JUDGMENT

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L.019 OF 2002

BETWEEN	**DAVID LAWRENCE**	**PLAINTIFF**
AND	**NESTLE-JMP JAMAICA LIMITED(incorporating CREMO LIMITED)**	**DEFENDANT**

Miss Marion Rose-Green for the Plaintiff 'Claimant' and Mr. Emile Leiba instructed by Myers Fletcher & Gordon for the Defendant.

HEARD : 17, and 18 September 2007, and 31 July 2008.

Mangatal J. :

1. This is a claim by the Claimant Mr. Lawrence against his employers the Defendant. Mr. Lawrence claims that on two separate occasions he had an accident and suffered personal injuries as a result of the Defendant's negligence, failure to provide a safe system of work, and further or in the alternative, the Defendant's breach of the Factories' Act.
2. In the amended Statement of Claim it is pleaded that Mr. Lawrence was at all material times a Cold Room Worker, employed to Cremo Limited, which was later incorporated by Nestle-JMP Jamaica Limited, the Defendant.
3. The Claim states that it was an expressed or implied term of Mr. Lawrence's Contract of Employment and /or it was the duty of the Defendant to take all reasonable precautions for Mr. Lawrence's

safety while he was engaged on the Defendant's work as a Cold Room Worker, not to expose Mr. Lawrence to risk of damage or injury of which they knew or ought to have known, to provide and maintain a safe and adequate work place, and to take reasonable care that the place at which Mr. Lawrence carried out his work was safe and to provide and maintain a safe and proper system of working.

4. Mr. Lawrence states that on or about the 5th of October 1996 during the course of his employment, he was engaged upon work at the Defendant's place of business then Cremo Limited at 284 Spanish Town Road, Kingston 11 in the Parish of Saint Andrew, when he was instructed by the Defendant's servant and / or agent to move stocks from a shelf. In the performance of that duty he climbed upon a dolly in order to reach the goods. Mr. Lawrence's knee collided with the shelf on the dolly and Mr. Lawrence thereby suffered injuries to his knee.

5. Mr. Lawrence also claims that on or about the 1st day of January 1998, during the course of his employment he was engaged upon work at Cremo's same place of business when he was instructed by the Defendant's servant and/or agent to move stocks from the cold room and in performing that duty he was in the process of pulling a dolly with goods when he slipped, fell, and twisted his right knee, thereby suffering injury.

6. Mr. Lawrence's Attorney Miss Rose-Green was content to plead that the Defendant is liable in the same capacity in respect of both incidents, and paragraphs 6 and 7 of the Amended Statement of Claim read as follows:

7. *The Defendant is liable in the same capacity in respect of both accidents.*

PARTICULARS OF NEGLIGENCE

a. *Failing to take any adequate care to see that the Plaintiff would be reasonably safe in using the premises.*

b. *Exposing the Plaintiff, whilst he was engaged upon his work at the premises to a risk of damage or injury from a danger of which they knew or ought to have known.*

c. *Failing to take any adequate or any sufficient or effective precautions to ensure that the Plaintiff would be safe in accessing the goods on the shelf.*

d. *Failing to store the goods at a safe place where the Plaintiff could access the goods without causing danger to himself.*

e. *Failing to take any adequate or sufficient measures to prevent the metal dolly from being unsafe and dangerous for the Plaintiff's use.*

f. *Failing to ensure that the floor was not slippery.*

g. *Causing or permitting the Plaintiff to walk on a floor surface that was slippery or in a dangerous condition when they knew or ought to have known it would be a source of danger and where employees had to walk.*

h. *Failing to take sufficient measures to ensure that a person, including the Plaintiff when accessing goods on the metal dolly would not be injured and/ or maimed.*

i. *Failing to provide and maintain a safe metal dolly that was safe when in operation.*

j. *Failing to take any or any adequate precautions for the safety of the Plaintiff while he was engaged upon the work.*

k. *Exposing the Plaintiff to a risk of damage or injury of which they knew or ought to have known.*

l. *Causing or permitting the Plaintiff to walk in the walkway when they knew or ought to have known that it was not safe to do so.*

m. *In the circumstances failing to discharge the common duty of care to the Plaintiff in breach of the Act.*

