

Maritime NZ vs Gibson



www.MinEx.org.nz



1

The Parties

Maritime NZ – Health and Safety Regulator for maritime activities (similar to WorkSafe)



Tony Gibson – Former CEO Ports of Auckland

Resigned in 2021 following a string of deaths and serious incidents at the port. He had been in the role 10 years.



www.MinEx.org.nz



2

Some context



www.MinEx.org.nz



3

The Incident

- Two lashers were working on night shift during COVID, 30 August 2020. They were asked to re-lash containers incorrectly unlashed on day shift.
- A crane was unloading containers adjacent to lashing work unaware that the lashers were in close proximity.
- The twist lock mechanism on container had not been unlocked.
- The container fell laterally killing Mr Kalati.



www.MinEx.org.nz

MinEx

4

Following the incident

- Ports of Auckland and CEO Tony Gibson were charged with offences under the HSAW Act.
- Ports of Auckland pleaded guilty to failing to ensure the H&S of workers, and of systematic failures within their HSMS. They were fined and required to pay reparations.
- Mr Gibson defended charges against him in an 8-week trial but was found guilty of failing to exercise due diligence to ensure Ports of Auckland met its duties.
- Court found that as an "officer" Mr Gibson failed to exercise the "care, diligence and skill" expected of a reasonable officer in the circumstances.

www.MinEx.org.nz

MinEx

5

Summary of judgement

- Whether an officer has exercised due diligence must be fact and circumstance dependent.
- An officer does not need to be involved in the day-to-day operations in a hands-on way but he/she cannot simply rely on others to discharge the duties of oversight and due diligence.
- An officer must personally acquire and maintain sufficient knowledge to reasonably satisfy him or herself that the PCBU is complying with its duties under the Act.
- An officer does not satisfy the due diligence duty by merely putting in place policies or procedures as to how work is to be carried out.

www.MinEx.org.nz

MinEx

6

Work as done

- Concept of "work as done" rather than "work as imagined".
- Officers have an important role to play and not just rely on advice from H&S advisers and consultants.
- You must ensure that you are satisfied that work as done meets the legislative and internal (PCBU) requirements.
- It is not good enough to implement policies and procedures and assume they are effective in managing high risk activities, or rely on layers of management to ensure it is working.



www.MinEx.org.nz



7

A good CEO may still fall short

Tony Gibson did a number of positive things and was genuinely concerned about H&S **BUT**:

- He did not have a full understanding of the roles and responsibilities involved in health and safety.
- There were delays in the implementation of key H&S projects. (e.g. looked at geo-fencing in 2016 but did not implement it until after Mr Kalati's death in 2020.
- There were multiple warning signs including 4 x convictions under the HSAW Act and one fatality on Mr Gibson's watch.

www.MinEx.org.nz



8

Other findings

- There was a culture on night shift of unsafe practices and cutting corners.
- There was a lack of supervision on night shift (POAL pleaded guilty to this in their case)
- There was confusion amongst workers over the application of the "3 container rule" for exclusion zones.
- Changes were made to operations during COVID but Mr Gibson did nothing to ensure himself that the changes made did not undermine lasher's safety.



www.MinEx.org.nz



9

Learnings

- Context is everything – dynamic, diverse, high-risk environments will demand greater focus.
- How do you ensure you understand “work as done” rather than “work as imagined”?
- Officers have an important role to play and not just rely on advice from H&S advisers and consultants.
- It is not good enough to be focused on H&S. You need to be able to show that you are focused on the right things and progressing any work needed to improve risk controls for high-risk activities.



www.MinEx.org.nz

MinEx

10



Wayne Scott
MinEx CEO

wayne@aqg.org.nz
mobile: 021 944 336

www.MinEx.org.nz

MinEx

11
