LEGAL UPDATE

CASE UPDATE

25 January 2019

TREND OF INCREASED PENALTIES FOR WORKPLACE SAFETY OFFENCES CONTINUES

SUMMARY

On 8 January 2019, a company was fined $400,000 for a fire at a refinery on Pulau Bukom which resulted in six workers suffering various degrees of burns.[1] This marked the third time in the past two years that the Singapore Courts have imposed a fine of $400,000 on a company for a workplace safety offence. $400,000 remains the highest fine that has been imposed on a company for a workplace safety offence to date.

This update examines the sentencing trends for offences under the Workplace Safety and Health Act (Cap 354A, 2009 Rev Ed) ("**WSHA**") following two important High Court decisions which laid down comprehensive sentencing frameworks for offences under the WSHA: *Public Prosecutor v GS Engineering & Construction Corp* [2016] 3 SLR 682 ("***GS Engineering***") and *Nurun Novi Saydur Rahman v Public Prosecutor and another appeal* [2018] SGHC 236 ("***Nurun Novi Saydur Rahman***").

BACKGROUND

In 2004, three major workplace accidents took place in Singapore – the Nicoll Highway collapse, a fire on the *Almudaina* at Keppel Shipyard and a worksite accident at the Fusionopolis building. These three incidents resulted in 13 lives being lost and numerous other injuries. Two years later, the WSHA was enacted in order to safeguard the health, safety and welfare of persons at workplaces. The three guiding principles of the WSHA are to reduce risk at the source by requiring stakeholders to minimise the risk they create, to encourage industries to adopt greater ownership of safety and health outcomes, and to impose higher penalties for poor safety management and outcomes.[2] The stakeholders targeted under the WSHA include employers, principals, occupiers, manufacturers or suppliers, installers or erectors, employees and the self-employed.[3]

Under section 50 of the WSHA, the maximum generally prescribed penalty for companies that are first-time offenders is a fine of up to $500,000. However, in the first 10 years after the WSHA's enactment, many of the sentences imposed for WSHA offences fell below 30% of the maximum penalty of $500,000. Similarly, although section 15(3A) of the WSHA provides that a person who carries out a negligent act that endangers the safety of himself or others at work can be fined up to $30,000 and/or jailed for up to two years, prior to 2017, no custodial sentences were imposed on individuals convicted under this section. As explained below however, the sentencing regime described above changed significantly after the High Court's decisions in *GS Engineering* and *Nurun Novi Saydur Rahman*.

THE SENTENCING FRAMEWORK PUT IN PLACE BY THE HIGH COURT

Public Prosecutor v GS Engineering & Construction Corp [2016] 3 SLR 682

The 2016 High Court decision of *GS Engineering* involved an incident in which two workers employed in the construction of towers at Fusionopolis Way fell to their deaths from the seventh floor while loading an air compressor onto an unsecured loading platform. The main contractor, GS Engineering & Construction Corp, was charged under section 12(1) of the WSHA for breaching its duty as an employer to take necessary measures to ensure the safety and

[1] https://www.mom.gov.sg/newsroom/press-releases/2019/0108-company-fined-for-fire-at-petroleum-refinery-in-pulau-bukom

[2] https://www.mom.gov.sg/workplace-safety-and-health/workplace-safety-and-health-act/what-it-covers

[3] https://www.mom.gov.sg/workplace-safety-and-health/workplace-safety-and-health-act/what-it-covers

health of its employees at work, in so far as this was reasonably practicable.

The High Court reviewed the sentencing regime for companies under the WSHA and concluded that the sentences previously imposed failed to utilise the full range of penalties available. The Court reasoned that as the maximum sentence stipulated for an offence signals the gravity with which Parliament views that offence, maximum prescribed penalties ought to be taken into account when determining where the offender's conduct falls within the entire range of punishment. With this in mind, the Court proceeded to lay down a new sentencing framework for offences by companies under the WSHA. Based on the range of suitable starting-point sentences provided by the Court, companies with a high degree of culpability and who have been guilty of breaches with a high potential for harm may expect a starting-point fine of between $300,000 and $500,000. This starting-point fine will then be calibrated appropriately after taking into account the aggravating and mitigating factors of the case.