8. *Further or in the alternative the injuries sustained by the Plaintiff were occasioned by the breach of duty of the Defendant under the Factories Act and breach of the duty of care owed by the Defendant to the Plaintiff as employee.*

PARTICULARS

i. *Failing to take any or any adequate precautions for the safety of the Plaintiff whilst he was engaged in carrying out the said work.*

ii. *Failing to provide a safe or adequate plant for the Plaintiff to work.*

iii. *Failing to take any or any adequate measure to provide safe equipment so that whilst a person including the Plaintiff was using same he would not be injured and/or maimed.*

iv. *Causing or permitting the dolly to be or to become or to remain a danger and a trap in that the Plaintiff's body was liable to be injured on it.*

v. *Causing or permitting the Plaintiff to walk on a floor surface that was slippery or in a dangerous condition where they knew or ought to have known it would be a source of danger and where employees had to walk.*

vi. *Failing to provide a safe system of work.*

vii. *In the circumstances failing to discharge the common duty of care to the Plaintiff in breach of the Act.*

9. In response, the Defendant has said that it denies that there has been any breach on its part of the duty to provide a safe system of work or of any duty at all owed to Mr. Lawrence. The Defendant denies that the alleged or any injuries sustained by Mr. Lawrence were caused or occasioned by any breach of statutory duty under the Factories' Act or otherwise.

10. Further or alternatively, the Defendant states that any injuries, loss or damage Mr. Lawrence sustained on or about the 5th of October 1996 were caused wholly or partially by Mr. Lawrence's own negligence. The particulars of negligence pleaded are as follows:

a. Failing to use the dolly chosen by him in a manner consistent with its proper use.

b. Failing to exercise due care in using the dolly so as to prevent any sliding or movement of the dolly while he was standing thereon.

c. Failing to take any or any sufficient care to ensure that his foot and in particular his knee did not come into contact with the shelves in a manner likely to cause him injury.

9. As regards paragraph 5 of the Amended Statement of Claim which treats with the alleged incident in January 1998, the Defence makes a denial of that paragraph and the particulars of negligence.

Mr. Lawrence's evidence

10. In his evidence, Mr. Lawrence has stated that on or about the 5th of October 1996 he was working in the Cold Room. His supervisor instructed him to fill an order. Mr. Lawrence took the order from his supervisor and entered the chill room, which leads to the Cold Room. In amplification of his examination-in chief, Mr. Lawrence described the Cold Room as a storeroom where the ice cream is kept, sometimes on pallets. There are no shelves and the room is big enough to play football in. The Cold Room was packed to the

doorway with dollies. Mr. Lawrence says that it was difficult to gain access to the ice cream in the cold room so he had to climb on top of the dolly to get to the ice cream. He describes the dolly as being a heavy trolley with two shelves on four wheels. When he climbed on the dolly his left knee collided with the shelf of it. Mr. Lawrence sustained injuries and felt severe pain to his left knee and leg.

11. In amplification of his evidence in the Witness Statement, Mr. Lawrence said that the Cold Room is often packed very tight, right up to the doorway and so in order to take out an order, one would sometimes have to climb up on a dolly. If for example, one had a small order, say 10 ice cream containers, the different flavours are spaced out and one would have to search for them, some on the top, some on the bottom shelves of the dollies. There was a method other than climbing on the dolly. He would have had to request the supervisor to ask another worker to help him draw back the dolly. Mr. Lawrence said that that has happened on occasion. However, on another occasion the supervisor's response was that Mr. Lawrence should fill the order himself since it was a small order. Mr. Walton, who gave evidence on behalf of the Defendant, was one of Mr. Lawrence's supervisors. However at the time of the 1996 incident one Mr. Patterson was the supervisor from whom Mr. Lawrence took the order.

12. Mr. Lawrence started working at Cremo in 1994. The incident happened before Mr. Lawrence went on staff and he worked 2 years before going on staff. According to Mr. Lawrence, when in the Cold Room the Supervisors and the workers used the same method of standing on the dollies and packing off the ice cream. That was the method they generally used, climbing on the dolly and packing off the things. He says that dollies were of different sizes.

