Gaughan v Straits Instrumentation Pte Ltd and Another
[2000] SGHC 28

Case Number : Suit 419/1999

Decision Date : 28 February 2000

Tribunal/Court : High Court

Coram : Judith Prakash J

Counsel Name(s) : Lisa Sam (Donaldson & Burkinshaw) for the Plaintiff; David Khong (Wendy Wong & Partners) for the first defendants; Muthu Arusu (Allen & Gledhill) for the second defendants

Parties : Gaughan — Straits Instrumentation Pte Ltd; Another

Employment Law – Employees' duties – Duty to provide sufficient instructions on parameters of job – Extent of duty

Employment Law – Employers' duties – Duty to devise safe system of work for performance of work done by independent contractors

Employment Law – Employers' duties – Employee-supervisor assisting persons being supervised – Whether such act outside course of supervisor's employment – Whether supervisor under obligation to assist

Tort – Negligence – Whether plaintiff's injuries caused by negligence of first defendants' workers

Tort – Negligence – Whether employee acted within course of his employment – Whether employers liable for breach of duty

: ***Synopsis***

The second defendants are a ship owning and operating company incorporated in the United Kingdom. The plaintiff entered their employ in 1982 as a junior radio officer. By 1996, the plaintiff had attained the rank of second officer (radio) and in April 1996, the second defendants assigned him to take up this position aboard their vessel `Cardigan Bay`.

In May 1996, the vessel was dry-docked at Sembawang Shipyard Ltd, Singapore, for the purpose of modifying the main mast in order to qualify the vessel to undertake the American trade. The main contractors for the works were Sembawang Shipyard Ltd (`Sembawang`) and they in turn employed the first defendants, another Singapore company, as sub-contractors to carry out various portions of the works.

The works included the removal of all aerials, lighting and equipment (including the radar) from the main mast, the subsequent modification of that mast and the re-siting and re-fitting of the objects removed onto the modified mast. The plaintiff had been asked by the second defendants` superintendent, Mr Alan Turtle, to `oversee` the mast modifications. His job was to ensure that the equipment was not damaged by the first defendants in the course of removal or re-siting.

One of the items which had to be taken off the mast was a radar antenna. This work was undertaken on 27 May 1996. The first stage of the work was the removal of the nuts and bolts of the antenna. This was done by two of the first defendants` workers, Lim and Letchumanan (`Letchu`). They then attached strops to the antenna and attached it to a dock-side crane. The plaintiff provided a guide rope for the lowering operation and directions to the shore crane were given by the first defendants` foreman, one Ramasamy (also known as Raja), who was at the starboard bridge wing.

The radar antenna was lowered onto the starboard bridge wing by the crane. It then had to be moved into the wheelhouse for storage while the mast modification works were undertaken. It was a long narrow piece of equipment but heavy, weighing approximately 186 kg. Its heaviest portion was the middle where the motor was attached.

The only way of moving the antenna into the wheelhouse was to physically carry it in. It was generally agreed that four men were needed for this job. The plaintiff`s story is that the first defendants had only three workers available at the time and that he stood in as the fourth man and assisted them in the lift. He also directed the operation. It took two lifts to get the antenna into the wheelhouse. At the end of the second lift, the antenna was placed next to the chart table. The plaintiff then initiated a third lift in order to reposition the antenna slightly. According to him, on this final lift, two of the first defendants` workers failed to lift or take any of the weight. Upon lowering the equipment back to the deck, the plaintiff felt a severe pain in his lower back.

The plaintiff`s pain continued over the next few days. On 1 June 1996, he visited the shipyard clinic and was given some painkillers and a deep heat rub by the doctor in charge. The plaintiff continued to work on board the vessel throughout the period that it remained in dry-dock and during its post dry-dock voyage to New York. This was despite his severe back pain, discomfort and worsening sciatic pain from the time of the accident. On 5 August 1996, the plaintiff left the ship and was flown home to the United Kingdom from New York.

The day after he arrived home, the plaintiff saw his general practitioner who thought he was suffering from a hamstring pain. The pain persisted, however, and on 23 August 1996, the plaintiff was declared unfit for duty. Subsequently, he was referred for physiotherapy. The physiotherapy started in October 1996 but did not relieve the plaintiff`s pain. In November and December 1996, he was given lumbar epidural injections. Thereafter he had physiotherapy and, by March 1997, he had improved sufficiently to be declared fit for work.

On 8 April 1997, the plaintiff rejoined Cardigan Bay. He worked on board Cardigan Bay until July 1997 and then joined another vessel belonging to the second defendants. On 24 March 1998, whilst he was on leave from the subsequent vessel he was involved in a road accident. This caused a flare up of his previous symptoms and over the ensuing months he was unable to go back to work and underwent a great deal of medical treatment. On 9 November 1998, the plaintiff was found permanently unable to meet medical fitness standards for the Merchant Marine due to recurrent lower back pain. The plaintiff retired from the Merchant Marine from 1 December 1998.

The plaintiff instituted this action on 15 March 1999. He alleges that his back injury was caused by the negligence of the first defendants and/or of that of the second defendants. As regards the first defendants, he relies on the negligence of their workers in the lifting procedure which resulted in his injury. As for the second defendants, his contention is that they were negligent in failing to devise or operate a safe system of work and thereby exposed him to the foreseeable risk of injury from the carrying operation.

Issues

There are both factual and legal issues to be decided. The factual findings I have to make relate to what actually happened on 27 May 1996 and whether, and if so, how, these events led to an injury to the plaintiff`s back. The legal issues arise more in relation to the second defendants and revolve around the question of whether they were in breach of their duty to provide the plaintiff with a safe system of work.

The starting point is the fact that the vessel was placed in dry-dock for the purpose of mast modification works to be effected by Sembawang and their sub-contractors, the first defendants. Among the jobs sub-contracted to the first defendants was job No 1841 which required them to mark and remove all the electrical fittings and cables on the main mast so as to facilitate the renewal of the main mast. On completion of the mast renewal, the first defendants were to re-locate all the electrical fittings and cables on the mast. The plaintiff was not shown this work order but he was aware of the first defendants` role. To quote his own affidavit: `the first defendants and their servants or agents were off-shore contractors appointed to make various modifications that had to be effected on the main mast involving the removal of all aerials, lighting and equipment (including radars) and the re-siting and fitting of the same onto the new mast`.

