



Case No: HQ16P01412

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 20/10/2017

Before :

MASTER COOK

Between :

Associated British Ports

Part 20
Claimant

- and -

DFDS Logistics Limited
(trading as Quayside Distribution)

Part 20
Defendant

Simon King (instructed by **Hill Dickinson LLP**) for the **Part 20 Claimant**
Michael Jones (instructed by **DWF LLP**) for the **Part 20 Defendant**

Hearing dates: 3 and 4th October 2017

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....

MASTER COOK

Master Cook:

1. The Part 20 Claimant ABP seeks an indemnity or contribution under the provisions of the Civil Liability (Contribution) Act 1978 from the Part 20 Defendant who I will refer to as Quayside.

2. The relevant provisions of the Act provide:

“1(1) ... Any person liable in respect of any damage suffered by another person may recover contribution from any other person liable in respect of the same damage (whether jointly with him or otherwise).

(4) A person who has made or agreed to make any payment in bona fide settlement or compromise of any claim made against him in respect of any damage ... shall be entitled to recover contribution in accordance with this section without regard to whether or not he himself is or ever was liable in respect of the damage, provided, however, that he would have been liable assuming that the factual basis of the claim against him could be established.

2(1) ... In any proceedings for contribution under Section 1 above the amount of the contribution recoverable from any person shall be such as may be found by the Court to be just and equitable having regard to the extent of that person's responsibility for the damage in question.

(2) ... The Court shall have power in any such proceedings to exempt any person from liability to make contribution, or to direct that the contribution to be recovered from any person shall amount to a complete indemnity.”

3. ABP seeks a contribution or indemnity from Quayside because it has paid damages and costs to Mr Wood by way of settlement of a claim for damages for personal injury suffered by him on 2 August 2013.
4. Mr Wood was injured when a forklift truck he was driving at Lowestoft Fish Market toppled off a raised platform onto an adjacent service road. Lowestoft Fish Market is owned by ABP and accordingly they were the occupier for the purposes of the Occupiers' Liability Act 1957 and owed duties in respect of a workplace under the Workplace (Health Safety and Welfare) Regulations 1992 [the Regulations].
5. Mr Wood's claim was settled by acceptance of a Part 36 offer on the basis that he would recover two thirds of the sum he would otherwise be entitled to. This settlement recognised that there was substantial element of fault on the part of Mr Wood. ABP accepted that it was responsible for a relevant breach of regulation 17 of the Regulations in that it failed to install a barrier or edge protection on the raised platform.
6. Damages were then agreed and under the terms of a consent order dated 13 January 2017 ABP agreed to pay Mr Wood the sum of £210,000 by way of damages plus a sum of £8,489.90 to the Compensation Recovery Unit and costs of £100,000.
7. In these Part 20 proceedings ABP assert that Quayside was in effect Mr Wood's employer for the purpose of his work at the Fish Market. It is alleged that Mr Wood

worked at the Fish Market solely for Quayside enabling them to carry out their business there. In the circumstances ABP allege that Quayside owed to Mr Wood all the duties generally owed by an employer to an employee both at common law and under the relevant regulatory provisions.

8. Particulars of the duties alleged and breached are set out at paragraph 5 of the particulars of claim. In short ABP allege that had Quayside discharged their duties owed to Mr Wood, any dangers inherent in having him operate a forklift truck on the raised platform at the Fish Market, absent the presence of any edge protection, would or should have been become apparent to Quayside so that their working practices would have been altered and/or so that Quayside could have raised the issue with ABP in order that measures designed to avoid an accident such as that suffered by Mr Wood could have been implemented.
9. By its Defence Quayside asserted that it had no presence at the Fish Market and that its employees would deliver fish to the transport yard and that Mr Wood in his capacity as a self-employed forklift truck contractor at the market would load and unload deliveries. It was denied that Mr Wood worked exclusively for Quayside and asserted that he had worked for other merchants at various times. In the circumstances and for the reasons set out a paragraph 3 (iv) of the Defence Quayside denied that it owed the alleged duties and obligations to Mr Wood.
10. Quayside also alleged that the raised platform was very slippery due to an accumulation of grease and/or fish product which had not been cleaned by ABP and which was a potential cause of Mr Wood's accident.
11. Counsel were agreed that following issues arose for the court's consideration:
 - i) Was Mr Wood in effect Quayside's employee at the material time, and/or was Quayside in a position equivalent to that of an employer vis-a-vis Mr Wood?
 - ii) Did Quayside owe towards Mr Wood all or any of the duties pleaded by ABP?
 - iii) If Quayside did owe duties towards Mr Wood was it in breach of all or any of the duties owed?
 - iv) If Quayside was in breach of any duty, did that breach contribute to the happening of Mr Wood's accident?
 - v) If Quayside was in breach of a duty owed to Mr Wood and all or any of those breaches contributed to the happening of the accident, should Quayside make a contribution to ABP in respect of the settlement reached with Mr Wood and if so in what proportion or what sum?

