probabilities, that his working environment was unsafe.

[27] In very very belated submissions, counsel for the Claimant relied on the authority of ***Orlando Adams v D&G Limited***[6] in support of his claim that the Defendant failed to provide a safe working environment.

[28] In that case, however, the Claimant was assigned to work in an area where he was exposed to various chemicals that were hazardous in their nature such as caustic soda, stabillion and ferisol. He was also exposed to extremely high temperatures. The Claimant contended that as a consequence of his prolonged exposure, despite repeated complaints to his employer, he developed bronchial asthma.

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[6] [2016] JMSC Civ 211

[29] The Court found that the Defendant had breached their duty of care to him as an employer. The Court did not make any express finding as to whether or not the environment was one which was unsafe. But it ultimately found that the Defendant's place and system of work caused and/or contributed to his diagnosis of bronchial asthma.

[30] I have no such similar evidence here. The Claimant posited that the kegs were heavy, weighing 77 pounds when loaded, and stacked onto pallets in heights of four (no actual height measurement was given). However, nothing about this suggests anything inherently dangerous or unsafe about this process of loading and unloading.

Failed to take reasonable care for the Safety of the Claimant

[31] Again, the Court is not certain of the Claimant's allegations here. There is no evidence to suggest that the Claimant's task was inherently dangerous or that the working environment was itself dangerous. Safety connotes a duty to not expose the employee to dangers whilst on the job. There was no evidence provided that the environment was dangerous or that the Claimant's task was dangerous requiring the employer to implement a specific safety regime.

[32] This pleading also fails in my view.

Failed to Provide the Necessary Tools and/or Equipment and/or gears to Carry out the Tasks

[33] The Claimant himself testified that he was provided with equipment to do his task. The following was revealed in cross examination:

> Q: As part of working as an operator you received safety boots, high visibility vest, safety glasses and a pair of ear muffs or ear plugs?
> A: Yes. I received these things.

[34] I find as fact that the Claimant did receive these pieces of equipment. I also find as a fact, based on the Claimant's own evidence, that he received a jib crane as part of his equipment. There was no evidence from the Claimant that the items he

received were malfunctioning or otherwise inoperative or inadequate for their purpose.

[35] There was no evidence from the Claimant that the jib crane was not adequate to perform his task. According to the evidence, the task of lifting the kegs was not the Claimant's job. That was for the contractor who worked with the Claimant. The Claimant was hired as a technical operator in the two man team.

[36] In cross-examination, the following exchange took place:

> Q: Your job was to be a technical operator at the plant?
> A: Yes Sir.
>
> Q: As a technical operator you worked on the Keg Line?
> A: Yes.
>
> Q: And, when working on the keg line, it was the usual case that there were two people working on the keg line?
> A: To some extent. If one person is on break, then there is only one person.
>
> Q: The Defendant company stipulated 2 people to work on the keg line?
> A: Yes.
>
> Q: Of those two people, one was a contractor and the other an operator?
> A: Yes.
>
> Q: The operator was primarily responsible for operating the Jib Crane?
> A: Yes. And also doing quality checks.
>
> Q: The jib crane was a machine used to lift the kegs?
> A: Yes. It aided lifting the kegs.
>
> Q: The contractor, was the one who placed the kegs on the conveying system right?
> A: Yes sir.
>
> Q: As I understand it, when working the keg line, you were the operator?
> A: Yes.
>
> Q: When the keg line was operating, you primarily operated the jib crane?
> A: Yes.
>
> Q: You received training on how to operate the jib crane?

A: Yes. From the previous person who operated the line. He gave me a walk through.

Q: You agree that you were able to safely operate the jib crane?
A: Yes.

[37] It is my finding then that the Claimant was more than likely the operator. The operator's tasks were as set out in his witness statement at paragraph 4, but I find that it did not include putting empty kegs on the conveyor and removing full kegs from the conveyor. As the Claimant clearly indicated in his witness statement at paragraph 4, this only occurred if the contractor was on a break.

[38] The Court was not given any evidence as to *how* the jib crane worked and how exactly it was used during the Claimant's tasks. The Claimant failed to provide any evidence of why the jib crane was insufficient in the performance of his tasks. This was a matter for the Claimant to present as part of his evidence of the system. In all the circumstances then, I cannot say that the equipment provided was in anyway inadequate for the Claimant's tasks. He was not required to do any sort of heavy lifting. That was, in my finding, a job for the contractor.

[39] The Claimant testified that he was not given any back brace. Counsel made repeated this allegation in his submissions. There is no evidence from the Claimant that a back brace was necessary for his job or that it would have likely made his task any easier. In the circumstances, I cannot say that this alleged failure would have made any difference.

[40] All told, this pleading also fails in my view.

