

Fine over death of ‘careless’ employee

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The NSW Industrial Court has reminded employers they have an obligation to factor into safe work systems any circumstances in which workers are inclined to be careless, inattentive or foolhardy.

Employed by St Mary’s Tyre Service Pty Ltd, a worker was killed when a tyre exploded as he was attempting to remove the tyre from a truck. He had been instructed to inspect the tyre only.

A field service request form issued to the worker by his employer clearly stated: ‘Inspect. Ring back if tyre and wheel is still on unit.’

He was *not* instructed to undertake any work on the tyre beyond the visual inspection.

Additional supervision

Justice Frank Marks found that the employer had failed to provide a safe system of work, despite the unauthorised activity of the worker, noting that additional supervision may have been required.

‘Communication of the exact limits of the work to be performed by the employer to the third party client with an exhortation to ensure only that work that was to be performed by the employee in the manner specified might require a further layer of supervision within many organisations,’ he said.

Foolish acts must be guarded against

The Court also noted that employers must guard against ‘careless, inattentive or even foolish’ workers.

‘On one view of it, as stressed by the defendant (employer), its breach of the Act consisted of its failure to instruct Mr Butler (worker) not to perform any work on the tyre and to reinforce this in some way,’ he said.

‘The prosecutor submitted, however, that if Mr Butler had been properly instructed and trained about the risk of injury associated with performing work in and about the tyre without ensuring that it had first been deflated, it is more likely that he would have been conscious of the danger of what he was doing at the time of the incident and therefore less likely to have done it.’

‘Given that the work that Mr Butler attempted to carry out, albeit not part of any instructions that he was given, was highly potentially dangerous, but noting that it was work that was associated with the kind of work that he carried out, I regard the failure to put in place an appropriate system of instruction, training and supervision as being a serious one.’

St Mary's was convicted and fined \$85,000 and the court took into account the employer's remorse, contrition, cooperation with WorkCover and allowed a 25% discount for an early guilty plea.