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Employers liability for practical jokes in the workplace

The extent of vicarious liability has been tested by the courts again and this time in relation to employees engaging in horseplay and practical jokes.

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The extent of vicarious liability has been tested by the courts again and this time in relation to employees engaging in horseplay and practical jokes. This is an area that has led to some interesting and conflicting decisions in the past and which is understandably a cause of concern for employers as, by their nature, such incidents are unpredictable and difficult to anticipate.

The recent case Chell v Tarmac Cement and Lime Limited revisited the issues. The claimant, who was the victim of the practical joke, was employed by another company but was working on the same site as several Tarmac employees including Mr Heath who discharged target pellets by the claimant's head, causing him to suffer a burst ear drum.

At first instance the Judge followed the two stage test set out in Lister v Hesley Hall Limited; he found that the first stage of the test, being the existence of a close relationship between the employer and the wrongdoer, was satisfied by the employee/employer relationship between Mr Heath and Tarmac. The second stage is the question of whether there was a sufficiently close connection between the actions of the wrong doer and the relationship between the wrong doer and the employer as to make it just that the employer be held responsible for those actions. The Judge did not find this to be the case and in coming to his decision noted that, (i) the target pellets were not work equipment but had been brought to the site specifically for the purposes of the prank, (ii) the use of the target pellets was unconnected with Mr Heath's work and did not advance the purposes of his employer, and (iii) Mr Heath was not supposed to be working with or in the vicinity of the claimant at the time. The Judge concluded that "…work merely provided an opportunity to carry out the prank that he played, rather than the prank in any sense being in the field of activities that Tarmac had assigned to Mr Heath."

The Judge went on to consider foreseeability and the issue of risk assessments and found that there was no evidence to suggest that the employer should have foreseen such an incident. There was no history or threat of violence – the employer was not on notice of the risk. The Judge specifically commented that there was no need for the risk assessment to consider the risk of horse-play and pranks as they are outside the behaviour that should be engaged in at work.

The decision was upheld on appeal, both in relation to vicarious liability and foreseeability.

This case reinforces there is a potential defence to claims where injury results from a practical joke, horseplay or prank.

The decision perhaps emphasises a move by the courts to place some restriction on the principle of vicarious liability, following the approach of the Supreme Court in Morrisons Supermarkets v Various and Barclays Bank v Various (2020). This following a period of expansion of the principle and increased risk for both employers and insurers. The case also helpfully confirms that risk assessments do not need to address the potential for actions which occur outside the scope of the employer's work. However it should not be regarded as a silver bullet as each case will turn on its own facts. It remains important to ensure that action is taken in relation to any complaints of bullying and harassment as a finding of negligence could follow if an employer is on notice of such behaviour prior to an accident and does not react appropriately.

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