13. Mr. Lawrence continued to work with the company. After his 1996 injury he was transferred to the production area but he was still

working in the Cold Room. On or about the 6th of January, 1998 Mr. Lawrence was working in the Cold Room. Ice was on the floor, formed as a result of water which was spilled on the Cold Room floor. Mr. Lawrence states that quite often when there is a build up of ice at the back of the Cold Room the company defrosts the ice to ensure that the fans used to circulate the air are working. According to Mr. Lawrence, when the ice melts the water runs back inside a tunnel which is a part of the Cold Room. When the water runs back inside the tunnel it forms ice on the floor, causing the Cold Room to become slippery. He states that if the water is allowed to remain on the floor it forms ice. Mr. Lawrence says that when the workers report the problem of water on the floor to the supervisors, they sometimes neglect it and do nothing. Water is used in the defrosting process.

14. Mr. Lawrence states that it is not his job to clean the floor or wipe water off the floor. He states that it is the job of the maintenance workers to clean the floor.

15. Mr. Lawrence states that on or about the 6th day of January 1998 at about 8: 30 a.m. he was at work. He was pulling a dolly from the bottom of the tunnel taking it to the top of the tunnel as production was about to start. The dollies are packed two in a row on both sides from the top to the bottom of the tunnel. Whilst pulling the dolly Mr. Lawrence claims that he slipped and his right knee was sprained. He felt severe pain and he continues to suffer with both knees.

16. Mr. Lawrence states that as a result of the injuries he has been unable to work. He was made medically redundant in February 2001. He said in his Witness Statement dated 8th February 2005 that since April 2002 he had obtained work involving light duties but his income is far below what he was earning before the accident . He claims for loss of earnings and for loss of earning

capacity. He is also claiming for the cost of future surgery on his knees.

17. Mr. Lawrence was cross-examined. As regards the 1996 incident, Mr. Lawrence states that the dolly he climbed on was taller than him and his height was estimated to be 5 feet 7 inches. The dolly had 2 shelves and the shelf that his left knee collided with, (Mr. Lawrence's words were "knee lick up with"), was the middle shelf. He denied that he was never instructed at any time to climb on top of the dolly. Mr. Lawrence said that in October 1996 he was in possession of a Cold Room Boot issued to him. However, he says that there are 2 sets of Cold Room Boots. One is the hard Boots, and the other is the proper one. He had the hard Boots in October 1996 but he did not get the proper one until a good while after.

18. As regards the January 1998 incident, Mr. Lawrence says that the shelves of the dolly that he was pulling both had ice cream on them. Mr. Lawrence agreed with Counsel for the Defendant Mr. Leiba's suggestion that it is correct that 2 persons normally operate the dolly when it is halfway full. He said that he knows what a digger is. It is used to break ice on the floor to clear up the floor. In response to a suggestion that the digger was used by himself and other Cold Room workers to break ice on the floor of the tunnel, Mr. Lawrence said that other Cold Room Workers used the digger to do that but he only used the digger to open the door. Confusingly, he also said that in his time he did not see any other worker use the digger to break ice. Mr. Lawrence says that on the morning in question there were lights in the tunnel. Before he began walking along the tunnel, he could see to the other end but it was foggy.

19. In re-examination Mr. Lawrence said that on the morning of the 6th of January 1998 there was a reason why he alone was pulling the dolly. He came in early in the morning, and normally there were 2

workers assigned to work in the tunnel, including Mr. Lawrence, each spend one hour inside and one hour outside the tunnel. The 2 workers do it hour by hour. The one outside the tunnel has to look for dollies for what they have inside the tunnel and when it is Mr. Lawrence's turn to go outside he does the same thing. When he came in that morning the supervisor let Mr. Lawrence know that he must draw down whatever is there in order for production to start. Since Mr. Lawrence was there alone at the time, he pulled down the dolly alone. The supervisor was there when he pulled down the dolly.

The Defendant's Case

20. The Defendant called one witness to give evidence, being Mr. Derrick Walton, who is the Distribution Coordinator at Nestle's Ice Cream Division.

21. Mr. Walton started working at Nestle when Cremo Limited was taken over in 1997 but prior to this he was with Cremo Limited in 1996.