Relevant case law

12. There was little dispute between the parties as to the relevant law relating to Mr Wood's employment status. I was particularly referred to the well-known case of *Lane v Shire Roofing Company (Oxford) Ltd* (1995) IRLR 493 (CA) and to the more recent case of *Jennings v Forestry Commission* (2008) ICR 988, 2008 EWCA Civ 581 in which the case of *Lane* was followed. At paragraph 20 of his judgment in *Jennings* Richards LJ

quoted with approval Henry LJ's statement of the relevant principles in the case of *Lane*:

“First, the element of control will be important: who lays down what is to be done, the way in which it is to be done, the means by which it is to be done, and the time when it is done? Who provides (i.e. hires and fires) the team by which it is done, and who provides the material, plant and machinery and tools used?

But it is recognised that the control test may not be decisive – for instance, in the case of skilled employees, with discretion to decide how their work should be done. In such cases the question is broadened to whose business was it: was the workman carrying on his own business, or was he carrying on that of his employers? The American Supreme Court, in *United States of America v Silk* (1946) 331 US 704, asks the question whether the men were employees 'as a matter of economic reality'. The answer to this question may cover much of the same ground as the control test (such as whether he provides his own equipment and hires his own helpers) but may involve looking to see where the financial risk lies, and whether and how far he has an opportunity of profiting from sound management in the performance of his task

And these questions must be asked in the context of who is responsible for the overall safety of the men doing the work in question”

13. The authorities make it clear that the question of employee status will depend upon the facts of the individual case and various features, most significantly business activity and control.

The Evidence

CCTV

14. Mr Wood's accident was captured on CCTV. I was provided with a copy of the available footage which had been enhanced and slowed down. The CCTV is not of the highest quality and because the accident occurred at night much of the action is either obscured by darkness or from the lights at the front of the fish market and the spotlight on the front of Mr Wood's forklift truck.
15. The footage shows Mr Wood arriving at the fish market in his car. He can be seen going to his forklift truck and then to the rear of a lorry parked adjacent to the raised platform. He then picks up some pallets from the rear of his lorry and proceeds back to the start of the raised platform where he turns on to the platform and proceeds along it towards the camera for a short distance before turning left into the Fish Market. He then returns

to the lorry and does the same again. On his third trip to the lorry he takes some time to put the pallets on the forklift. Just as he begins his journey back to the fish market a white van arrives and parks in front of the raised platform. Mr Wood's forklift can be seen progressing towards the junction of the roadway and platform and then turn on to the platform where he stops facing the camera. The occupant of the van appears to climb up onto the platform and crosses in front of the forklift into the fish market. A short time afterwards the forklift moves off at what appears to be a slight angle and topples over the edge of the platform. It is extremely difficult to come to any firm conclusion about why or what caused the forklift to topple over the edge from the CCTV footage.