As for the plaintiff`s own role, in his affidavit he stated that he had been instructed to oversee the main mast modification at dry-dock by Mr Alan Turtle (dry-dock superintendent) and Mr Brian Mullan (electrical superintendent) both employees of the second defendants. There was a lot of important work to do in the dry-dock involving all the electrical equipment on the main mast and Mr Mullan had personally selected him for the dry-dock voyage. In court, the plaintiff added that he had been told that his job was a hands-on job and that he should `get stuck-in`. He also agreed that his role was to ensure that the equipment was not damaged by the first defendants` workers during the operations.

Did the second defendants instruct the plaintiff to lift the equipment?

The first factual issue that arises is whether the plaintiff was instructed by the second defendants to participate in the lifting of the equipment. The plaintiff`s affidavit did not make such a direct allegation. There he said that the master of the vessel, Captain Lax, and himself, had agreed that the antenna must be placed in the wheelhouse so that it would not be damaged by general dry-dock activities. He said that the overall distance that the antenna had to be moved was approximately 20 feet and that it had to be lifted over the sill and through the wheelhouse door. While the antenna itself was not particularly heavy, the attached motor/turning mechanism was considerably heavier and the shape and length of the equipment made it difficult to manoeuvre. He then went on to state that three workers of the first defendants had assisted him in the lifts and to describe the procedure adopted in the lifts. The affidavit did not mention of exactly how he had come to participate in the lifting exercise.

The plaintiff amplified this evidence considerably during cross-examination. He asserted in court that the issue of placing the antenna in the wheelhouse had been raised by him again with the master and had been discussed three times in all: the first time when the decision to put it in the wheelhouse was made and the next two times on 27 May itself, both before and after the antenna was brought down from the mast. He was asked when the agreement referred to in his affidavit on the placing of the antenna had first been made. His reply was that Captain Lax had spoken to him shortly after the vessel arrived in dry-dock, maybe around 17 May, to say that the antenna should be stowed in the wheelhouse.

The plaintiff went on to say that this instruction to stow the equipment in the wheelhouse had been repeated to him on the morning of the lift by Captain Lax. He had spoken to the captain on the bridge wing at the time when the strops were being attached to the antenna in order to bring it down onto the deck. At that point he asked the master whether the antenna could go ashore to be stored in a warehouse. The answer was no. Then, once the antenna had been placed on the bridge wing, he had gone to look for the captain to discuss its stowage. When he found the captain in the wheelhouse five minutes later, the captain said that the first defendants` workers would give him a hand to move

the equipment into the wheelhouse, thus implying that the master had already spoken to the workers whilst the plaintiff had been looking for him.

The master`s evidence was different. He was not sure whether he had informed the plaintiff in the first place that the equipment was to be installed in the wheelhouse. He said that this instruction would have been given to the plaintiff either by himself or by Mr Turtle or by the chief engineer, Mr McLean. He was, however, certain that he did not speak with the plaintiff again on this issue on 27 May 1996 or that on that day the plaintiff had made any suggestion to him to have the equipment brought ashore or sent to Kelvin Hughes, the manufacturer, for an overhaul.

Both the defendants submitted that the plaintiff`s evidence on the two conversations with the master on 27 May including the instruction to participate in the lift should not be believed. They pointed out that neither of these alleged conversations had been mentioned in the statement of claim, his affidavit of evidence in chief or in the opening statement even though he had been thinking of taking legal action against the second defendants from as early as the end of 1996 when his memory of what had happened would have been much fresher and his recollections could have been noted down for later use. Further, before he went into the witness-box, the plaintiff`s case was that as the second officer (radio), it was part of his duty to ensure that the equipment was not damaged by dry-dock activities and, as it was put in his opening statement, at all material times he was directed by his employer to ensure that their expensive equipment was safe and undamaged by dry-dock activities. In view of what the plaintiff was suing for, it was significant that there was no mention of the alleged direct instruction that he should carry the antenna into the wheelhouse with the assistance of the first defendants` workers. Neither did he in his correspondence with the second defendants before starting the action, mention that he had been injured because he had complied with the master`s instructions to carry the equipment.

I had difficulty believing the plaintiff on this aspect of his evidence. Quite apart from the fact that his responses could have sprung from his realisation that I found factual deficiencies in the formulation of his case (as I pointed out to his counsel during her presentation of the plaintiff`s opening statement), the plaintiff`s account of what had happened on 27 May and why he had found it necessary to speak to the master twice that day on the movement of the antenna was not coherent or probable.

The plaintiff was not able to explain why he needed to speak with Captain Lax twice that morning on the storage of the equipment in the wheelhouse when such instruction had already been given to him around 17 May 1996. The plaintiff had agreed that once the captain had made a decision it was not open to him to question that decision. As a good officer (a description both he and the second defendants would agree applied to the plaintiff) it was improbable that he should thereafter have continued to press the point about taking the equipment ashore. He was not able to offer any satisfactory explanation, either, as to why he needed to seek Captain Lax`s instruction for the third time after the equipment was brought down onto the bridge wing. The plaintiff`s explanation for this third conversation was that he was not re-opening the issue of the storage area but simply seeking the captain`s direction on how the antenna was to be moved into the allotted room. This was an improbable explanation. The plaintiff clearly knew that it was the job of the first defendants to dismantle the equipment and move it from the main mast onto the bridge wing. Yet he claimed that he had no understanding at all as to who was to move the equipment from the bridge wing into the wheelhouse. As Mr Khong for the first defendants pointed out, if the plaintiff had had any doubts on this issue, he would have asked Captain Lax about it on 17 May or, at the latest, when he allegedly had the second conversation on the bridge wing whilst waiting for the dockside crane to lower the antenna from the mast. Thus even if I accept the second conversation took place, the third was completely unnecessary and cannot have happened.

It also seemed to me unlikely that the master, knowing that contractors had been employed by the second defendants for the specific purpose of doing the modification works, would have told the plaintiff, a specialist officer, to assist the contractors` workers in such a manual operation. As Captain Lax testified, the plaintiff was not expected to lift the equipment by himself as it was too large. Neither would he be expected to lift it with assistance. In the context of the works and the existing contractual situation it was the contractors only who would be expected to do the lifting as the shifting of the antenna was an integral part of their job specification. The fact that the master did not specifically tell the plaintiff not to do the lifting himself is irrelevant. I agree with the submission that the plaintiff had invented this third conversation with Captain Lax in order to support his case that he had participated in the lift on the master`s instructions.