22. Mr. Walton was a delivery supervisor at Cremo in 1996 and a delivery supervisor with Nestle in 1998. His responsibilities involved ensuring that deliveries are made and supervising the warehouse.

23. Mr. Walton's evidence is that there is a Delivery/Distribution area of the Cold Room and there is a Production area of the Cold Room and that there were several dollies assigned to the Delivery area.

24. A dolly is a stand on wheels on which cartons of ice cream are placed. The dolly's purpose was to store and to move the product. According to Mr. Walton, contrary to what Mr. Lawrence is saying in relation to the 1996 incident, no one was supposed to climb the dolly, which only had two levels for the purpose of storing goods. In 1996 and even up to the present day using a dolly was the best method of transporting and storing products. It was only for these

purposes that the Defendant instructed their employees to use the dolly. Other equipment could be used but their use would have been limited to storing products and not to transport them.

25. Mr. Walton also states that in addition there were no shelves in the Cold Rooms which would necessitate anyone climbing or jumping from a dolly. In his Witness Statement Mr. Walton says that this was because the height of the dolly was less than that of the average human being, and so workers could reach the top level of the dolly by hand while standing on the ground.

26. According to Mr. Walton, every effort was made at Cremo and later Nestle to make the dollies safe by regularly maintaining them. Mr. Lawrence's duties required him to work in tandem with others to remove goods from the production line and pack them onto a dolly and carry them to the Cold Room/"the tunnel". This is where the ice cream is put after it comes from the production line to blast freeze it. Two persons should pull a dolly at all times. One should be in the back and the other in front. This was because the dolly had 4 wheels. The 2 front wheels were to guide the dolly and the other 2 were stationary.

27. Mr. Walton states that in addition to instructing the workers to pull the dollies in groups of two, from time to time the workers were educated on how to operate and were give instructions on safety measures. Each worker was told that he should always wear a Cold Room boot. Cold Room boots had grips at the base which could prevent workers from slipping or sliding.

28. The only slipping or sliding that could take place in the Cold Room is on ice. The extremely low temperature in the Cold Room does not allow water to be formed. Ice forms on the floor if there is a leak causing a passage of air into the Cold Room. Such a leak could be caused by a door being open and by heat coming into the Cold Room and merging with the cold air. Ice is formed as a result.

29. According to Mr. Walton, however, ice is not allowed to stay on the floor in the day time and the Cold Room workers are given strict instructions not to allow a build up. Ice usually builds up overnight when no one is around, but it is the workers' task to clean up first thing in the morning. Workers are equipped with an instrument referred to as a "digger" and it is their duty to immediately remove ice if it accumulates. Further instructions are given to these workers not to move the dolly if there is ice on the floor and to make sure that the floor is safe before moving the dolly.

30. Mr. Walton states that there are 3 reasons for giving the workers the instruction not to move the dolly if there is ice on the floor and to make sure that the floor is safe before moving the dolly:

    i. A dolly will not move properly if ice is on the floor;

    ii. If ice is on the floor the employee would be guilty of breaching his duty to keep the floor clean;

    iii. He would be endangering himself.

31. In his Witness Statement dated February 2005, Mr. Walton had stated that the dollies were about 4 feet in height. However, in amplification of his evidence- in-chief, Mr. Walton says that since he gave the Witness Statement he has had reason to reassess the height of the dolly. In February 2005 he had given the approximate height of the dolly. However, since then he had had occasion to reassess the height of the dolly. He measured the height of the dolly, not using a tape measure but estimating from his own height, which is 5 feet 10 inches. Mr. Walton now says that the dolly is fairly close to 5 feet 7 inches.

32. Mr. Walton was cross-examined and he said that contrary to what Mr. Lawrence stated, it is not true that the dollies come in different

sizes. From he went to Cremo he says that the same size dolly has always been used and this has never changed. He says if the dolly was either taller or shorter than the ones they have it would pose a problem.

