HIGH COURT OF AUSTRALIA

Public Information Officer

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BRETT GEORGE JERZY CZATYRKO v EDITH COWAN UNIVERSITY

The University failed in its duty of care to Mr Czatyrko by not providing him with a safe system of work, the High Court of Australia held today.

Mr Czatyrko, 43, was a general assistant at the University in 1997 when he was injured while loading boxes of books and documents on to a truck with colleague Reece John Fendick. The truck had a hydraulic lifting platform which emitted a loud noise when being raised and a clanging sound when it reached its full height but no sound was emitted when it was lowered. Both men loaded boxes on to trolleys and took them up into the truck with the platform. When they were told they needed to hurry, Mr Fendick went back and forth collecting boxes on his trolley while Mr Czatyrko arranged the boxes inside the truck. When the truck was almost full and Mr Fendick was taking the platform down Mr Czatyrko stepped backwards and fell heavily.

He sued the University in the Western Australian District Court for damages for negligence arising from an alleged failure to provide safe equipment and a safe system of work. Mr Czatyrko claimed the University failed to take reasonable precautions for his safety by not providing a warning device to indicate that the platform was descending, by instructing him and Mr Fendick to do their work hurriedly and in a manner that ignored safety issues, and by failing to have a system in place requiring that an employee lowering the platform alert other employees. The University denied liability and contended that Mr Czatyrko's injuries were caused by his own negligence because he failed to look behind him.

District Court Judge Peter Martino awarded him $379,402 after finding that the University was entirely responsible. Judge Martino held that the University had exposed Mr Czatyrko to unnecessary risk of injury, that it was foreseeable that Mr Czatyrko would not realise the platform had been lowered, and that his belief that the platform was in place when he stepped backwards was reasonable. The University successfully appealed to the Full Court of the Supreme Court of WA which held that Mr Czatyrko was under an obligation to take reasonable care to avoid foreseeable risk of injury to himself and that his injuries were caused by his own negligence. He then appealed to the High Court.

The Court unanimously allowed the appeal. It held that employers must take reasonable care to avoid risks of workplace injury. Employers must take into account possible thoughtlessness, inadvertence or carelessness, particularly with repetitive work. In its failure to implement necessary safety measures the University was in breach of its duty to take reasonable care to prevent the risk of injury. The Court held that the issue was not simply of failing to warn Mr Czatyrko of a risk, but of creating a risk by failing to adopt a safe system of work.
Repetitive work in a diminishing space under pressure to do the job quickly left wide scope for inadvertently stepping backwards without noticing whether the platform was raised.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*

Address: PO Box 6309, Kingston ACT 2604 Telephone: (02) 6270 6998 Facsimile: (02) 6273 3025
e-mail: fhamilton@hcourt.gov.au