I therefore find that no direct instructions were given to the plaintiff by the second defendants to physically participate in the lift. His job, as he was well aware, was to oversee the work of the first defendants` workers in order to ensure that the equipment was not damaged. This might have involved him in giving directions or assistance from time to time (as he did when he provided the workers with a guideline to be attached to the antenna for the lowering from the mast) or in stopping them from doing anything that he could anticipate might lead to damage to the equipment but it would not have required him to take an active part in moving the equipment from place to place.

Did the plaintiff participate in the lift?

There is a direct conflict of evidence between the plaintiff and the first defendants on what happened during the actual movement of the equipment.

The plaintiff`s account was contained in paras 6 to 8 of his affidavit. He said that three workers of the first defendants assisted him to lift the equipment on his signal. He would say `one, two, three, lift` and the operation would commence. However, there was no direct order for the lift to cease. Any one of the party taking part would indicate the strain and the others would lower the equipment back to the deck. Two lifts were done in this manner: the first from the bridge wing to the wheelhouse door and the second was through the wheelhouse door up to the chart table.

The third lift, the one that caused the plaintiff`s injury, was when the equipment was re-positioned slightly so that it caused the least obstruction. According to the plaintiff, at all times he used the correct lifting posture, having the knees bent with his back straight and keeping the load as close to his body as possible. However, on the final lift, two of the first defendants` workers failed to lift or take any of the weight. Upon lowering the equipment back to the deck, the plaintiff felt a severe pain in his lower back. The workers then slapped their friend (who lifted) on his back with big smiles on their faces as though they found something amusing.

In cross-examination, the plaintiff gave a more detailed account of the lifting operation. He said that the antenna was taken into the wheelhouse immediately after he had spoken to the captain on the third occasion. When he left the wheelhouse, he saw Raja and his two workers waiting around the antenna. They were getting ready to lift, taking up their positions and flexing their muscles and the plaintiff came along and took up his position, at one corner of the equipment with his back to the wheelhouse. Next to him was, most probably, Letchu and opposite him at the far end was Mr Lim. The plaintiff then said `We will put it in the wheelhouse, next to the chart table`. He did not give them instructions on the method of lifting as they appeared ready and simply waiting for him. He then said `One, two, three, lift`.

The men lifted the equipment by its four corners. Once lifted, the base of the equipment was about six inches off the ground but the plaintiff was not able to see it because the antenna blocked his

view. On the first lift, the equipment was moved about 7 or 8 feet and then lowered to the deck. The plaintiff was halfway through the door at that point and he and the worker on his left-hand side were the first to enter the wheelhouse door.

The third lift was undertaken completely within the wheelhouse and it was a small movement of the equipment so that the pedestal was closer to the electrical cabinet. For this third lift, the four men were still position at the respective ends of the antenna. As far as the plaintiff could recall, Lim, the old balding Chinese man was at the other end and Letchu (whom he described as not being Chinese but possibly Malaysian) was next to him. The plaintiff identified Lim as being the only worker who had lifted with him on the third lift. He was asked whether the two workers who failed to lift were Raja and Letchu and his reply was that as far as he remembered the other two were Letchu and Raja but he could not recall whether Ah Tai, another Chinese man employed by the first defendants, was one of the two workers who failed to lift on the third lift.

During the third lift, the equipment was moved approximately 6 inches to the right of the plaintiff. The plaintiff said that, this time, it appeared to him by the increased load that the person on his left and one of the workers at the other end had failed to take some of the load or all of the load. He was not able to see whether these persons had not lifted at all or whether they had tried to lift but had not taken the load. After the equipment was lowered, the person on the plaintiff`s left walked along the length of the antenna and he and other worker slapped Lim on the back. The plaintiff took a moment to catch his breath and then went to speak to Raja. By this time some of the workers who had lifted were at the wheelhouse door putting on their work shoes. Raja informed the plaintiff that the men would return the next day. The plaintiff did not say much as he was in pain and he did not complain to Raja about the two workers having failed to take on any weight. This was because he was embarrassed.

The first defendants` position was that the plaintiff did not participate in any of the three lifts. In his first affidavit of evidence-in-chief, Raja stated that as the foreman of the first defendants, he had full control and supervision of the first defendants` workers and the manner in which the work were carried out. He said that the first defendants used a dockside crane to bring the antenna down from the mast on to the starboard bridge wing. He was then instructed by one of the ship`s staff to move the antenna into the wheelhouse. This was done by his workers and himself without the assistance of the plaintiff. There was no reason for the plaintiff to assist since the four of them were then able to move the radar antenna themselves over the short distance of 15 metres. Neither he nor his workers requested the plaintiff to help them with the move.

At para 11 of his first affidavit, Raja stated that the first defendants were not aware of the existence of the plaintiff until the writ of summons for this action was served on them. In a subsequent affidavit however, Raja corrected that statement. He said that he was in court on the first day of the trial when the plaintiff took the stand. Having had sight of the plaintiff, he recalled that the plaintiff was on board the vessel when she was dry-docked and when he and his workers were on board carrying out the works.

On the stand, Raja gave more details on how the lifting operation was undertaken. He said that he was the one who gave directions for the lifting operation. He described the positions of the four men as follows: two of his workers were holding on to the centre near the turning mechanism, the heaviest place. The other worker and Raja himself were facing the first two at the opposite side of the centre. All of them were holding on to the metal bracket that was bolted on to the scanner of the antenna.

Raja testified that he and his workers did not have a system for lifting but that they had practised

lifting together. When they were tired they would put down the object. No one would give an order to start lifting. In this case there were three lifts. During the first lift the antenna was brought close to the wheelhouse door. It was put down because it could not go through the door. Part of the scanner was in the wheelhouse and the mechanism was resting on the sill. Two of the workers then went into the wheelhouse and picked up the antenna from there. Then they all lifted it into the wheelhouse and put it down. Then they lifted it up again and put it in front of the chart table and slowly two of the men adjusted one side of the antenna and then the two at the other end adjusted their end. When the adjustments were done the men were no longer standing at the middle of the antenna but were standing at the two opposite ends.