Mr Wood's statement

16. Mr Wood's witness statement dated 18 October 2016 was put in under the provisions of the Civil Evidence Act 1995. This witness statement was prepared to answer a Part 18 request by ABP in Mr Wood's action against them. It does not deal with the circumstances of the accident but does deal with the relationship between Mr Wood and Quayside.
17. Mr Wood stated that he started to work at the Fish Market in Grimsby after leaving school. Some years later he started to do deliveries using his own van. Eventually that business grew into a substantial haulage company delivering fish to various locations including Lowestoft, Ipswich and London. One of Mr Wood's clients was Quayside.
18. In about 2003 Mr Wood's business experienced difficulties and he took the decision to close it. At this time Mr Wood was asked by Mr Wilkinson, the managing director of Quayside, if he would like to be employed by Quayside to work for them at Lowestoft as they wanted somebody to be their main person there and drive a fork lift truck. Mr Wood informed Mr Wilkinson that he did not want to work for a company as he had always worked for himself. Mr Wilkinson said that Quayside would be able to guarantee that Mr Wood would be kept in constant work. Mr Wood agreed to work on a self-employed basis for Quayside and would invoice them for the work he did and for use of Mr Wood's forklift truck. Mr Wood's understanding was that he was self-employed, would not be paid for Bank Holidays and did not receive holiday or sick pay. Mr Wood used to invoice Quayside £350 per week. Mr Wood issued two invoices one for £300 for a week's work and one for £50 for use of the forklift truck.
19. Initially Mr Wood used his own forklift truck but in about 2012 his forklift required replacement and thereafter he hired a truck from George Bunning & Co. Notwithstanding this change Mr Wood continued to invoice Quayside £50 per week for use of the forklift. The cost of hiring the forklift is shown in Mr Woods accounts. It is perhaps worth observing at this point that the cost of the forklift hire was actually under £50 per week and that when George Bunning & Co increased the weekly cost of hire Mr Wood simply absorbed the increase.
20. Mr Wood's work at Lowestoft therefore involved using his forklift truck to unload fish from Quayside's lorries, which was shipped on shrink wrapped pallets and transporting the pallets into the fish market.
21. Mr Woods account was that Quayside was the only company that he invoiced. He stated that he did "little bits" here and there for others and in return he might get the odd cup of tea or breakfast. He also did some work for George Bunning's business in Lowestoft

as a favour. He said stated that he was never given guidance or instruction by Quayside as to how he was to carry out his work or drive the truck nor was he ever given any health and safety guidance.

22. I should also note at this point that I was shown records of refresher training and a certificate issued to Mr Wood by Firstline Services in February 2013 as a “Lift Truck Operator”. It was accepted by counsel that this Health and Safety Commission accredited course was organised and paid for by Mr Wood.

The witnesses

23. ABP called 4 witnesses; Mr Bowley who was ABP’s Health and Safety Manager from 2003, Mr Edmonds who was ABP’s Senior Engineering Supervisor, Mr Robert Beare, who was ABP’s Operations Manager and Mr Graham Shillings who was a coxswain employed by ABP at Lowestoft. The witness statement of Mr Ian Firman was agreed.
24. Mr Bowley was on holiday at the time of Mr Wood’s accident. He confirmed that a metal barrier had been installed on the quayside of the Fish Market in 2010 as a result of an incident in May of that year when a van toppled off the quayside into the dock and that this incident had nothing to do with Mr Wood. He confirmed that a similar solution had now been adopted to prevent vehicle access onto the raised platform where Mr Wood’s accident occurred.
25. Mr Bowley confirmed that his investigation into Mr Wood’s accident was based on what he was told by others and he had written the question on the photograph at page 93 “is this oil or water and did you clean it up?” and that Mr Edmonds had informed him it was water. He confirmed that the Fish Market was cleaned on a daily basis at some point in the morning but the area outside the Market Hall including the raised platform was not hosed down daily but cleaned as necessary.
26. Mr Edmonds did not arrive at the Fish Market until about 7.30 in the morning and did not go to the site of the accident until 8.30 am some 5.5 hours after the accident. He said that he was not aware that Mr Arundale the Deputy Port Manager had reported that Mr Wood had said that surface of the raised platform was slippery. He said that when he looked at the raised platform it was dry. The issue of whether the surface was slippery was on his mind straightway. He accepted the written note made by him referred to the platform surface being damp and had made no mention of a puddle.
27. Mr Beare confirmed that he arrived at the scene of the accident at about 8.30 am some 5.5 hours after it had happened. He said that he did not recall seeing a security guard but that the shift changed at 6 am. He confirmed that the Fish Market would be washed down once daily at some point after the 7 am auction by the coxswain and deckhand of the pilot boat as part of their duties.
28. Mr Beare was asked about an incident in January 2013 when Mr Wood caused some damage to a metal shutter with his forklift. He confirmed that he expected Mr Wood or his employer to pay for the damage and that he had been informed by Quayside that Mr Wood was self-employed and accordingly had written the letter of 28 January 2013 to Mr Wood informing him that he was being held responsible and would be invoiced once the damage was repaired. He confirmed that Mr Wood had been invoiced the sum of £305.95 on 13 February 2013. Lastly, he was asked about enquires he had made as