Exposed the Claimant to an unnecessary risk [of] injury

[41] There is no evidence of this in my view. The Claimant's task was not one that was so complicated that it should have exposed him to an unnecessary risk of injury. Let us compare the case of ***Channus Block and Marl Quarry Limited v Curlon***

Lawrence[7]. In that case, the Respondent (the Claimant in the court below) had lost both his lower limbs during an unfortunate incident whilst cleaning out a cement mixer at the Appellant/Defendant's premises.

[42] This was a complex task. It involved more than one worker to clean the special cement mixing machine. It was recognised by the employer that the machine was dangerous and there was a safety system developed by the employer to ensure that the workers would not suffer injury whilst carrying out the task as they would have to go into the machine to use a sledgehammer to dislodge the hardened concrete. This created a clear risk of injury if the machine should be turned on accidentally whilst one worker was inside dislodging the hardened concrete.

[43] Another useful case for comparison is ***Walsh v Rolls Royce (1971) Ltd***[8]. In that case, a very experienced worker and his equally experienced and competent supervisor were performing the very simple task of moving some ladders. During the course of moving the last ladder, the appellant Claimant was injured when the back of his head hit into a beam whilst he was walking backwards with the ladder. The two men had worked out a system for moving the ladders themselves. He claimed he was injured because his fellow worker had failed to warn him of the presence of the beam. The employer was found not liable in negligence. But on appeal to the Court of Appeal, the Appellant was successful, but only partially. He was held to be 50% contributory negligent.

[44] Watkins LJ aptly summarised the reasoning of the Court of Appeal for finding the Appellant contributorily negligent as follows,

> *"The arrangement was not a very sensible one. It was, for two grown-up, very experienced workmen, a task which they could have accomplished without any trouble whatsoever and without involving themselves in any kind of risk of injury; but for some reason best*

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[7] [2019] JMCA Civ 3
[8] (Unreported) [1981] Lexis Citation 467

known to themselves they made difficult that which should have been simple. Unquestionably the plaintiff, in the circumstances, should have been able to look after himself, and the best way of doing that way by facing the direction in which he was going as he was re-entering the loading bay. So he was part author of a bad and rather silly system of work. Lord Oaksey, in Winter v Cardiff Rural District Council [1950] 1 All ER 819 at 822, [1950] WN 193 said:

"There is a sphere in which the employer must exercise his discretion and there are other spheres in which foremen and workmen must exercise theirs".

This was a simple task, the method of doing which could be safely left to the intelligence and experience of these two workmen. They did not, between them, do a very good job of it."

[45] Another illustration of this is provided by the case of *King v Smith et al*[9]. In that case, the plaintiff was a window cleaner employed by the first defendant, whose rule book for window cleaners provided that windows above six feet from the ground must be cleaned, as far as possible, from the inside or by sitting on the window sill, and that, if any part of the window could not be cleaned except by standing on the sill, the cleaner must secure his safety belt rope, if possible, to a structure able to support his weight should he fall, or to use fitted hooks where specially provided. The plaintiff was cleaning a second-floor window, in an office building occupied by the second defendant, which had no attachment for a safety harness, and, because there was a desk against the window, the plaintiff could not clean it by sitting on the sill. He tried to open the window from the top to clean it from inside, but the sash stuck and he went out onto the sill to clean it instead. Having cleaned the window, he reached inside to try and get back into the room but his hand slipped on a piece of paper pinned inside the window frame. He fell 35 feet and suffered serious injuries. In the plaintiff's action in negligence the judge gave judgment against the first defendant for 70 per cent. of the plaintiff's damages to be assessed, having found contributory negligence of 30 per cent. The 1st

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[9] [1995] ICR 339

Defendant appealed. On appeal to the Court of Appeal it was held that the first defendant was in breach of his duty of care to the plaintiff in failing to instruct the plaintiff to clean from inside windows more than six feet from the ground which, if in proper working order, would have been capable of being so cleaned and not to go out on the window sill unless there was safe anchorage for a harness; and that employers who could have protected themselves by explicit instructions but did not do so must bear the major share of the blame and the court would not interfere with the judge's apportionment.

[46] So the above case illustrates that there was an inherent risk in cleaning a window of such a height. So much so that it required the employer to give **specific** instruction to the employee for that dangerous task.

[47] It is my finding therefore, that this pleading also fails.

Failed to Provide the Claimant with any Proper Training

[48] It is my finding that the Claimant did receive adequate training. The Claimant says he was given training, albeit informally, from his predecessor in the operating of the crane. I also find it more than likely that he received training from the same predecessor in the other functions of the role of operator.

[49] The following evidence was revealed in cross-examination:

> Q: You received training on how to operate the jib crane?
> A: Yes. From the previous person who operated the line. He gave me a walk through.
>
> Q: You agree that you were able to safely operate the jib crane?
> A: Yes.
>
> Q: You were also trained as an emergency medical responder by the Defendant?
> A: Yes.
>
> Q: This gave you a basic understanding of body function and common medical emergencies at the work place?
> A: Yes.