During cross-examination, Raja was told that it had been suggested in court that two persons at each end could lift the antenna at either end. His response was that to his knowledge, this could not be done. It was not possible because the scanner was made of fibreglass, a very light material, and the heavy motor mechanism was located in the centre of the scanner. The antenna could not be lifted by its ends and had to be lifted at the point where the weight was located, otherwise the wings of the scanner might crack.

The first two lifts

When assessing which of the two conflicting versions is the true one, the first point to be decided is how many workers of the first defendants were available to do the job that morning. It is not disputed that generally in relation to the works the plaintiff worked on a daily basis with four workers from the first defendants. These were the foreman (whom the plaintiff identified as Raja), Lim (whom the plaintiff described as an older, balding Chinese man), Letchu (whom the plaintiff thought was possibly Malay but definitely not Chinese) and Ah Tai (whom the plaintiff knew to be Chinese and a welder).

Raja`s evidence is that all four members of the team were available for the shifting operation. At the beginning, Letchu and Lim were on the mast, undoing the nuts and bolts, while Ah Tai and Raja were at the starboard bridge wing waiting for the radar to come down. Raja was directing the operation and Ah Tai was welding some brackets at the side of the bridge wing. The plaintiff recalled the situation slightly differently. He remembered that Raja and Lim were on the mast to remove the nuts and bolts. At that time he himself was standing on the scaffolding. He also thought there was another worker on the mast, possibly Letchu. He was then asked whether he was aware at the time that the first defendants were carrying out some welding work on the bridge wing. His immediate reply was `Yes. That would have been Ah Tai`. This confirmed Raja`s evidence about Ah Tai`s location although immediately thereafter the plaintiff tried to water down the admission:

> *Q: At the point of time when the antenna was brought down from the main mast, the first defendants` foreman and three workers were on the vessel.*
>
> *A: I was aware that Raja and Lim and possibly one more were up the mast. With regards to the welding, don`t know if the welding was going on that particular day. In dry-dock there was welding going on around the clock. So with regard to Ah Tai welding, couldn`t say for certain if he was welding at that time.*

It would be noted, however, even then the plaintiff was not willing to categorically deny Ah Tai`s presence on the bridge wing.

It was also interesting to note the lengths to which the plaintiff went to explain why he had to take part in the lifting operation rather than get anyone else to replace the missing worker from the first defendants` team. The plaintiff was asked whether he had determined that four people were able to perform the lift. His reply was that he thought that four people were the minimum for the lift and that was the only number that was available to him at the time. He agreed that he would have been able to see the chief engineer or any deck officer to requisition help from other crew members but said that in this case there was no time to do that because he had the impression that the captain wanted the radar moved straightaway as it was then lunch time and the first defendants` workers wanted to go for lunch. When it was put that the move could have been effected after lunch, his reply was that it could not because the first defendants were not coming back after lunch and some of the Filipino crew members were working only half a day, thereby reducing the ship`s staff considerably. When he was asked how many people were left on board, however, his answer was that he did not know. None of this evidence, which would have been material to explain why the plaintiff was doing what on the face of it did not appear to be his task, appeared in his affidavit of evidence-in-chief. It was also not put by his counsel to Mr Raja that his workers had wanted to rush off for lunch and would not be back that afternoon. Nor was it put to Captain Lax that there was no one else available from the crew to help in the lift because some crew members were on half a day.

Quite apart from my doubt as to the necessity for the plaintiff`s participation to enable the carrying operation, I find it difficult to accept his description of what had happened during the first two lifts. The plaintiff`s account that the four men including him were positioned at the four corners of the radar seems unlikely. The width of the antenna at each end was one foot and it would be difficult if not impossible for two persons to stand next to each other at either end in order to carry the antenna in the wheelhouse. Moreover, the weight was in the middle, and lifting it up from the ends would have been harder to do than lifting it up from the centre and would also have exposed the antenna to the risk of cracking at the ends. Further, there was a two and half inch sill that had to be traversed at the doorway and if the men had been located at either end they would not have been able to see the base of the antenna which would have made traversing the sill harder.

The plaintiff was asked how two persons could stand next to each other and lift the antenna up by the foot-long end. His answer was that they would have to be on each corner and that in his description of where people had been lifting, he was trying to get across to the court that the people at the ends were looking down the length of the radar and that each person lifting had one hand under the end of the radar and the other along the length. It was put to him that if that was correct, there would be a twist to the back and that could not be the correct lifting procedure since the back would have to be straight in any lifting operation. His answer was that the back would be straight with the hands in that position. He was then asked questions about manoeuvring through the doorway which was, as he recalled, only about 30 inches wide. He disagreed that to get such awkward equipment through such a narrow a doorway one person had to be free to direct the manoeuvre through the doorway and into the wheelhouse. The plaintiff asserted that in the lifting manner that he had described with a man on the corner, with just a short twist of his head he would be able to see where he was going and even the two inch sill would be easily seen by the two people in front with a slight twist of their heads. He denied that there was a fifth person who directed the movement into the wheelhouse and that that fifth person was himself. Instead he said that he helped direct the operation from the right corner of the radar closer to the door. I did not find the plaintiff`s account credible.

The plaintiff`s description of how the operation was performed did not gel with the physical attributes of the equipment, principally its length, narrow ends and substantial weight in the middle or with the narrow passageway which had to be traversed. It is impossible for two persons standing shoulder to shoulder to move together through a 30 inch doorway. This may, however, be done by four persons

standing sideways. The account given by Raja of how the equipment was taken from the bridge wing into the wheelhouse was much more plausible bearing in mind the physical characteristics of the equipment and the nature of the area traversed particularly in relation to his description of how it was moved through the doorway and how his workers put it down on the sill and then went into the wheelhouse and picked it up from the portion that was inside the wheelhouse in order to complete the move.

I do not believe that the plaintiff participated in the first two lifts. He did not need to do so since with Raja`s participation the first defendants had sufficient men on site to accomplish the carrying operation without the plaintiff`s assistance. Raja testified that he and his men were practised in carrying radars. No doubt was cast on this testimony by the plaintiff. Indeed he asserted that Raja had told him of this on the morning of the lift itself. Since Raja knew what to do in moving the equipment and since he had sufficient men on hand for the job, there was no reason for him either to ask the plaintiff to be involved or to accept any offer of assistance from the plaintiff.