33. He stated that there would only be fog in the mornings when a maintenance crew is doing a defrost. Other than that it would be clear. There was a maintenance crew separate and apart from Cold Room workers. The function of the maintenance crew was just to defrost the unit to enable better freezing points. When they defrost, within a half an hour period the ice starts to melt. After the defrost there would not necessarily be water flowing. In the Defendant's defrosting operation they use ammonium chemicals to defrost. Mr. Walton says that if you defrost your freezer at your house water would run, but in the case of the Defendant's operation water does not run immediately. However, naturally ice melts and does run. Mr. Walton said that when the ice melts, from his knowledge, the tunnel is someplace that has to be kept in a tidy condition. He does not know whether when the ice melts it runs back into the tunnel. He said that the maintenance crew have to defrost the ice to get lower freezing points.

34. Mr. Walton denied that it was the duty of the maintenance crew to clean up the water. He says their duty was in respect of the refrigeration units. Mr. Walton said that in January of 1998 there were not to his knowledge only 2 persons; the Defendant had a team on the production side.

The Governing Law

35. One of the duties which an employer owes to his employee is to provide a safe place of work. There is a comprehensive discussion

to be found in **Charlesworth & Percy on Negligence**, 9th Edition, as follows:

> *10-09* ***Duty is owed to each employee individually.*** *The duty is owed to each employee as an individual. Necessarily, this involves the employer's having to take into account any peculiarity, weakness or special susceptibility of his workman about which he knew or ought to have known. ....*
>
> *(i) Safe place of work*
>
> *The duty of employers to provide their workmen with a safe place of work was explained by Lord Goddard L.J. to be " not merely to warn against unusual dangers known to them....but also to make the place of employment....as safe as the exercise of reasonable skill and care would permit." .....*
>
> *10-15 .....*
>
> *Clearly, regard must be had to the nature of the place of work when considering whether or not it is safe.....*
>
> *10-16 It has been suggested that the employer's duty as to the condition of the premises is less than in respect of the plant and appliances. This, however, is at variance with the authorities quoted above and it is more probable that the two responsibilities, respectively, are very much alike. Moreover, the duty to provide a safe place of work is fulfilled by providing a place as safe as care and skill can make it, having regard to the nature of the place. This may involve having to take competent advice about, for example, what precautions ought*

to be taken, such as the fitting of some form of sound-proofing materials. If the workman is working on a scaffold or a roof, it must be a safe scaffold or roof. No complaint can be made that working there is not as safe as working on level ground. As long as the employer makes the working place as safe as it can reasonably be made, he has satisfied his obligation. Thus, situations often arise where there are possible dangers, the risk of which a prudent employer can foresee and yet the particular danger cannot be removed easily or at all.

Illustrations

The employer's duty in such circumstances is to take reasonable precautions for his workmen's safety, which could involve the provision of fencing around a tank at a sewage-pumping station; adequate fencing to meet the risk of an employee falling off a platform, whilst working with his back to a steep drop; a handrail on a short but steep and irregular flight of steps;...

10-18 On the other hand, it was held that the employer's duty to take reasonable precaution for his workmen's safety did not include fencing the edge of a sloping roof.

10-19 ***Is common law duty higher than statutory duty?*** *The employer's duty at common law is not higher than that imposed by sections 28 and 29 of the Factories Act 1961. Indeed, Lord Tucker in Latimer v. A.E.C.Ltd. warned "that the courts should be vigilant to see that the common law duty owed by a master to his servant should not be*

gradually enlarged until it is barely distinguishable from his absolute statutory obligations". More often than not, the statutory obligation will impose a higher duty on the employers than at common law.

....

10-21 ***Temporarily unsafe conditions.*** *Apart from the nature of its construction, a place of work may become unsafe, owing to some temporary condition or some obstruction being created on it. In such a case, the test to be applied is whether or not a reasonably prudent employer would have caused or permitted the existence of that state of affairs of which the complaint is made. It follows that the question of what constitutes a breach of his duty in any given set of circumstances must be one of degree.*

Illustrations

10-22 .... When a workman slipped on a patch of oil or water or both which had accumulated, possibly in a depression, on the concrete floor of a passage in a factory, Somervell L.J. said that he felt it impossible to say that the mere existence of these conditions "indicates any failure to take reasonable care to protect those employed from unnecessary risk." When the entrance to a factory became slippery following a sudden fall of snow, which froze as it fell shortly before the factory opened, and a workman slipped on entering, the employers were held not liable, on the ground that there had been no failure to exercise reasonable care. A fire authority was not negligent where a station officer

slipped and hurt himself on a tiled floor after water, ubiquitous, in the station, leaked from the valve of a fire appliance pump....

