IN THE SUPREME COURT OF BELIZE, A.D. 2011

CLAIM NO. 697 of 2008

GILBERT CADLE **CLAIMANT**

AND

BELIZE ELECTRICITY LIMITED **DEFENDANT**

Hearings
2011
20th May
27th June
25th July
15th August
8th November

Mr. Carlo Mason for the claimant.
Mr. Darrell Bradley for the defendant.

JUDGMENT

1. On 2nd April, 1981, the claimant was employed as a driver by the defendant, a duly incorporated company under the Companies Act Chapter 250, and the primary supplier of electricity in Belize. He also held the position of messenger, and later was promoted to the post of mail clerk stationed at a mail room located in one of two buildings –

the Dispatch Building. The other building is known as the Main Building, and both are owned by the defendant. As mail clerk, his duties included the making of deliveries of mails and other items to various departments located in the buildings where the defendant carried on its business. He was assisted in discharging his duties by a messenger over whom he had some supervisory control.

2. On the morning of 8th July, 2004, the exact time is unknown, a request was made to the claimant by a senior officer of the defendant to deliver some boxes of paper from the Dispatch Building to the officer in the Main Building. The distance between the two buildings was about fifty yards. At the time of the request, it was raining. The claimant told the officer who allegedly wanted the paper urgently, that it was raining, and he would deliver the paper on the cessation of the rain. The rain stopped at 1:45 p.m. and the claimant began carrying the paper at about 2:30 p.m., about 45 minutes after the rain stopped. The paper was in three separate boxes, each box weighed about twenty pounds. He placed the three boxes on a trolley provided by the defendant for that purpose, and proceeded to the Main Building from the Dispatch Building to deliver the boxes of paper. Wearing as part of his attire, were a brace supplied by the defendant, which was a strap around his waist and connecting up to his shoulders; and a pair of traction boots, which he wore, a photograph of which is given as item A in the appendix to this judgment. The evidence disclosed that the claimant made about three requests to the defendant for traction boots to carry out his duties, but he was not successful in those requests. He testified that he got his own traction boots, shown in the

appendix; and that "the purpose of the boots is to avoid slippage," to use his own words.

3. When the claimant arrived at the Main Building to deliver the paper, he saw, due to the rainfall, a pool of water at the base of the steps to the Main Building. The steps were three in number, at a height of about two feet; and at both sides of the steps, there were railings. For the purpose of entering the building, the claimant had to climb the three steps and then walk a few yards, push a door and enter the building. A photograph of the steps, railings, and the front of the building is given as item B in the appendix.

4. The steps were made of concrete and were tiled, but due to the rain, were also wet. The claimant walked through the pool of water at the base of the steps, and decided to pull the trolley with the three boxes up the steps – he facing the trolley and his back facing the entrance door of the Main Building. He pulled the trolley with the boxes up the first step and the second step, but as he tried to mount the third step – a flat surface leading to the door of the building – he slipped and fell on his bottom, putting him in a seated position backing the door on the hard surface of the third step, with the trolley and the boxes falling on him. Due to the fall, he felt, at first, some pain in his back; but about midnight of the said date while he was at home, the pain became severe and unbearable; and he had to be rushed to the Karl Heusner Memorial Hospital for medical attention.

5. The claimant over a period of time after the accident consulted and was treated by several doctors, including treatment of microscopic spinal surgery on 23rd November, 2005. But in spite of the medication prescribed for him, and the doctors he consulted, the back pain persisted preventing him from sitting or standing for any long period of time. Dr. Andre Sosa diagnosed that the claimant suffered from "severe lumbago and bilateral sciatics that radiates to the bottom of both feet." The doctor explained that this came about because of "discal bulges at L4-L5 and C5-S1 spaces and a linear fracture at the joint between the left S1 lamina and the S1 Spinous process." In simple language, according to the doctor's sworn evidence, the claimant suffered a fracture of one of the lumber spine bones, and the pain comes about because of friction between the damaged lumber spine bones. The doctor testified that it was reasonable to assume that the injury resulted from the trauma that caused the patient to seek medical attention from him. The doctor also testified that the claimant, due to the injury, would have difficulty sitting for long periods of time.

6. The injury prevented the claimant from effectively carrying out his duties, and after failed attempts by the defendant to have reduced hours of work for him, and a programme to gradually ease the claimant back into the regular schedule of work failed, a decision was taken by the defendant to terminate the services of the claimant with effect from 5th January, 2008 on medical grounds, in accordance with a previous finding by the Social Security Board of "invalidity" of the claimant. The letter of termination identified payments to the

claimant, including severance payment and salary up to 4th January, 2008, and an ex gratia payment, all to a total of about $65,000.