It is also noteworthy that Raja testified that one of the ship`s officers had directed the movement into the wheelhouse although he did not identify this person as being the plaintiff. It appears to me that such directions would have been required due to the presence of the sill, the small and crowded area of the wheelhouse (other items had already been placed inside it for storage during the works) and the awkward dimensions of the antenna itself. The logical person to undertake the directing would have been the plaintiff who had the responsibility of ensuring that the workers did not damage the equipment and who had already assisted slightly in the lowering operation. I consider that in all probability the plaintiff`s participation in the first 2 lifts consisted of giving directions to the lifting team. The plaintiff`s own evidence did support Raja`s recollection of an officer-director since he did assert that he had directed the lifting operation, only he said he had done so from his position on a corner of the antenna wing rather than from inside the wheelhouse.

The third lift

To an extent, whether the plaintiff actually participated in the first two lifts is irrelevant since his allegation was that he was injured on the third lift. Even if he had only participated in this last movement, if it had caused his injury, he might have a case against either or both defendants depending on how the injury was sustained. The defendants deny he participated in the third lift or that his back problems had anything to do with the movement of the radar.

There is not such a glaring contrast between the plaintiff`s description of how the third lift was conducted and that given by Raja. There were, however, some significant differences. Although both men said that for the third movement the four persons involved were located at the ends of the equipment, two to each end, the plaintiff`s description was of an intended simultaneous lift by all four to move the pedestal of the antenna closer to the electrical cabinet. Raja, on the other hand, said that each pair of men adjusted their end of the antenna separately and thus at any one time only two of them were lifting the antenna. The object of this exercise was to put it closer to the chart table so that it would not be an obstruction.

Who is to be believed? On the one hand, the plaintiff was very clear that he first experienced pain after being involved in adjusting the position of the radar within the wheelhouse. This part of his story is supported by almost contemporaneous evidence. There is a documentary record that starts with the plaintiff`s visit to the Sembawang doctor on 1 June 1996. He told that doctor that he had been involved in carrying heavy objects one week before his visit. Then on his visit to his general practitioner in August 1996, the history recorded was that two months previously the plaintiff had lifted a heavy weight while working in dry-dock and had sustained a lumbar sprain and since then had

had intermittent twinges of pain in his right thigh. Next, in a letter dated 10 October 1996 to the fleet personnel manager of the second defendants informing the latter of his current medical condition, the plaintiff mentioned that whilst he was on board the Cardigan Bay during her time in dry-dock, his back went into spasm and pains were felt in his right leg after a heavy lift. Two weeks later, in a letter dated 24 October 1996 an orthopaedic surgeon who examined the plaintiff mentioned being told that the plaintiff had had back pain since May 1996.

These documents show that from the beginning of June 1996, the plaintiff was consistent in his account of what had led to his back pain. They are the strongest factor in favour of accepting the plaintiff`s version of events. On the other hand, the plaintiff`s account of how he was injured is somewhat unclear and his own behaviour after the alleged injury was not consistent with any perception on his part that he had been injured by someone else`s negligence or deliberate non-performance of duty.

The plaintiff was closely questioned about his affidavit statement that on the final lift, two of the workers failed to lift or take any of the weight. He was asked to confirm that these two non performing workers were Raja and Letchu. The plaintiff`s reply was that as far as he could remember they were Raja and Letchu but that he could not recall whether Ah Tai was one of the workers who failed to lift. It should be noted here that the plaintiff was clear that Raja was standing opposite him with Lim, who was the only other worker to lift when the plaintiff did. Logically that meant that the person standing next to the plaintiff had to be either Letchu or Ah Tai. The plaintiff was therefore asked why he could not remember whether there were two Chinese persons lifting the equipment with him since the incident left a lasting impression on him. His reply was a feeble `I remember there were three others lifting and to me it doesn`t matter if they were Chinese or another nationality`. He also conceded that he was not 100% certain that the third worker was Letchu. This was an odd lapse of memory since this third person was his immediate neighbour. He should have been able to distinguish whether his neighbour was Chinese or not especially since he was quite clear that Letchu was not Chinese.

Whilst the plaintiff was able to remember that Lim was purportedly an older balding Chinese man and also to describe in some detail the clothing worn by Raja, Lim and Letchu on the day of the lift, he was not able to say for certain who was standing beside him when the third lift was made. The plaintiff`s evasiveness in this respect could have been because he was unsure whom amongst the four of the first defendants` workers who had lifted the equipment, he had to eliminate to replace himself as one of the lifting party in the wheelhouse.

The plaintiff was then pressed to try and recall whether the two workers concerned had failed to lift the equipment at all or whether they had lifted but not taken all the weight. His answer was that it appeared to him that by the increased load that the person on his left and one of the workers at the end other had failed to take some of the load or all of the load. It was put that this was an impression and that he did not know for a fact what had happened. Then he was asked whether when he had made his statement in his affidavit `Two of the workers failed to lift` it had meant that after he and Lim had moved upwards in a controlled manner the other two workers remained in their original positions. His answer was they did. He was then asked whether he was saying that they did not even lift at all. His reply was that he could not tell what they had done or not done from simply looking at them because it had taken place in a fraction of second and it was only a small lift, maybe just an inch. So really the plaintiff was unable to say what had been done or omitted and this inability weakens his case.

The plaintiff`s actions after the lift were not those of a man who had been injured by his co-workers` carelessness or non-co-operation. From what he said in court, Raja was most probably one of those

at fault. Yet, after catching his breath when the plaintiff went up to speak to Raja he made no mention to Raja of what had happened. Neither did he confront any of the other workers as to why they did not lift or take any weight thus causing him to suffer a severe pain. His explanation for this was that he was embarrassed about feeling the pain. Yet there was nothing to be embarrassed about if the pain had been inflicted because the workers had been deliberately slack in the lifting exercise. He was asked whether he felt angry or upset with these two workers for causing him this severe pain. The plaintiff`s reply was an evasive `I do now`. When he was pressed as to what he had felt at the time, his answer was `I didn`t know what damage was done to my back. I was glad the radar was finally in position`. If those were his feelings at that time ie relief, he was either not injured or did not feel that he had any cause for complaint in relation to the co-workers` behaviour.

