

RECENT DECISIONS

Section 151Z: Watch your step! Negligence not proven against occupier

Kalolane Pty Limited v Hungry Jack's Pty Limited [2015] NSWDC 82 (22 May 2015)

[Link to decision](#)

Summary

The employer failed on a claim against Hungry Jack's seeking to recover compensation paid to and on behalf of a delivery driver for injuries suffered as the result of a slip and fall at their premises. The employer was unable to satisfy the court that any negligence on the part of Hungry Jack's was proven or causative of the worker's injuries.

Background

The worker had driven to the Hungry Jack's store at Muswellbrook on 5 April 2013 arriving at about 9am and commenced unloading goods from the rear of his truck.

After placing a number of boxes onto a trolley, he then attempted to alight from the rear of the truck when he slipped and fell to the ground sustaining injury.

The employer contended that the worker had walked through some grease at the store at a point during the delivery and that was what caused him to fall from the back of the truck.

The Proceedings

The worker gave evidence that the floor inside the main doorway of the Hungry Jack's store including a ramp leading up to that area, was greasy and had water on it. The grease had then tracked onto the soles of his shoes that had caused him to slip and fall.

In cross examination, the worker could not recall precisely what had occurred when he attempted to alight from the back of the truck and the Court was not persuaded that he had slipped because of grease on his boots noting that the worker's evidence was 'just as consistent with a misstep beyond the rear of the truck as it is with a slip.'

Hungry Jack's tendered evidence about the system of cleaning, to show that the floor of the store was cleaned with hot water and degreaser every night while the surrounding concrete area was high pressure cleaned early every second morning. It was conceded that a grate area, where the grease and water was directed during cleaning, was greasy; however the worker did not traverse this area. As this evidence was not directly challenged by the employer, the Court was not satisfied that the ramp from the doorway had grease on it.

The Court held that the evidence failed to establish that Hungry Jack's had breached any duty of care that it owed to the worker.

Implications

While civil liability claims including actions against occupiers, remain a viable avenue for recoveries, careful consideration must be given to the evidence of the worker as well as any systems or processes that may have been put in place by the occupier. Obtaining as much information as possible about the systems and processes as well as any contemporaneous evidence of the mechanism of injury will often be vital to the outcome of the recovery action.

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