LITIGATION - CANADA

Saskatchewan Court of Appeal confirms acquittal following workplace fatality in grain terminal

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The Saskatchewan Court of Appeal has dismissed the crown's appeal of the acquittal of a Saskatchewan employer in a case involving a worker who died of suffocation in a grain terminal.(1) The court confirmed that the trial judge had made no error in finding that the elements of the charges had not been proven beyond a reasonable doubt.(2)

The crown argued, among other things, that a workplace injury or death is proof or evidence of a violation of the occupational health and safety legislation. The Saskatchewan Court of Appeal noted that this issue did not appear to have been settled by the courts and referenced a recent Alberta Court of Appeal case, where leave to appeal was granted regarding that same issue.(3)

The court reviewed the existing case law and found that where – as in the case before it – the crown had particularised a charge, the elements of the alleged contravention under the legislation were not necessarily established by proof of the injury or death of an employee at the workplace. While proof of an accident may be enough to establish the elements of the general charge that an employer failed to ensure the health and safety of an employee, where the crown has particularised a charge, it must prove all of the necessary elements.

In this case, the court agreed with the trial judge's finding that the crown had failed to prove the elements of the charges. It found that the worker had learned through training that he was not to enter a confined space, such as the receiving pit, until he had received the necessary training and safety procedures for doing so. In addition, the usual procedure to unplug a blockage was a simple process that required no specific training or supervision. The trial judge had also made a finding of fact that the deceased had not been told to enter the receiving pit or unplug the blockage; he had been told only to look in the pit. Therefore, the employer was not obliged to instruct him on how to perform those other tasks. Finally, while the court acknowledged that employers have a positive duty to ensure employees are meaningfully aware of hazards, the trial judge's findings about the training and workplace culture of safety did not lend themselves to a finding that the employer had failed in its duties to the employee.

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Endnotes

(1) *R v Viterra Inc*, 2017 SKCA 51 (CanLII).

(2) *R v Viterra Inc*, 2016 SKQB 269 (CanLII).

(3) *R v Precision Diversified Oilfield Services Corp*, 2017 ABCA 47.