The other point that was peculiar was that the plaintiff mentioned that after the lift and whilst he was catching his breath `some of the workers who had lifted were at the wheelhouse door putting on their work shoes`. He was then asked whether he spoke to Raja as the other two workers were putting on their shoes. In his reply he again said `some of the workers`. When asked why `some`, his answer was that he did not remember how many but he thought it strange that one or two of them had removed their boots to go into the wheelhouse. The word `some` definitely implies more than one person and although the plaintiff had the opportunity to agree that `some` in this context meant two, he refused to take it and repeated that word. He then tried to say that it meant one or two. It seems to me more likely that when he said `some` initially, he had meant two or three and when he realised the implications of this, he tried resile from them by recounting his observation that it was strange that one or two workers had removed their boots.

In addition to failing to take issue with Raja over the bad behaviour of himself and his men, the plaintiff also did not think fit to raise the matter with anyone else either formally or informally. The second defendants had a system for filing of formal accident reports throughout their fleet. Accidents were required to be reported to the vessel`s safety officer. The plaintiff was aware of this procedure and used it subsequently in 1997. The plaintiff did not, however, make any accident report in respect of the incident that took place on 26 May 1996. Not only did he not report it on the day itself when perhaps he might not have taken the matter seriously since he said then that he thought his injury was only a pulled muscle, but he did not report it on the next day when he woke up in what he described as being the most excruciating pain and must have realised that he had suffered a more serious injury than he initially thought. At no time did he mention to the master or any of his shipmates what had been done to him or what had caused his pain. Whilst he might not have wanted to damage his working relationship with Raja by making a complaint over what initially seemed to be a small matter, such considerations would not have inhibited his telling the ship`s crew what had happened had he really felt aggrieved. Neither would they have prevented him from telling his various doctors exactly how the injury had been sustained. Yet none of the medical reports has a word on the matter.

The plaintiff did not appear to me to be a timid or retiring person or to be lacking in gumption. According to his own evidence, he had queried the master`s decision and wisdom in placing the radar antenna in the wheelhouse on at least two further occasions in spite of having been told the very first time by the master that it was to be so placed. He also showed in court that he was capable of looking after his own interests by directing cross-examining counsel on how to phrase his questions. Yet, at no time in May or June 1996 did he complain to anyone about how the first defendants` workers had behaved. Even when he was thinking of taking action for his injury towards the end of the year he did not make any statement about his injury having been caused by negligence of these workers. The first defendants were given no warning of the plaintiff`s position until the writ was issued in March 1999. In my view, the lack of complaint on the part of the plaintiff for nearly three years must be regarded as significant.

The medical evidence was also interesting. It showed that the plaintiff`s injury even if sustained because of his participation in the lift may have occurred even if all the other workers had carried out the lift properly. The second defendants` expert witness, Professor Templeton, stated that he believed that the plaintiff did have significant degenerative change affecting his lower back prior to his accident in May 1996 and that that accident exacerbated that condition and caused it to be painful. He did, however, also testify that if four persons had carried such equipment and all four had adopted the correct lifting posture and lifted the equipment at the same time there was no likelihood of any of the four suffering a back injury unless they had a pre-disposition towards such an injury. Professor Templeton observed that even without a lifting incident, any other lifting activity or acute movement of the back could have precipitated pain in the plaintiff`s back. This evidence was supported by the plaintiff`s expert, Dr Krishnamoorthy, who said that the back is a very fragile region and the prolapse of a disc can also be caused by activities like bending forward to brush your teeth though if you have to lift something the risk of injury is higher.

Undoubtedly, from May 1996 the plaintiff had a problem with his back. The weight of the evidence does not, however, in my opinion, indicate that this problem resulted from any negligence or default on the part of the first defendants` workers. My primary finding is that the plaintiff did not participate in the third lift with them in the way he said he did. Bearing in mind the documentary record, his account of having sustained injury while involved in a lift might reflect his having tried to help them make the slight adjustment of the position of the radar within the wheelhouse and thereby injuring himself. This was an operation in two phases, involving an adjustment at either end, and the plaintiff may have helped move one of the ends in the way Raja described. It was not, however, a concerted lift as described by the plaintiff. In any event even if the plaintiff did participate in the movement, either as the fourth or even a fifth man, it is unlikely that the first defendants` workers defaulted or were neglectful in carrying out the lift in relation to him. It is more probable that his injury was caused by the strain that he unfortunately placed on a back which already had a predisposition towards such an injury.

Conclusion on first defendants

The factual findings which I have made are sufficient to absolve the first defendants from any liability to the plaintiff for his injury. They did not breach any duty of care which they had towards him even if he was involved in the antenna shifting operation. The case against them must therefore be dismissed.

Legal issues involving second defendants

The position is, however, somewhat different with regard to the second defendants. On the basis that the plaintiff probably lifted the antenna to adjust its position when it was in the wheelhouse and that this led to his injury, the issue is whether legally the second defendants are responsible for that injury. As his employers, they were under a duty of care towards the plaintiff to take reasonable care for his safety in the course of his employment. As pointed out in ***Employer`s Liability at Common Law*** (11th Ed) by John Munkman, this duty extends in particular to the safety of the place of work, the plant and machinery and the method and conduct of work though it is not restricted to these matters (see p 125). In this particular case, the plaintiff`s allegation is that the second defendants failed to provide or were negligent in relation to the provision of a proper method and conduct of work. Again, the burden of proof is on the plaintiff.

Various particulars of negligence were pleaded. Most of these were premised on the assertion that it was the plaintiff`s task to manually carry the equipment into the wheelhouse. For example, the plaintiff alleged his employers were negligent in causing or permitting him to carry the equipment, in failing to avoid the need for him to undertake the manual handling of the equipment, in failing to make a suitable and sufficient assessment of the manual handling operation to be undertaken by the plaintiff or to take any appropriate steps to reduce the risk of injury arising out of the lifting operation and failing to give him any adequate instructions in the method of lifting and carrying of the equipment.