to whether fish offal was being left out in boxes near the site of the accident by L & G Roberts. He confirmed that L & G Roberts was the first unit near to the site of the accident and that he had been told that Mr Wood's son Paul would sometimes collect offal between midnight and 3 am. He confirmed that ABP had been issued with an HSE contravention notice on 9 December 2013 in respect of its failure to identify the risk posed by the unprotected edge of the loading bay platform.

29. Mr Shillings confirmed that he would commence his shift at 6 am but would not come into work until 9 am unless there was a vessel coming into port requiring pilot services. One of his first tasks is to hose down the Fish Market. There is a hydrant for this purpose which is locked when not in use. He said that any decision to wash down the loading area would be based on a visual inspection.
30. Quayside called 6 witnesses; Helen Jasiewicz, who was Quayside's Customer Account Manager, Mr Weatherhogg who was Quayside's Operations Manager, Mr Caushi who was a driver employed by Cornwall Transport Limited, Jane Dunstan who was a Claims Manager employed by Quayside, Mark Haines who was a driver employed by Quayside and Mr Gresham another driver employed by Quayside.
31. Helen Jasiewicz said that Mr Wood's role was simply to load and unload Quayside's vehicles. This would involve some limited paper work checking the manifest to ensure that right number of boxes had been delivered and faxing an inventory of the goods he had loaded. She did not give Mr Wood any instructions about how to do his work and was not aware of anybody else doing so. She said customers would ring her if there were any discrepancies. She confirmed that Mr Wood was paid a flat rate for his services and that to her knowledge he had never taken a day off sick. She mentioned that she vaguely recalled being told by a colleague that if, for any reason, Mr Wood was not available he could arrange cover through one of his sons. She said that Mr Wood's position was unique and a one off historic arrangement. She also confirmed that further invoices had come to light and that it was probably fair to say there were now no gaps in the invoice record.
32. Mr Weatherhogg confirmed that Quayside had no presence at Lowestoft Fish Market and that the company's vehicles went there to load and unload. He had never had direct dealings with Mr Wood but understood him to be what was known in the trade as a "lumper". He did not know of any arrangement between Mr Wood and Sam Coles but assumed that Mr Wood had similar agreements with other merchants to act as a "lumper". He did not agree that Mr Wood was the face of Quayside at Lowestoft and stated that their lorry drivers would deal with customers. He confirmed that Quayside did not obtain details from Mr Wood about his forklift licence, insurance arrangements or risk assessments. Lastly, he accepted that Quayside was issued with an HSE contravention notice on 10 December 2013 in respect of a failure to ensure that Mr Wood provided risk assessments for his work as an independent contractor.
33. Mr Caushi confirmed that he had been driving vehicles for Cornwall Transport for several months before Mr Wood's accident. He learned his routine from the driver he took over from. The routine was that five days per week, Tuesday to Saturday, he would drive to Lowestoft Fish Market and would park his lorry, Mr Wood would unload the lorry and take the fish into the market. He did not know who paid Mr Wood and was only at the market for between 20 and 30 minutes. His usual load was between two or three pallets of fish.

