

Some Lessons in Officer Due Diligence

The case of *Maritime NZ v Anthony Michael Gibson*, 2024, which resulted in a \$130,000 fine and \$60,000 in costs against the CEO of the Ports of Auckland, gained attention for the size of the fine. The judgement also contained some timely advice.

1. You need to be personally involved and proactive in relation to health and safety issues and not just rely on others – **get out of your seat** and talk with people and understand how things actually work – i.e. work as done v work as imagined. In smaller organisations where the “officer” is directly involved in the work this will be relatively easy. But it is also easy to become complacent and not see issues as a consequence. Periodically standing back and assessing risks is an antidote for this issue. Better still, consider an independent review of your workplace.

Quote from Judgement: The officer must also acquire and maintain sufficient knowledge of the operations of the PCBU and the work actually carried out “on the shop floor” to adequately identify and address actual workplace hazards and risks. S80 (g)

2. You can't rely on those with health and safety duties within the organisation. Assume the person reporting is massaging the picture – **ask questions**, verify and interrogate the information you receive. And monitor the right things in the first place.

Quote from Judgement: An officer cannot ... simply assume that the information they receive from their subordinates as to the adequacy or effectiveness of the PCBU's health and safety system and hazard controls is accurate and sufficient. An officer must be proactive in relation to health and safety issues and in a position to properly monitor, verify and interrogate the information they receive. S 80 (j)

3. Do not assume **no news is good news**. More than likely, it isn't.

Quote from Judgement: An officer cannot assume that the PCBU is compliant with its duties under the HSWA in the absence of being told otherwise. S 80 (j)

4. Have a regime of **monitoring or auditing** – including independent audit - to ensure that those systems and processes are achieving their purposes.

Quote from Judgement: Due diligence also requires the officer to engage upon, or arrange, an effective process of monitoring, review and/or auditing of the PCBU's systems, processes and work practices to ensure that those systems and processes are achieving their purposes and that relevant safety standards and policies are, in fact, being adhered to. S8 (k)

There are changes proposed in the Bill currently under consideration, but these do not change these fundamentals.