

A manual handling claim

Case Study 9

August 2012

Casualty

Risk Management



Overview

Manual handling claims represent a significant claims exposure for many QBE clients, being difficult to defend on liability arguments and particularly where an individual presents medical evidence confirming suspected work-related injury.

Employers' duties under the Manual Handling Operations Regulations (MHOR) 1992 (as amended) are onerous and include the requirement for the employer to carry out a task specific risk assessment. This should take into account the need to provide training that is specific to the task to ensure it is performed safely, the actual load(s) being moved, the work environment, the physical capability of the employee to perform the task and whether movement or posture is hindered by use of personal protective equipment or clothing. Allegations often focus on the quality and suitability of the training provided with employers commonly struggling to evidence that the training provided (if any) was fit for purpose. Robust accident investigation **is** equally important to ensure all reasonably practicable measures have been deployed by the employers and to satisfy a court that they have discharged their duty of care.

Ashok Verma vs British Airways (BA)

This case, which proceeded to litigation and a fully contested hearing, illustrates that we can succeed in defending such claims. The trial judge provided useful pointers that employers should take heed of in their efforts to prevent and dissuade unmeritorious manual handling claims and also to mount a similarly successful liability defence where they do arise. The outcome, in itself, provides part of the business case for investment in initiatives to tackle injury arising from manual handling activities.

The Claimant's allegations

The Claimant, an airline operative, alleged that he was carrying out his duties and was to collect the staff of a recent flight arrival. His task was to load their luggage into the staff bus, which required stacking the luggage in two layers. Whilst in the process of loading the luggage onto the upper layer of the luggage compartment the Claimant sustained injury to his right elbow and arm.

The Claimant's solicitors formally alleged that our Insured was in breach of various regulations and common law duties. Ultimately the main focus of the allegations was on the MHOR.



QBE



Liability Investigation

Our Insured's accident investigation confirmed that the Claimant was loading bags onto the staff bus and, as he tried to place the second layer of luggage, he twisted his right arm. The incident was reported but there were no witnesses. The Claimant attended A&E where his arm was placed in a sling and he was then sent home.

The arrivals procedure at the time involved the driver reversing the vehicle to the end of the baggage conveyor belt. When the baggage arrived he was tasked with loading the bags from the conveyor belt into the rear of the vehicle, duly noting the number of the items. The baggage conveyor was placed at a low level thereby allowing easy transfer of baggage into the rear of the vehicle. Once the vehicle had been loaded, the driver was then tasked with collecting the flight crew and reconciliation of their baggage.

Flying staff baggage was restricted to weigh below 25kgs and there is no evidence to suggest that the bag involved in the index accident was heavier than this.

The Insured's safe system of work dictated that all flying staff luggage was limited to a maximum weight of 25kgs. Anything over 25kgs would be clearly tagged as 'heavy' following weighing from a conveyor belt before having their luggage accepted onto any flight. The task being carried out by the Claimant had been fully risk assessed and he had undergone comprehensive Pristine Condition manual handling training only one month before the index accident. Witness evidence confirmed that the 'second layer' of baggage to which the Claimant was trying to add the bag would not have been more than 2 to 2½ feet in height.

Our defence of this claim effectively centred around the fact that the Claimant had been fully trained in the correct manual handling techniques in accordance with the safe working procedure and that his non-adherence to his training was the cause of his accident.

Trial outcome

In summing up at the hearing, the trial Judge made it clear that the key evidence was that of the training provider, whose representative gave important evidence upon the Manual Handling training that the Claimant had received i.e. demonstrating:-

- Why the Claimant's demonstrated movement under cross-examination meant that extra unnecessary pressure was being placed upon his body
- That this was exactly the type of movement that was highlighted as being a risk in their training programme
- How the Claimant 'should' have lifted the bag, and further, that the Claimant would have been trained to lift from the ground, up to a variety of heights.

In giving his judgment the Judge stated that he found the defence witnesses to be more credible than the Claimant. He accepted our Insured's evidence that the bag in question was not likely to have weighed in excess of 25kgs and, had it weighed more, would have had a 'heavy' tag attached to it. He also accepted evidence that the conveyor belt was not a necessity for the operation and that it was entirely normal for bags to have to be lifted from the tarmac. The Judge went on to state that our Insured, in sub-contracting Pristine Condition, had satisfied all relevant parts of the Manual Handling Regulations by taking account of every risk that the Claimant could have faced in his task. He stated that it was evident that the Claimant had not followed his training and that he was therefore the author of his own misfortune.

Learning Points

The detailed and task specific training provided in this case was key in demonstrating that BA had given full consideration to preventing the type of injury which the Claimant sustained. It was also important to have a witness from Pristine Condition who was able to give the judge a visual demonstration of the correct lifting techniques. In summary:-

- It is important to demonstrate that an effective system of work is in place. On this occasion a system for regulating heavy baggage was evidenced
- Generic risk assessments may not be enough to persuade a judge that proper consideration has been given to the potential risk of injury. In this case a task-specific risk assessment coupled with evidence of how the training was delivered to the Claimant was far more useful

- Witness evidence from the trainer, or someone who delivers the course, is vital to provide evidence of the training content and when arguing its adequacy
- It is important, as in this case, to produce the register signed by the Claimant to confirm his attendance at the training. Often employers rely on electronic documents simply confirming that individuals were 'enrolled' on a course such that actual attendance can be challenged. Employers also often struggle to provide evidence of the training content.

Impact

QBE's reserve on this case was £48,000 inclusive of costs. The release of this reserve represented a significant financial saving for QBE and BA. Equally the case sets a precedent, preventing similar claims and rewarding the significant efforts made in developing appropriate systems of work and training that were ultimately recognised by the court.

Conclusion and QBE comment

This case highlights the need for the deployment of a comprehensive, task specific manual handling training programme that is 'fit for purpose' when seeking to defend civil claims pled under the MHOR. The Courts place great weight and emphasis on evidence of appropriate training of employees in task specific manual handling lifting techniques. Many employers still fail in this area. However, where evidence of effective training can be provided by the employer, backed by documented safe system of work and appropriate risk assessment, the Claimant will invariably have a significant mountain to climb in discharging the burden of proof upon them to satisfy any presiding court that their employer is at fault.

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