I have found that the plaintiff was not specifically ordered to participate in the lifting operation. His instructions were to oversee the move and ensure no damage was caused to the equipment. The persons who were to undertake the move were the first defendants. Thus, many of the particulars pleaded are no longer applicable. The plaintiff recognised this possibility as the case developed and in the closing submissions presented, much more emphasis was laid on the aspect of the second defendants` alleged failure to provide the plaintiff and the first defendants with adequate information about the peculiar characteristics of the equipment and their failure to ensure that there were sufficient workers to handle the operation.

On these submissions, the following questions arise:

(a) were the second defendants entitled to instruct the plaintiff to oversee the first defendants` work without being more specific on his duties?

(b) did they have a duty to devise a safe system of work for the performance of the manual lift by the first defendants?

(c) was the plaintiff acting in the course of his employment when he chose to participate in the manual work contracted to and undertaken by the first defendants?

Sufficiency of instructions

Turning to the first question, it was not contended by the plaintiff that the instruction he received from the master to oversee the shifting operation was an unauthorised one outside the scope of his legal duties. His submission was that there was no evidence before the court that he was specifically instructed to supervise only. This submission flew in the face of the master`s statement that in his job as a supervisor, the plaintiff had no reason to lift the equipment. The plaintiff also sought to show that his job had a broader description than the second defendants were willing to admit by pointing out that he was not informed that the lifting of the equipment would be done by the first defendants` workers only or told about the unusual characteristics of the equipment or told that there should be a minimum of four workers to carry out the moving of the equipment. The plaintiff`s basic complaint therefore was that he was simply told to supervise without being given any parameters for this job. In essence, the contention is that the second defendants did not provide a safe system of work because they did not tell the plaintiff precisely what he should and should not do.

As pointed out in **Winter v Cardiff Rural District Council** [1950] 1 All ER 819 by Lord Oaksey (at p 822), there is a sphere in which the employer must exercise his discretion and there are other spheres in which foremen and workmen must exercise theirs. The point here is whether when it came to supervising the lifting operation, it was for the plaintiff to exercise his discretion or for the second defendants to exercise theirs and lay down a system for the execution of the work. Whilst the employer has the primary obligation of organising work, when an isolated task is involved, whether the obligation of organisation falls on the employer or the employee whom he has designated to do the

task depends on whether the operation is so complicated or unusual as to necessitate special organisation outside the scope of that employee`s expertise.

Looking at the facts of this case, at the time of the incident, the plaintiff had had 16 years experience as a radio officer during which he had worked with radar equipment. The plaintiff had qualified in the United Kingdom and, as the master testified, must have been aware of the `Code of Safe Working Practices` which that country enforces for seamen. Five or six copies of that Code were kept on board the Cardigan Bay as vessel had been registered in the United Kingdom up to April 1996. The Code prescribes various matters to be taken account of by both seamen and their employers in relation to manual lifting exercises. The master testified that the plaintiff as an employee of 15 years would have understood the Code and been aware of its contents in his job of supervising the lift. I see no reason not to accept the master`s evidence on this point.

Prior to the vessel docking at the Sembawang dry-dock, the plaintiff had had experience of dry-dock repairs though not in connection with the removal of the radar or the modification of the main mast. Whilst the vessel was in dry-dock and before 27 May, he with the assistance of two crew members, also dismantled and moved a smaller radar which had been attached to the main mast. He also must have had knowledge about the subject antenna. It was clearly visible from the ship`s mast. Plans and details of the equipment were kept on board and were available to the plaintiff. He knew that a shore crane was to be employed to lower it onto the deck from the mast and therefore must have realised that it was a really heavy piece of equipment. He therefore had access to all the information he required about the equipment prior to starting his supervision of the removal operation.

The plaintiff knew that the removal of the antenna had been contracted out to the first defendants and that they were responsible for all phases of the operation. According to his evidence, however, it was he who determined that four persons were sufficient to undertake the movement of the antenna into the wheelhouse and he himself gave the signals and directed the three lifts that took place.

An employer is only required to take reasonable care and to guide against foreseeable risk to his employee. The master did not consider that there was any risk posed to the plaintiff in supervising the operation. He did not foresee that the plaintiff would get himself involved in a physical operation which had been contracted out to independent third party contractors. The plaintiff was an experienced officer and was not shy about his accomplishments and abilities during the trial. He was more than qualified for the role of supervisor of the removal and storage operation (he showed his knowledge of what needed to be done by supplying the guide rope and giving directions and determining how many people were required for the carrying operation). The submissions made on his behalf when condensed to their essence, are that he should have been given extremely detailed instructions on what to do running, by analogy, the gamut of the alphabet from A to Z. I find it impossible to accept those submissions in the light of the facts here. The plaintiff cannot now say that the second defendants were remiss in having assigned the role and manner of supervision to him. The cases of **Jenner v Allen West & Co Ltd** [1959] 2 All ER 115 and **Byers v Head Wrightson & Co Ltd** [1961] 2 All ER 538 cited by the plaintiff are not applicable to the facts of this case because the employees involved there had neither experience nor expertise to assist them unlike the plaintiff.

The plaintiff suggested that he needed to be given general safety instructions by the second defendants and quoted Lord Oaksey`s words in **General Cleaning Contractors v Christmas** [1953] AC 180 to the effect that the employer has a duty to give such general safety instructions as a reasonably careful employer who has considered the problem presented by the nature of the work would give his workmen. He also relied on a local authority, ***Parno v SC Marine Pte Ltd*** [1999] 4 SLR 579 to illustrate the same point. Those situations were somewhat different. In the first case, the injured workman was employed as a window cleaner to work outside high self-locking windows. It was

obviously a dangerous situation but he was given no safety instructions or appropriate safety apparatus. In Parno`s case, the workman was injured while trying to repair a loose pin during a piling operation. He was inexperienced but vested with responsibility for minor repairs and confronted with what he thought was an emergency situation. Here, the plaintiff was well equipped to deal with the task of supervising the movement of the antenna and was also aware of safe working procedures including the correct manual lifting procedure. Neither was he put into a situation where he had to make a quick decision without proper consultation with the master or other officers.