7. On 21st October, 2008, the claimant filed a claim against the defendant for damages for personal injuries and loss caused by negligence of the defendant, servants and agents. The statement of claim contained particulars of negligence as follows:

> "(1) The defendant was negligent in that:
>
> (a) It employed the claimant to carry and/or move a load so heavy as to be likely to cause injury to the claimant;
>
> (b) Failing to provide any or any adequate manual or mechanical assistance for the purposes of moving the boxes of paper;
>
> (c) Failing adequately or at all to ensure that the claimant used manual or mechanical assistance;
>
> (d) Failing to advise or instruct the claimant properly, or at all, in the correct manner of transporting the boxes;
>
> (e) Causing or permitting the claimant to work unaided in the moving of the boxes when it was unsafe to do so;
>
> (f) Failing to warn the claimant of the dangers of working as described above;
>
> (g) Failing to provide a ramp which the claimant could have utilized to pull the trolley;

(h) Failing to provide a suitable route for the claimant to travel with the boxes;
(i) In the premises, failing to provide or maintain a safe and proper system of working or to instruct the claimant to follow that system and/or failing to take proper care for the safety of the claimant."

8. The defendant denied that it was negligent. The first task is to decide whether the defendant was negligent. The burden is on the claimant to prove, on a balance of probabilities, that the defendant was negligent. The evidence establishes that the defendant had a full time staff of three persons employed in a safety unit whose job was to deal with safety of the employees, one of whom was Mr. Phillip Waithe, a safety and training engineer. The claimant, according to his testimony, attended safety training and he said that he also attended quarterly safety meetings for about ten years. The defendant also had a safety manual, a copy of which was given to each employee, including the claimant. The claimant admitted that he was given a copy of the safety manual, which was tendered in evidence. The manual states that every employee shall carefully study the safety rules applicable to their assigned duties. Paragraphs 101(b) and 102 (a) of the manual state respectively as follows:

"101(b) If an employee is called upon to perform work that could be considered hazardous and proper protection is not provided, the

matter should be brought to the attention of their supervisor before starting the work. If questions arise, interpretation rests finally with the supervisor.

102(a) Before beginning a job, employees shall satisfy themselves that they can perform the task without injury. If they are in doubt as to their ability to perform the work, they shall call this to the attention of their Supervisor."

9. Paragraph 131 of the manual deals with the handling and lifting of heavy objects by employees. It states that an employee shall obtain assistance in lifting heavy objects or using power equipment. Paragraph 131(c) states that employees shall not attempt to lift beyond their capacity, and that caution shall be taken when lifting or pulling in an awkward position. The said paragraph says that: "The right way to lift is easiest and safest. Crouch or squat with the feet close to the object to be lifted; secure good footing. . . ." The defendant also had other safety facilities in place such as the above mentioned safety brace, and the claimant said he had on traction boots at the time of the accident.

10. Let us, having regard to the evidence, examine carefully how this accident happened. The claimant came up to the base of the steps with the trolley with the three boxes thereon. He knew that it was raining about 45 minutes before, and that the steps were wet. He knew that there were railings at the side of the steps as can be seen

from item B in the appendix. He knew, or must have known, the provisions of the manual dealing with safety, and the handling and lifting of heavy objects. He attended safety meetings over a long period of time. While he was there at the base of the steps with all the above knowledge, he ought to have considered various options to deliver the boxes. One option was to call for assistance to lift the trolley with the boxes, if he intended to carry them together, as the manual instructs; two, hold on to the railings of the steps with one hand while pulling up the trolley with the other; and three, leave the trolley at the base of the steps and transport each box manually up the steps while facing the door of the Main Building. The claimant did neither of the above. He walked through the pool of water, pulled the trolley with all the boxes thereon while backing up the steps and his back to the door, which was clearly, in my view, a dangerous maneuver in the circumstances. Even if it is accepted that the boxes of paper were urgently required, and therefore the trolley was used to carry all three boxes at one time because of the urgency, the claimant testified that after the request for the paper came, about 90 minutes thereafter he set about delivering the paper, which was about 45 minutes after the rain stopped; and he further admitted that had he carried the three boxes up the steps one by one, it would have taken only seconds to do it.