[50] It is my finding that there was no evidence of formal training given to the Claimant. Counsel for the Claimant also highlighted this in his submissions and emphasised that the absence of formal training led to the injury. However, the absence of formal training does not mean that there was no adequate training. In fact, on his own evidence, the Claimant was able to safely operate the jib crane and do his duties for over 2 years with the simple walk through that he received from his predecessor. In my view then, the Claimant received adequate training for his assigned task.

[51] The problem arose when the Claimant decided to take on a task to which he was not assigned of his own volition and without the consent of the Defendant.

[52] There is no evidence from the Claimant that the Defendant knew that the Claimant and the contractor had this informal arrangement between them. The Claimant said in cross-examination that this arrangement was the norm – that is the Claimant would step in and do the contractor's work when the contractor took a break.

[53] The Claimant did not plead that the Defendant knew of this arrangement yet allowed it to persist. The Claimant's pleading at paragraph 3 of his particulars of claim was that his job, "…included heavy lifting without proper training, appropriate gears, and sufficient workmen". But heavy lifting was not part of his job based on the evidence. Therefore, in my view, there would be no need for the Defendant to give the Claimant any additional training on the lifting and loading of kegs onto the conveyor. In fact, his evidence is that he only did the lifting and loading of kegs when the contractor was absent which was outside his scope of employment.

[54] In my view, this pleading also fails.

Failed to Provide Sufficient Workmen to Carry Out the Task

[55] I also find that this pleading fails.

[56] The evidence, as revealed in cross-examination of the Claimant, was that the two man team was adequate. The problem only arose when the contractor decided to take a break. There was no pleading about this fact and its impact on the Claimant in the Particulars of Claim.

[57] Here is what was said in cross-examination:

> Q: Look at paragraph 9 of your witness statement. Look at the first sentence. You said the contractor went on break and you were the operator that day?
> A: Yes.
>
> Q: You agree that no one instructed you to fill the role of contractor?
> A: I agree. But that is the norm. That would be the agreement.
>
> Q: That agreement was between you and the contractor?
> A: Yes.
>
> Q: Not between you and D&G?
> A: Correct.
>
> Q: Based on your agreement with the contractor on the keg line, you would step into that role?
> A: Yes.
>
> Q: You received training on how to fill that role?
> A: Yes. Briefly. The training was brief.
>
> Q: When you elected to fill that role, you were able to safely fulfil that role. No accidents?
> A: Yes. No. I was not safe. When I said yes earlier, maybe I did not understand what he was asking.

[58] As I indicated earlier, there is no pleading that the Defendant knew of this practice; or that they knew of this practice and allowed it to continue; or that they knew of this practice and took no steps to train the Claimant in this new task.

[59] That the Claimant said that he received training for that role does not translate to the Defendant sanctioning that arrangement. He also gave no evidence as to the source of this training.

[60] Then there was this additional bit of evidence from cross-examination:

> Q: The two man keg line system, based on your experience working for the Defendant, it was generally sufficient to get the kegs where they needed to be?
> A: Yes.
>
> Q: So to fulfil the function of the keg line, the two man keg line team was sufficient?
> A: Yes.

[61] It is my finding that the two man operation for the keg-line was adequate. However, when the contractor took a break, it became inadequate. There is no evidence that the Claimant reported this deficiency to the Defendant and they did nothing about it. In fact, there is no pleading that the Defendant was aware of this deficiency that arose when the contractor went on break and failed to remedy the system.

[62] That was not the way the Claimant's claim was pitched.

Failing to Provide a Safe System of Work

[63] I mention this head as counsel for the Claimant made submissions on same. However, it was never pleaded as a particular of breach of duty. It is incumbent upon counsel to properly plead their cases. Whilst the strict rules around pleadings have been relaxed since the implementation of the Civil Procedure Rules and the availability of witness statements, there are still strict rules of pleadings under rules 8.9 and 8.9A.

[64] You must still set out your case; you must still set out your main factual allegations; you will not be allowed to rely on factual allegations in evidence where they could have been pleaded but weren't (unless the Court allows).

[65] In any event, I did not find that the Claimant's evidence revealed any inadequacy to the system of work that was known or ought to have been known by the Defendant but was not reasonably acted upon which led to the Claimant's injury.

CONCLUSION

[66] In my view, the Claimant has failed to satisfy me that it is more likely than not that the Defendant breached its duty of care as employer to him, their employee.

[67] Again, the duty of the employer is simply to do what is reasonable. According to Lord Tucker in the case of ***General Cleaning Contractors Ltd v Christmas***,[10] "Their only duty is to take reasonable steps to provide a system which will be reasonably safe, having regard to the dangers necessarily inherent in the operation."

[68] There is simply not sufficient evidence from the Claimant to show that the Defendant has failed to take reasonable steps to provide a system that was reasonably safe having regard to the dangers necessarily inherent in the operation.

DISPOSITION

1 Judgment for the Defendant;
2 Costs to the Defendant to be taxed if not agreed.

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Dale Staple
Puisne Judge

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[10] [1953] AC 180 at p. 195