Employer not liable for an employee’s practical joke on a colleague which caused hearing loss

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In the recent case of Chell v Tarmac Cement and Lime, the Court of Appeal said that an employer was not liable for an employee's practical joke which injured a contractor working at its site. The prank had not been done "in the course of employment" and nor was it realistic to expect employers to take steps to prevent horseplay in the workplace.

What happened in this case?

Mr Chell was employed by Roltec and contracted to work for Tarmac Cement and Lime Ltd (**Tarmac**) at one of its quarry sites. Tarmac's employees were unhappy about the use of contractors at the site, fearing that they would be replaced by them. Tensions grew between the employees and contractors.

One of Tarmac's employees, Mr Heath, decided to play a prank on Mr Chell. He brought two explosive pellets into work and placed them on Mr Chell's work bench. He struck them with a hammer, causing them to explode. As a result, Mr Chell suffered a perforated eardrum, hearing loss and tinnitus.

Mr Chell brought a personal injury claim against Tarmac arguing that they were:

- vicariously liable for the negligent actions of Mr Heath; and/or
- negligent for breaching their own duty to take steps to prevent a reasonably foreseeable risk of injury.

The Judge dismissed the claims. Mr Chell's appeal to the High Court was dismissed and he appealed again to the Court of Appeal.

What was decided?

The Court of Appeal dismissed the appeal.

Tarmac was not vicariously liable for Mr Heath's prank. In order to be vicariously liable, the prank must have been done "in the course of employment". For this to be the case, the prank would need to be closely connected to the field of activities that Mr Heath was authorised to do in his job. The Court found that this not the case. Mr Heath had brought the explosive pellets into the workplace – it was his own equipment and did not belong to Tarmac. Hitting the pellets was not a direct part of his work and nor was it in the general field of activities that he had been authorised to do.

Nor had Tarmac been negligent. The fact that there were underlying tensions in the workplace and that heavy and/or dangerous equipment was available was not enough to create a reasonably foreseeable risk of injury. There had been no threats of physical violence from Mr Heath to Mr Chell, or more generally. Even if there had been such a risk, the only relevant risk was a general risk of injury from horseplay. However, the Court said it would be unreasonable and unrealistic to expect employers to have a system in place to ensure that employees did not engage in horseplay.

What does this mean for employers?

This is a welcome decision for employers which underlines that they will not be liable for anything and everything that their employees do at work. There must be a sufficiently close connection between the wrongful act and the errant employee's job role and activities. The fact that the employee's job provides them with the opportunity to commit a wrongful act is not enough to establish a sufficient connection. There is a distinction between cases where the employee is misguidedly attempting to further his employer's business interests and cases where the employee is simply "on a frolic of his own"

and pursuing his own interests. An employee acting to further a personal vendetta is likely to be in the latter camp

Nevertheless, it would be sensible for employers to do their best to avoid this kind of situation arising in the first place (and spending the time and money fighting legal cases). Employers should ensure that employees understand that practical jokes are not tolerated in the workplace. Policies and training should reflect the fact that such jokes may breach health and safety rules and may also amount to bullying and harassment. Staff should understand that such behaviour could lead to dismissal.

Chell v Tarmac Cement and Lime Ltd

If you would like to discuss any issues arising out of this decision, please contact Amanda Steadman (amandasteadman@bdbf.co.uk) or your usual BDBF contact.

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