Following the High Court's decision in *GS Engineering,* the Courts have demonstrated an increased willingness to impose heavier penalties on companies for offences under the WSHA. Just 3 months after the High Court's decision in *GS Engineering*, the District Court imposed a record fine of $400,000 on a company for an incident that led to the deaths of two trainees near Pasir Ris MRT station. 9 months later, another company was also fined $400,000 for an incident which resulted in the tilting of an oil rig, injuring 89 people. Most recently, on 8 January 2019, a third company received a $400,000 fine under the WSHA for a fire at a refinery. Putting aside the record fines imposed on these companies, there has also been a general upward trend in the quantum of the penalties imposed on companies for workplace safety offences, as seen in the annual statistics published by the Ministry of Manpower.

Nurun Novi Saydur Rahman v Public Prosecutor and another appeal [2018] SGHC 236

A similar increase in sentences has also been seen for workplace safety offences committed by individuals. In the High Court decision of *Nurun Novi Saydur Rahman,* a worker was charged under section 15(3A) of the WSHA for carrying out a negligent act that endangered his own life as well as the lives of the workers under his charge. The High Court observed that at the time when the Prosecution was presenting its case, no custodial sentences had previously been imposed for the offence in question. The Court also observed that although there had been several cases in which accused persons appeared to have a relatively high degree of culpability and had committed breaches with a high potential for harm which resulted in fatalities, these persons had only received fines in the region of $5,000 to $12,000. The Court expressed the view that the sentences previously imposed failed to give effect to the legislative intent behind the enactment of section 15(3A) of the WSHA, which was to improve workplace safety by deterring risk-taking behaviour.

The Court proceeded to lay down new sentencing guidelines for individual offenders, based on the individual's level of culpability, as well as the potential harm caused by the breach. Under these guidelines, an individual with a high degree of culpability and who has committed a breach with a high potential for harm may expect a starting-point sentence of approximately 16 weeks' imprisonment. This starting-point sentence will then be adjusted according to the aggravating and mitigating factors in the case. An additional sentence of up to 10 weeks may be added if serious injuries have been caused, and an additional 8 to 40 weeks may be added if death has been caused. Applying this framework, the Court imposed the first jail sentence for an offence under section 15(3A) of the WSHA and sentenced the accused to 25 weeks' jail.

COMMENT

As explained above, there has been a noticeable increase in the sentences imposed in the wake of the two High Court decisions referred to above. This is not surprising given that in both cases, the High Court indicated that the sentences previously imposed failed to utilise the full range of penalties prescribed under the WSHA.

What this means is that companies who are convicted of workplace safety offences may end up facing very high fines. Perhaps more importantly, it also means that individuals who are involved in workplace safety offences may end up facing significant custodial sentences if they are

culpable for breaches which result in injury or loss of life. It bears noting that the accused person in *Nurun Novi Saydur Rahman* was charged under section 15(3A) for a negligent act which endangered the safety or health of himself or others. In *Nurun Novi Saydur Rahman*, the High Court has made clear that even stiffer penalties will apply for reckless or wilful acts which endanger the health or safety of a person or others, and which constitutes an offence under section 15(3) of the WSHA.

In the face of such sentences, what can a company do to reduce its potential exposure? Some suggestions are set out below.

First, companies must ensure that the necessary processes and procedures are in place to adequately safeguard the health and safety of their employees and to prevent avoidable injury and loss of life. This includes carrying out adequate risk assessments for all of the activities carried out by the companies, and implementing the necessary safety measures to minimise risk.

Second, companies must ensure that their processes and procedures are properly documented. It is often the case that a company faced with a workplace safety investigation is unable to properly substantiate its safety processes and procedures to the authorities because of a lack of consistent diligent documentation. By the time an investigation has commenced, it is usually far too late to rectify such an issue.

Third, companies should ensure that regular checks and audits are carried out to ensure that there is on-the-ground compliance with the companies' processes and procedures. Many incidents at the workplace occur because employees fail to adhere to the processes and procedures set out in safety manuals. This is something that may be detected through regular checks and audits. At the very least, regular checks and audits will reduce a company's culpability if an accident occurs and the company is faced with a charge under the WSHA.

Finally, if a company is facing investigations relating to a possible workplace safety offence, it is often critical to engage lawyers as early as possible to review all relevant documentation and to ensure that the authorities are provided with a full and balanced picture of the circumstances giving rise to the incident. Drew & Napier has successfully handled cases where the authorities have been persuaded to compound the charge in question instead of seeking a high fine.

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