The plaintiff cited **Williams v BALM (NZ) Ltd** [1951] NZLR 893 where it was held that `it is the duty of an employer reasonably to anticipate that the men provided for a job will consider it expected of them to carry on as best they can with the number provided, and that, if a man gets into difficulties, he will make an effort to get out of them himself before he calls on others who have other work to do`. In that case, the employers themselves had designated four workers to move a piece of equipment which on a previous occasion had required five or more persons to move it. It was not the situation here that the plaintiff had no choice but to make do with the number of workers who were available. If there was in fact a shortage of one person to undertake the lift, then the plaintiff could either have directed the first defendants to get an additional worker to help them or alternatively reported the matter to the master or chief engineer. He was neither placed in a dilemma or in a situation of emergency where he had to participate in the physical lift. He was not a casual worker but an officer overseeing the first defendants` manual work and had every right and authority to set out the number of workers required from the first defendants.

System of work for first defendants

I have held above that the second defendants were not in breach of duty in simply telling the plaintiff to supervise and not specifying the exact manner in which he should carry out that duty. Since he was supervising the first defendants` work, should they have devised a system of work for the performance by the first defendants of their contracted job? I agree with the submissions made by the second defendants that it was not their role to do this. That role belonged to the first defendants or to their employers Sembawang. These parties had the responsible of planning the operation and ensuring that a safe system of work was in place for the movement of the antenna.

The plaintiff cited various cases including **McDermid v Nash Dredging & Reclamation Co Ltd** [1987] AC 906, **Wilsons and Clyde Coal Co Ltd v English** [1938] AC 57 and the ***Cardiff Rural District Council*** case, in support of the well known proposition that an employer cannot escape liability for injury to his employees by delegating the responsibility of devising a safe system of work on an independent contractor. That principle has, however, no application to the facts of this case. The plaintiff was designated the task of supervising the first defendants, he was well equipped to do so, he devised the system of work and he in fact executed it by giving directions/signals. The plaintiff was not subjected to danger from a system devised by the first defendants.

Course of employment

The final question arises from a plea by the second defendants that they have no responsibility for the injury sustained by the plaintiff because in participating in the lift instead of just overseeing it the plaintiff was acting outside the course of his employment. In this connection, it is worth reproducing some of ***Munkman*** `s observations on the limits of the employer`s duty. Between pp 103 to 105 of his text, he states:

> *It is evident that the employer`s duty does not extend to every moment of the workman`s life, and equally evident that it cannot be restricted to the period*

when the workman is inside the factory or other place of work, since his duties may take him outside ...

The duty is not confined to the actual performance of work, but also applies when the servant is doing something reasonably incidental to work, as where the plaintiff had gone to wash a tea-cup when she slipped on an oily duck-board and injured herself: ***Davidson v Handley Page Ltd*** *[1945] 1 All ER 235 ...*

Difficult questions may arise where a man strays to a part of a factory or ship where his duties do not require him to be, and there encounters some danger. If, however, the workman is doing his employer`s work, he does not cease to be acting in the course of his employment by the fact that he is working at a place where he is forbidden to go, even by statutory orders ... Likewise disobedience to orders does not necessarily mean that the workman has moved out of the course of the employment, even when he arrogates himself duties which he is not employed to perform and is forbidden by statute to perform: ***National Coal Board v England*** *[1954] AC 403[1954] 1 All ER 546 (miner coupled with cables, which should be done by shotfirer personally). All these cases have the common feature that the plaintiff, however foolishly or misguidedly, was doing the employer`s work. Probably the reason why the court has taken a broader view of the course of employment in this connection is that the fault of the plaintiff can always be taken into account to reduce the damages.*

The second defendants rely on two cases to support their contention that when the plaintiff became involved in the manual lift which was to be undertaken by the first defendants` workers as opposed remaining a supervisor, he was no longer acting in the course of his employment. In **Forsyth v Manchester Corp** [1912] 107 LT 600, it was held that a gas inspector, whose duty was to inspect and report on the gas meter had no business trying to repair the meter, and that his participatory acts in relation thereto which resulted in an injury to the plaintiff were outside the course of his employment. The facts of that case are, however, far removed from those of the present since the person injured was not the workman himself but a small child who picked up a knife which the inspector had negligently left lying about while he was looking for some other tools. Also the inspector had gone into the house in the first place as a favour and not in the course of his usual duties. I do not think that that case assists the second defendants.

Lowe v Pearson [1899] 1 QB 261 is a more relevant authority. There, the respondent, whose job was to make balls of clay and to hand them to the woman working at the machine, had hurt his hand while trying to clear the machine. He was held to be acting outside the course of his employment. The respondent had been expressly warned and well knew that he must not meddle with the machinery and the court made much of the fact that he had deliberately and knowingly engaged himself in work which he was not engaged to do, but on the contrary had been forbidden to do and which there was no necessity for his doing.

In my view, ***Lowe*** `s case is distinguishable in that the respondent there had a very defined job scope which he exceeded. Here the plaintiff was simply instructed to oversee an operation and it was left to his discretion as to how he did it. Although supervising generally involves giving directions only, it is not unknown for supervisors to lend a hand to the persons being supervised if in the course of the work the supervisor thinks it would be practical and convenient and helpful to do so. In such a situation, I do not think that one can categorise the act of assistance of the supervisor as being outside the course of his employment even though the persons he is assisting are the employees of

independent contractors. But whilst a supervisor may lend a hand he is not obliged to do so and if he is directing the work of third parties there would be even less pressure on him to get physically involved. The point is, however, that even if the plaintiff was acting within the course of his employment in assisting the workers, that in itself does not make the employer liable.

In this case, the plaintiff`s participation in the lift was purely a matter of his personal choice. It could not be said that his decision to do so and the consequent injury he sustained resulted in any way from any negligence on the part of the second defendants. The task assigned to the plaintiff was that of supervision of the movement of the antenna only. As an experienced officer, he was capable of performing the task. He had in fact, according to him, devised and operated the system of lift. Only the plaintiff was aware of his peculiar back history. According to the plaintiff, he determined that four persons including himself could perform the lift. He did not ask the first defendants to get an additional worker nor seek guidance from the master or assistance from the crew. He chose to be involved in the physical lift. It was unfortunate that this choice resulted in his back injury but liability does not automatically flow from injury except under statute.

Conclusion

The plaintiff has not been able to prove his allegations of negligence and breach of duty on the part of the second defendants either. Accordingly, this case is dismissed with costs as against both defendants.

Outcome:

Plaintiff`s claim dismissed.