10-24 In Vinnvey v. Star Paper Mills a workman had been brought to the scene of a spillage of some slippery substance, which had been allowed negligently to escape on to the floor, and charged expressly with the duty of cleaning up the mess with a squeezee. Cumming-Bruce J. held that there was no reasonably foreseeable risk that he would would slip and hurt himself in the course of performing such a simple duty. It may be sufficient to have a system whereby employees are themselves responsible for clearing away dangerous debris from the immediate vicinity of their work places.....

...(iv) Safe system of work

If the employer has instituted a defective system of work, as a result of which an employee is injured, although there is no negligence in the actual working of the system, the employer is liable. ....

10-60 ***Meaning of system of work.*** *A system of work is the term used to describe : (i) the organization of the work; (ii) the way in which it is intended the work shall be carried out; (iii) the giving of adequate instructions (especially to inexperienced workers); (iv) the sequence of events; (v) the taking of precautions for the safety of the workers and at what stages; (vi) the number of such persons required to do the job; (vii) the part to be taken by each of the various persons employed;*

and(viii) the moment at which they shall perform their respective tasks. Further,

"...it includes....or may include according to circumstances, such matters as the physical lay out of the job-the setting of the stage, so to speak-the sequence in which the work is carried out, the provision in proper cases of warnings and notices, and the issue of special instructions. A system may be adequate for the whole course of the job or it may have to be modified or improved to meet circumstances which arise. Such modifications or improvements appear to me equally to fall under the head of system."(Lord Greene M.R. in Speed v. Thomas Swift & Co. Ltd. [1943] K.B. 557 at 563, 564.

10-61 ***Duty to prescribe a safe system of work.*** *It is a question of fact whether or not there is need for a system of work to be prescribed in any given circumstances. In deciding it, regard must be had to the nature of the work, that is whether properly it requires careful organization and supervision, in the interests of safety of all those persons carrying it out, or it can be left by a prudent employer confidently to the care of the man on the spot to do it reasonably safely....*

10-63 ***Nature of the duty.*** *The duty to prescribe a safe system of work is neither one to provide perfection nor an absolute duty, so that where some commercial necessity requires that an employer will expose a workman to some risks, he may be able to*

avoid liability for his failure to guard against such dangers....

10-64 By way of illustration, if window cleaners have to clean windows high above the ground by standing on a sill, approximately six inches wide, without any instructions either to ensure that the windows should be tested before cleaning or to use any apparatus, such as wedges to prevent them from closing, or, being provided with safety belts to attach them to available transoms, there is a failure to provide a safe system of work. ...

10-67 ***Checking that the system is followed.*** *The fact of prescribing a safe system of work is not a discharge of the employer's duty, unless it is also accompanied by his taking steps reasonably to make sure that it is followed, such as by supervision in appropriate cases....On the other hand, an experienced man does not need any warning or advice about risks, with which he is thoroughly familiar.....*

Illustrations

10-70 It has been held to be an unsafe system when.....

10-71...when a workman was repairing a ship in dry dock, not taking any steps to prevent him from falling into the hold; in failing to provide boards for men to stand on when they were working on a roof, from which they were likely to fall.

Also, where an employee, in the course of removing a banner from a flag-pole, located at a height of approximately 27 feet, fell from an extension ladder,

which he had fixed to a trestle, standing on the platform of a utility truck;...

On the other hand it has been held that the system was not unsafe .....where responsible employees were properly left with the tasks of clearing away themselves any dangerous debris from the immediate vicinity of their workplace;-(Stanley v. Concentric (Pressed Products) (1971) 11 K.I.R. 260.....

10-74 Likewise, there was no negligence... when a workman in a shipyard had lifted up a cable, which was lying across a bogie track, in order to let the bogie pass along, but was struck and injured by it;....in cutting barbed wire by placing it on the metal head of a sledge hammer and striking it with a smaller hammer...