34. Jane Dunstan said that her job required her to deal with all customer queries on behalf of existing Quayside customers and to secure new ones. She had regular telephone dealings with Mr Wood over the years and spoke to him once or twice a week. She would only speak to Mr Wood in her working hours which were between 7 am to 3 pm. Mr Wood was always present at the Fish Market at these times. She assumed that Mr Wood worked for others because he had no other reason to remain at the Fish Market after unloading Quayside's lorry early in the morning. She said the telephone conversations only concerned discrepancies in the paperwork relating to such issues as the number of boxes.
35. Mark Haines was a lorry driver employed by Quayside. During the week commencing 29 July 2013 his duties included providing holiday cover for the regular driver on the Grimsby to Lowestoft route. He described his journey from Grimsby to Lowestoft via Elmswell. His first stop at Lowestoft was at Sam Coles Fish Merchants and he would usually arrive at about 1 am. Mr Wood would use a forklift belonging to Sam Coles Limited to unload the palletes and take them to the warehouse. Mr Haines would then drive to the Fish Market and Mr Wood would follow in his car. On arrival at the Fish Market Mr Haines would go to the back of the lorry and move the pallets to the rear of the lorry for Mr Wood to unload and then go to his cab to get some sleep, he had a 9 hour stop over before driving back to Grimsby.
36. Mr Haines said that he followed his usual routine on 2 August 2013 but shortly after retiring to this cab he was woken by a shout from Mr Wood. He got out of his cab and noticed the forklift on its side and that Mr Wood was trapped underneath. He was joined by a man he identified as Terry who he believed to be a van driver for one of the fish merchants. They went in search of a pallet jack in order to release some of the pressure on Mr Wood's legs.
37. Mr Haines described walking across the raised platform for the first time and said that he nearly slipped over. He described the surface as having the consistency of black ice. He thought this was because the surface was covered in fish offal/juice as the weather conditions were dry and there had been no rain.
38. Mr Haines and Terry managed to partially relieve the weight on Mr Wood's legs by using a palette truck to partially raise the forklift truck and they are to be commended for their efforts.
39. Once the fire and ambulance services had arrived and freed Mr Wood, he refused to be taken to hospital and said that he wanted to go in his own car so he wouldn't be stranded and could get back to the Fish Market. Mr Haines persuaded Mr Wood that he should go to hospital and then drove him there. He describes Mr Wood's main concern throughout the two hours they were at the hospital as being able to get back to Fish Market and the fish that required delivering.
40. Mr Haines said that in the course of conversation at the hospital Mr Wood mentioned to him that the forklift had slid on the surface of the platform and had lost control. Once Mr Wood's leg had been x-rayed and dressed Mr Haines took him back to the Fish Market where one of the merchants had to call Mr Wood's wife to persuade him to go home.

41. Lastly, Quayside's regular driver Mr Gresham confirmed that he would sometimes unload the first delivery at Sam Coles himself. On other occasions he would ring Mr Wood to assist before driving down to the Fish Market. He confirmed that to the best of his knowledge Mr Wood would usually be present at the fish market from the time he unloaded the lorry to the time he loaded the deliveries at 1 to 1.30 pm a period of about 8 hours. Mr Wood would collate the fish to be loaded and check it against the paper work. His impression was that Mr Wood did some work for other merchants and moved fish around the market with his forklift. He conceded that he was generally asleep in the time between unloading and loading. He said that he had had occasion to walk on the raised platform and that it was often slippery due to a build-up of slime and fish offal.

Findings of fact

42. There were not many factual issues for me to resolve.
43. On the whole all of the witnesses who gave evidence were doing their best to assist the court and I accept their evidence. I did find Mr Edmonds a little defensive over the issue of whether the raised platform had been reported as slippery. None of the witnesses called by ABP actually saw the condition of the raised platform at the time of the accident. I am satisfied that the platform probably was slippery at the time because of an accumulation of fish product or waste. I note that the platform was not part of the regular cleaning regime conducted by ABP's employees and that the potential for leakage and spillage on the loading bay was clearly present. I accept that Mr Haines did slip although I reject his description of the surface as being like black ice. He was in a hurry to try and locate the pallet truck for understandable reasons. Any such contamination was probably removed by the merchant responsible for it by the close of the first fish auction.
44. I am not satisfied that the slipperiness of the platform caused Mr Wood to lose control of the fork-lift. The CCTV does not appear to show the forklift out of control. I must approach the hearsay evidence of Mr Wood with some caution. I cannot rule out that state of the surface played some part in the accident however I can be certain that the accident occurred because of the lack of edge protection and presence of the forklift on the platform. Mr Wood accepted that there was a degree of fault on his part as part the settlement of his claim against ABP. Carelessness on the part of Mr Wood certainly played a part.
45. Mr Wood was clearly dedicated to the fish market and an almost constant presence there. I accept that Quayside was his main if not only source of financial remuneration. However, it seems clear to me that he did undertake tasks for many of the other merchants and businesses. I have no doubt that he received payments in kind and may have even received cash on the side. His work for Quayside did not require his presence at the market for more than a few hours to undertake the loading and the unloading of the lorry. I do not accept that Mr Wood acted as Quayside's representative at the Fish Market in a commercial sense. He did not take orders and Jane Dunstan dealt with customer queries over the telephone. Mr Wood's role was confined to loading and unloading the lorry together with ancillary paper work which involved no more than checking the manifests, noting any discrepancies and ringing Ms Dunstan to inform her of them.

