

In the Court of Appeal Civil Division

Neville

-v-

Trafford plc

Trafford Plc is a large UK based Multi-national company engaged in the production, storage and distribution of dangerous chemicals used to manufacture fertilisers. It occupies a factory site in Wales. The company has won many awards for the care it takes in training staff to handle such chemicals. Anxious not to lose valuable expertise, it offers retired ex-employees the opportunity to return on a part-time basis to help with training new staff. The ex-employees are allowed to retain their protective clothing for a small fee and their names are kept by the company on a register of those willing to help.

In December 1999, Trafford plc was faced with a severe shortage of workers due to holidays and a flu epidemic. Concerned about the safety implications of being short staffed and reluctant to close the plant and lay off workers just before Christmas, the company took the following steps:

Letters were sent to all retired staff living within 50 miles of the factory asking them to work part-time over the Christmas holiday period. The staff were to sign a fixed-term agreement under which they are designated "part-time labour only contractors" and are paid a lump sum based on hours worked plus a £500 Christmas bonus. They were under no compulsion to work any set hours but would be called in as and when required. 10 ex-employees, including Messers Keane and Scholes agreed to resume work on these terms.

The following events occur when the new staff begin work:

Ferguson, Trafford Plc's on site manager, after checking the work records of all the new employees requires Keane and Scholes to form a work details and fill a vat with the nitrogen compounds, which form the basis of fertilisers. Ferguson tells the workers to use the small loading crane rather than the large crane because although the job will take longer, the small crane is more manoeuvrable in the small space and there is less likelihood of accidents. After Ferguson departs, Keane who has 20 years of experience working for Trafford insists on using the large crane. In the process of loading the vat, the crane, due to the negligence of the crane driver and the other worker who was directing its operation, hits the side of the vat causing a spark that ignites the mixture. The workers were unscathed but an office worker, Neville, was seriously injured by flying debris.

Neville took action against Trafford Plc. At the trials Beckham J held in awarding damages to Neville that:

1. Keane and Scholes were employees of Trafford and thus Trafford could be vicariously liable for their actions.
2. In disobeying Ferguson's direct instructions Keane and Scholes were not acting on a folly of their own and were still acting in the course of their employment.

Trafford Plc now appeal on the following grounds:

1. Keane and Scholes were not employees of Trafford Plc but independent contractors. As such Trafford Plc could not be held vicariously liable for their actions.
2. In disobeying Ferguson's direct instructions Keane and Scholes put themselves outside the course of their employment thus Trafford could not be liable for their actions.

This problem is taken from the Weekly Law Reports Competition 2001, was set by David Bray of the University of Essex and is provided courtesy of ICLR.