11. The claimant did not, while he was at the base of the steps, consider lifting the boxes one by one up the stairs, though he probably could have considered it, as he admitted in cross-examination by Mr. Bradley for the defendant. To pull a trolley loaded with sixty pounds

of paper up the steps, with one's back facing the steps, must have involved some physical pressing on the wet surface of the steps by the feet of the person pulling the trolley, thus increasing the possibility of slipping on a wet hard tiled surface, much more pressing than would have been required for simply carrying, facing the steps, one box at a time. The claimant, in my view, ought to have foreseen, taking all the circumstances into consideration, including failure to use the railings of the steps, that slipping and suffering physical injury was likely to occur by transporting the boxes in the way he chose to. Employing the method of carrying up the steps one box at a time or employing any of the other above options, ought reasonably, in the circumstances, to have been undertaken by the claimant. The failure to exercise any of these options, it seems to me, amounts to recklessness or gross negligence on the part of the claimant.

12. One aspect of the claimant's case is that the defendant was negligent in failing to install non-slip strips on the steps which were outdoors and therefore subject to the rainfall, making them wet and slippery. The defendant ought to have reasonably foreseen, says the claimant, that persons using the steps after rainfall may fall and suffer injury if non-slip strips are not thereon.

13. The evidence whether non-slip strips were on the steps prior to, or at the time of the accident, is conflicting. Mr. Phillip Waight, the training and safety engineer, and a witness for the claimant, swore in his witness statement that the tiles on the steps became very slippery when wet. He swore that "Despite concerns raised by several

departments, no steps were taken by BEL to change the tiles, or to implement any other safety measure until after the claimant's accident. BEL has since installed non-slip strips on the tiles." He did not give a date when the non-slip strips were installed, but he is, it seems, clearly stating that they were installed after the claimant's injury. The claimant himself gave evidence, but said he could not recall whether the steps had traction or non-slip strips on them at the time of the accident. But Mr. Waight in cross-examination, on the question of when the non-slip strips were installed, was not as clear as he was in his witness statement as to when the non-slip strips were installed, for he introduces the possibility of uncertainty when he said: "From my recollection the safety strips were not in place." I believe he meant the strips were not place at the time of the accident.

14. Dana Foreman, Public Relations Officer of the defendant, swore in a witness statement dated 1st April, 2010 that the steps upon which the accident occurred were lined with non-slip strips which were installed prior to the accident and which were to prevent slippage on the steps. She then proceeded to exhibit pictures, D.F. 6 and 7, of the steps showing the non-slip strips. In a further affidavit dated 23rd April, 2010, in order to prove that the non-slip strips were on the steps prior to the accident, she exhibited a cheque dated 10th February, 2004 – D.F. 8 – purportedly used to purchase the non-slip strips; but the cheque does not state the purchase of the item for which it was drawn. Ms. Foreman also exhibited a further document dated 2nd February, 2004 purporting to show the replacement of non-slip strips to the "back step cafeteria entrance and front entrance." The document does

not state the front entrance of which building; and there is no evidence that the cafeteria is in the Main Building. When the claimant and the trolley fell a tile on the steps broke, and Ms. Foreman exhibited a photograph of the broken tile, shown as item C in the appendix. In her witness statement she says that the broken tile shows the non-slip strips.

15. In Ms. Foreman's oral evidence she also swore that the safety measures at the steps consisted of safety strips and that the function of the strips was to prevent slipping or slippage. She does not, in her oral evidence, say when the safety strips were installed. Another witness for the defendant, Amalia Bobadilla, an employee of the defendant, swore in her witness statement that the defendant in order to ensure the safety of its employees, "installed non-slip strips which have been in place since February 2003."

16. This is the state of the evidence in relation to whether non-slip strips were on the steps at the time of the accident. The burden is on the claimant to prove, on a balance of probabilities, that there were no non-slip strips on the steps at the time of the accident. Due to the conflicting nature of the evidence, I am not satisfied, on a balance of probabilities, that the claimant has proven that there were no nonslip strips on the steps.

17. In an action for common law negligence based on injury suffered by employees in the course of their duties, the case of ***Latimer AEC Ltd., 1953 2 AE Rep 449*** is relevant. In that case the appellant's job

included transporting on a trolley barrels containing material weighing about two hundredweights, along a passageway for a distance of about thirty yards, from where the barrels were stored. Due to exceptional heavy rainfall, the respondent's premises became flooded with surface water which got mixed with an oily liquid that was normally present in the flooring of the premises. When the rainfall subsided, the respondent put men to work using saw dust on the flooring to dry it and to decrease slipperiness. The appellant, in the course of his duties, went with the trolley to collect a barrel. In putting the metal lip of the trolley under the barrel in order to raise it and convey it along the passageway, he slipped and the barrel fell off the trolley and crushed his ankle causing severe injuries to the claimant. On a claim for negligence against the respondent, his employer, the House of Lords ruled that, on the facts of the case, the employer had taken every step which an ordinarily prudent employer would have taken in the circumstances to secure the safety of the employee and therefore the employer was not liable to the employee for negligence at common law. Where an employer has taken every step which an ordinarily prudent employer would have taken in the circumstances to secure the safety of an employee, the employer ought not to be liable to the employee for negligence at common law. The test is what a reasonable employer would have done in the circumstances of the case.