36. In **Stanley v. Concentric (Pressed Products)** 11 K.I.R. 260, in an abstract from Westlaw, the following notation appears:

Abstract: It is sufficient to have a system whereby employees are themselves responsible for clearing dangerous debris from the immediate vicinity of their workplaces. The plaintiff was a press operator. When coming on duty he and a fellow-employee found that there were scraps of metal in the vicinity of their workplace. The usual procedure was for them to remove such scraps themselves, or to ask a foreman to arrange for this to be done, but they decided not to bother with this. Later, while carrying some finished work, the plaintiff was injured by a piece of scrap

on the floor. He sued his employer alleging negligence.

Summary: Held, that the system for keeping the floor clear was adequate and the accident, in so far as it was anyone's fault, was the fault of the plaintiff.

37. In **Dixon v. London Fire and Civil Defence Authority** (1993) Times, 22 February, the English Court of Appeal held that a fire authority was not in breach of its duty of care to an employee who slipped and injured himself because of water on the tiled floor of a fire station. Lord Justice Stuart-Smith reportedly said *that the water, endemic in a fire station, had leaked from the valve of a pump of a fire appliance on to the tiled floor, causing the plaintiff to slip.*

But he had not shown that his employer had failed to take reasonable steps to cure leaking, a problem it had for many years.

Further, the plaintiff could not establish any failure by the employee to provide a proper floor. The quarry tiles, embossed with studs, although not providing the best surface to prevent slipping, were of a type shown to be satisfactory for the various functions taking place at a fire station and that was relevant.

38. Mr. Leiba, in the course of his closing address on behalf of the Defendant submitted that although the Claimant Mr. Lawrence is relying on two separate incidents in making his claim against the Defendant, the circumstances of each incident are to be considered separately. I agree with that submission and so I intend to deal with each incident in its own right in making my determination of the issues involved in this matter. The question of

what constitutes a breach of an employer's duty in any given set of circumstances is a question of degree.

Liability in respect of the Incident of 5th October 1996

39. I found in this regard that Mr. Lawrence appeared to be in a more reliable position than Mr. Walton to say what the procedure was in filling orders in the Cold Room. Mr. Walton was not employed to Cremo until November 1996, after the first incident involving Mr. Lawrence. I accept Mr. Lawrence when he said that in filling orders in the Cold Room, the general method used was to climb on the dolly and reach for and search for ice cream. I accept that the dolly was about the same height as Mr. Lawrence, approximately 5 feet 7 inches, or a little higher. In respect of this first incident, Mr. Lawrence claims to have suffered injuries when his knee collided with, to use his words in cross-examination, his knee "lick up" on the middle shelf of the dolly.

40. However, Mr. Lawrence also said that the dolly in question only had ice cream on the bottom shelf and not the top shelf. He said that 2 persons normally operate the dolly when more than half way full.

41. In my judgment, there was no failure on the part of the Defendant to provide a safe system of work. Nor was there any negligence on the part of the employer. As was held in **Vinnyey v. Star Paper Mills** [1965] 1 All E.R. 175, there was no reasonably foreseeable risk that Mr. Lawrence would hurt himself in the course of performing such a simple duty. This situation is to be distinguished from one where an employee has to mount steep or irregular steps without a hand railing, or where he has to work on a narrow ledge, for example, cleaning windows high above the ground, or removing an item from somewhere high above the ground, requiring the use of an extension ladder. Mr. Lawrence

says that he suffered injuries when his knee hit into the middle step and that seems to me to have been caused by his failure to exercise due care for his own safety, to ensure that his knee did not come into contact with the shelves in a manner likely to cause him injury. In addition, the dolly was only half way full and therefore based on his evidence, it does appear as if he could have moved or shifted the dolly himself instead of climbing on it in order to reach the ice cream and fill the order. In any event, Mr. Lawrence indicated that there was another method which could have been employed instead of climbing on the dolly and that was for him to have asked the supervisor to ask someone to assist him in moving the dolly. Save for his evidence that on another occasion when he had a small order to fill, that the supervisor had told him to fill it himself, Mr. Lawrence was not forthcoming with any reason why he did not make the request for assistance of the supervisor. Alternatively, even if the Defendant could be said not to have provided a safe system of work in that the Cold Room was kept too tightly packed, and may have prevented Mr. Lawrence having free and easy access to the ice cream on pallets on dollies, it really seems to me that Mr. Lawrence through his own carelessness in performing this simple task was the author of his own misfortune. There would be no sufficient nexus between the tightly packed nature of the Cold Room and Mr. Lawrence's hitting his knee on the dolly. I therefore find that in respect of the 1996 incident, Mr. Lawrence, the Claimant herein, has not proved the Defendant liable for breach of any duty of care owed to Mr. Lawrence, whether at common law or under the Factories Act.

