

## CASE STUDY: HEALTH & SAFETY MANAGER BADLY BURNED



A recent prosecution case, which followed an incident where a health and safety manager was badly burned in an accident at work, has highlighted a number of issues. Why did the manager behave in the way he did?

### **The case**

The company has been fined £16,500 and ordered to pay £571 costs after pleading guilty at a Magistrates' Court to a single breach of the Management of Health and Safety at Work Regulations 1999 (MHSWR), relating to the provision of risk assessments.

The court heard how the health and safety manager at the company, climbed between the guard rails on a gantry at the top of a large oil storage tank to oversee it being jet-washed. As he did so, he knocked a pipe connected to a pressure gauge, which came off and released oil at a temperature of more than 160°C over his upper body.

The employee sustained 10% burns to his shoulder, upper arms, neck and back. He was off work for more than a month before later leaving the company.

After the case, the prosecuting Health and Safety Executive (HSE) inspector commented:

"The employee was extremely fortunate not to be more seriously injured. If it hadn't been for the incredibly quick actions of colleagues who dragged him to an emergency shower, this incident may have had a very different outcome."

### **The legal position**

Looking at the facts of the case as reported, it does appear that the employee was fortunate not to be prosecuted personally. Section 7 of the Health and Safety at Work, etc Act 1974 (HSWA) places a duty on employees to take reasonable care of themselves and others, and it appears that in this case the employee did not do so. He may also have been open to a charge under s.37 of HSWA, which gives special duties on health and safety matters to managers and other senior people.

### **Competence**

The case also raises the question of the employees' competence, not only as an employee, but also as the company's health and safety manager. Regulation 7 of MHSWR requires employers to appoint

at least one person to give health and safety assistance to employees. The meaning of competence has been a subject of complex debate but probably includes the holding of qualifications, and experience. The health and safety manager may have been competent using this level of criteria but competence is dependent upon many other factors, and this includes an individual's behaviour.

To be competent, employees not only need to be trained and qualified, but they need to have a positive attitude to health and safety and behave in a responsible manner. It appears that he did not have behave responsibly and put himself and others at significant risk.

### **Behaviour**

The case reinforces the fact that it is an individual's behaviour that causes the majority of accidents. The health and safety manager deliberately defeated a guard rail system by climbing between the rails. Why did he behave in this way? What was his perception of the risk to himself when he took this course of action? What was going through his mind? This may explain why so many organisations are currently concentrating on a behavioural safety approach to prevent accidents.

### **Safety culture**

The case raises questions about safety culture. He was the health and safety manager, and yet he took a "short cut" on health and safety. This gives a clue about the health and safety culture of the company: the organisation probably did not see health and safety as a key and genuine prime objective. A lack of positive safety culture from managers can have a detrimental effect on employees' attitudes and behaviour and can lead to accidents.

### **Leadership**

He was described as a manager. It is well known from the many pieces of research that have been undertaken in the area that leadership is a vital ingredient to successful health and safety management. In this case, leadership looks to be woefully deficient and he set a very poor example to his colleagues.

### **Conclusion**

Speaking after the case, HSE inspector Judith McNulty-Green said:

"The whole point of a risk assessment is to ensure the risks associated with a particular task are considered and measures put in place to mitigate against them in order to keep workers safe. To carry out the work first and then write the assessment afterwards is foolhardy to say the least."