18. In ***Thomas v. British Aeroplane Co. Ltd., 1964 1 W.L.R. 694*** the plaintiff who was employed by the defendant, slipped and fell on an icy surface at the foot of a ramp while entering the defendant's factory

on his way to work and suffered physical injuries. In an action against the defendants for damages for injuries based on negligence at common law, the judge at first instance gave judgment for the defendant. An appeal was dismissed on the ground "that this danger of slippery or icy surfaces is an incident of winter in our country which everyone encounters and it is something one must anticipate and deal with oneself.": per Sommervell LJ at p. 697. Liability of an employer for common law negligence in relation to injury to an employee, the question the court should ask is: What was reasonable for the employer to do in this case or, put it another way, what action, in the circumstances which have been proved, would a reasonably prudent employer have taken? At common law in actions for negligence against an employer, the employer is not bound to provide a perfect system. "The duty of the employer is not a duty to put in a perfect system which will avoid all accidents. He has only to take the care of a reasonable, prudent man in the circumstances of the case": see Romer LJ in ***Thomas v. British Aeroplane Co. Ltd.*** above at page 696.

19. Lord Oaksey in ***Latimer*** in the context of employers obligations under the Factories Acts, said at p. 452 "a floor does not, in my opinion, cease to be in an efficient state because a piece of orange peel, or a small pool of some slippery material, is on it. In ***Levesly v. Thomas Firth and John Brown Ltd. 1953 2 A.E.R. 866*** it is stated at page 869 that obligations under the Factories Acts were similar to those for negligence at common law between employers and employees. This same point was made in ***Thomas v. British Aeroplane Co. Ltd***.,

above that the duty at common law is no higher than that imposed under the Factory Acts.

20. Other aspects of the claimant's case are in the statement of claim listed above as paragraph (a) to (i), and also in written submissions, to prove that the defendant was negligent. In relation to paragraphs (a), (b), (c), (e) it is true that the claimant was carrying a load of sixty pounds on a trolley, but to do that is not, in my view, so heavy as to be likely to cause injury to him. This injury was caused to the claimant because he chose to carry out his duties in a manner, as shown above, which was dangerous to him. The defendant provided a trolley and the claimant admitted that he had on traction boots at the time of the accident. In addition, he was supplied with a brace; and also available to him was the help of a messenger which he did not utilize. It is said also that the steps should have had "wheel ways" to allow the wheels of the trolley to move along the steps. This is not only, in the circumstances, an unreasonable request; but the claimant has failed to prove that the absence of the "wheel ways" caused or contributed to the accident or his injuries. Moreover, the safety manual as we saw above, gives instructions as to the lifting of items.

21. In relation to paragraphs (d) and (f) it is expected that the claimant, employed by the defendant for over twenty years, would use his experience, common sense, and would follow the advice in the manual in carrying out the uncomplicated and non-technical task of transporting three boxes of paper on a trolley. In relation to (g) and (h), I accept the submission of the defendant that a reasonably prudent

employer would not have installed a ramp on the three steps which had elevation of about 24 inches. Moreover, there is no evidence that the defendant failed to provide a suitable route to transport the boxes. As mentioned above, the accident occurred because of the option chosen by the claimant to transport the boxes up the wet and slippery steps. In relation to (i) the defendant provided a safety manual to the claimant, who also attended safety meetings and seminars for over ten years. The defendant also had in placed a safety unit with three members of staff. In my view the defendant had taken every step which an ordinarily prudent employer would have taken in the circumstances of the case to secure the safety of the claimant

22. It is unfortunate that the claimant suffered the injury to his back, but on the evidence he has failed, in my view, to prove, on a balance of probabilities, that the defendant was negligent. For the reasons given above, I have no alternative but to dismiss the claim.

23. I therefore make the following orders:

(1) The claim is dismissed.
(2) The claimant to pay costs to the defendant to be agreed or taxed.

Oswell Legall
JUDGE OF THE SUPREME COURT
8th November, 2011
P.T.O

APPENDIX

Item A	
Traction boots	Paragraph 2
Item B	
Photograph of steps and Railings	Paragraph 3
Item C	
Broken tile	Paragraph 15

P.T.O.