Liability in respect of the incident of 1st January 1998

42. In relation to the evidence as to the responsibility for cleaning the floor of the Cold Room and the tunnel, there is

variance between the evidence of Mr. Lawrence and Mr. Walton on this point. I am of the view that Mr. Walton's evidence is to be preferred on this point. Mr. Walton said that the maintenance staff were not responsible for cleaning up the water. However, he did also say that he was not the supervisor of the maintenance crew but what he did definitely know was that they are the ones responsible for defrosting the units. I accept Mr. Walton's evidence that any slipping and sliding that would take place would be on ice because the extremely cold temperatures in the Cold Room would not allow water to remain. Indeed, in his Witness Statement, Mr. Lawrence states that in the defrosting process, when the ice melts it forms water, the water runs back inside the tunnel, which is a part of the Cold Room, and forms ice on the floor, causing the Cold Room to become slippery. I accept Mr. Walton's evidence that the Cold Room workers are given strict instructions not to allow a build up of ice and that they are equipped with instruments called diggers because it is their duty to remove ice when it accumulates. I cannot accept the inference in Mr. Lawrence's evidence that he was just to use the digger to open doors, as opposed to breaking ice, when he at one point in his evidence admitted that other Cold Room workers use the digger to break up the ice .

43. In presenting his case, it really was not clear to me whether Mr. Lawrence was in fact wearing his Cold Room Boots, whether the hard ones, or the ones which Mr. Lawrence described as the proper ones at the time of the alleged incident in 1998.

44. In addition, by the time this accident happened in 1998 Mr. Lawrence was an experienced Cold Room Worker who knew that when the dolly was half way full two persons normally operate the dolly, and should operate the dolly. The only reason which Mr. Lawrence offers for pulling the dolly alone is that he was there alone at that time and that the supervisor made him know he was

to draw down whatever he had for when production starts. There is no evidence that Mr. Lawrence protested drawing down the load alone or indicated to the supervisor to get someone else to draw down the load with him, or to await the presence of another worker to draw the loaded dolly. At one stage in looking at these facts, I was reminded that the fact of prescribing a safe system of work is not a discharge of the employer's duty unless it is also accompanied by his taking steps reasonably to make sure that it is followed, such as by supervision in appropriate cases. However, it is clear that an experienced man does not need any warnings or advice about risks with which he is thoroughly familiar.

45. I am of the view that the system of work provided by the Defendant was not a perfect one, but was adequate in the circumstances. It was sufficient for the Defendant to have a system, which I have found as a fact they had, where employees, the Cold Room Workers, are themselves responsible for clearing dangerous matters, such as ice, from the vicinity of their workplaces. Before any question of moving the dolly arose, whether by himself or with someone else, the Claimant had a duty to see to his own safety. He saw ice on the floor that morning, he knows it is slippery yet he did nothing. He did not make any attempt to get rid of the ice. He did not use the digger for one of the purposes which he admits it is for, that is to break up ice on the floor and clear it up. Counsel Miss Rose-Green argued that the unchallenged evidence was that it was not Mr. Lawrence's duty to clean up the water. Even if that were so, it is not water that Mr. Lawrence slipped on; it was ice which he had seen that morning, and which I find that he had a duty to break up. The facts in this case are to some extent similar to those in **Vinnyey v. Star Paper Mills** [1965] 1 All E.R. 175. In my judgment, in so far as there was any fault on anyone's part for this 1998 accident, it was the fault of Mr.

Lawrence himself. I find that the Defendant was not in breach of either its common law duty or any statutory duty under the Factories Act.

46. The Claim against the Defendant therefore fails. There will be Judgment for the Defendant against the Claimant, with Costs to be taxed if not agreed.