HM INSPECTOR OF HEALTH AND SAFETY v CHEVRON NORTH SEA LIMITED

(UKSC [2018] 7)

NOTE OF JUDGMENT

On 8th February 2018 the Supreme Court published its judgment in this case. It was the first time that the Supreme Court had considered the test to be followed by an employment tribunal hearing an appeal against a prohibition or improvement notice under section 24 of the Health & Safety at Work etc Act 1974.

The Supreme Court was asked to resolve a difference in approach between the Court of Appeal in Hague v Rotary Yorkshire Ltd [2015] EWHC 696 and the Court of Session (Inner House) in HM Inspector of Health and Safety v Chevron North Sea Ltd [2016] CSIH 29. In Chevron, the Inner House decided not to follow Hague which lead to a further appeal to the Supreme Court. As the HSWA applies throughout Great Britain it was clearly unattractive for tribunals to follow different tests each side of the border.

Lady Black, delivering the judgment of the Supreme Court, approved Chevron but not Hague. It will be recalled the issue in both cases was whether the tribunal should be able to reply on evidence obtained by a duty holder after service of a notice to seek its cancellation by an appeal under section 24.

In Chevron, the later obtained evidence was a corrosion report relating to stairways and gratings on an offshore installation which proved the walkways were safe to use. In Hague, the later evidence was an electrical test which proved partly installed electrical equipment had been left dead when last worked on.

Three main points arise from Lady Black's short judgment. Firstly, it will remain good practice for an Inspector to serve a notice if s/he is of the opinion that the conditions in either section 21 or 22 of the HSWA are made out and the related circumstances support the notice. An Inspector often has to act promptly and sometimes in an emergency without the benefit of a full investigation. Due weight should be given to the Inspector's opinion when the appeal is heard. If a tribunal later cancels a notice because of evidence obtained later that is not to be taken as a criticism of the Inspector.

Secondly, an appeal under section 24 is an appeal against a notice not an opinion of the Inspector. So any evidence obtained later relevant to a matter before the Inspector such as 'risk' or 'breach of duty' may be relied on by the tribunal when hearing the appeal. Often such evidence will be expert evidence.

Thirdly, the appeal should focus on the circumstances on the ground when the notice was served but not to the exclusion of later obtained relevant evidence.

It is interesting to note that the Supreme Court was not attracted by the references in Chapter 9 of the Robens Report which proposed a more limited appeal against notices. Section 24 then provided the appeal but the Supreme Court's starting point was the section itself rather than the underlying report.

Furthermore although there is no mention in the judgment of the well known ‘Science Museum’ case, the Supreme Court, in effect, allowed later evidence that there was no ‘actual danger’ to be admissible to challenge a notice served after an Inspector formed an opinion there was a risk (’possibility of danger’) of serious personal injury.

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9th February 2018