Findings on the status of Mr Wood's employment

46. I have no doubt that both Quayside and ABP treated Mr Wood as a self-employed contractor and that he regarded himself as a self-employed contractor. This is borne out by Mr Wood's accounts and training records. ABP chose to invoice him for damage he caused to their property and Quayside clearly describe Mr Wood as self-employed. The HSE also accepted the position that Mr Wood was self-employed the notices issued by them were consistent with this.
47. However, as the case law makes clear the description given by the parties to such a relationship is not conclusive.
48. Mr King submitted that Mr Wood was the de facto employee of Quayside and identified seven particular features upon which he relied;
 - i) All of Mr Wood's paid work was for Quayside. Anything else which he did at the Fish Market was "little bits here and there" for which he did not invoice.
 - ii) Although Mr Wood provided his own equipment, namely the fork lift truck in question, as a matter of fact he simply re-charged Quayside this in full. It was not the case, for example, that the costs of the fork lift hire was spread amongst his various customers.
 - iii) Quayside did not have any other "self-employed contractors" at any of the ports in which it operated around the UK.
 - iv) Mr Wood was clearly Quayside's "man in Lowestoft": he did not just use his fork lift truck to unload the Quayside lorries; he also loaded up for the return journeys, and as a part of doing so he must inevitably have been closely in contact with Quayside's management so as to know what needed to be loaded in order to be returned to Grimsby.
 - v) If the fish merchants in Lowestoft had any queries about the goods which Quayside delivered, they would raise those queries with Mr Wood so that he was the local embodiment of Quayside.
 - vi) It was not only at the Lowestoft Fish Market that Mr Wood carried out duties for Quayside, he also did so at quite separate premises, namely those of Sam Coles Fish Merchants, where it appears Mr Wood did not use his own forklift truck (presumably because he could not easily get it there) but instead used other equipment, attending Sam Coles' when required to do so by Quayside's driver.
 - vii) Mr Wood signed for Quayside's deliveries on behalf of Quayside, and was responsible on behalf of Quayside for checking that the goods loaded on to the lorry matched the description on the associated paperwork.
49. Mr King accepted that the indications did not all point one way but submitted that taking things in the round Mr Wood was clearly in the position as regards Quayside of its employee, and was someone towards whom Quayside owed the duties of an employer.
50. On behalf of Quayside Mr Jones identified a number of factors which pointed the other way.

- i) Mr Wood's own evidence, which the Defendant relied upon under a Civil Evidence Act Notice, albeit that Mr Wood's evidence was that '95%' of his work was for Quayside and that that any other work was not '*invoiced*'.
 - ii) Mr Wood performed unloading work for Cornwall Transport, unloading on a daily basis, five days per week.
 - iii) The fact that an HSE investigator spoke to Mr Wood at hospital on 3 September 2013 who noted: '*Is self employed and invoices Quayside Haulage once a week for unloading/loading vehicle. Assists in other loading/unloading operations whilst on site between 03:00am-16:00pm*'
 - iv) Although the work Mr Wood performed for Quayside was relatively brief, he remained at the Fish Market throughout the day. During that time he was performing other work.
 - v) Although Mr Wood was rarely unable to work through illness it was his responsibility to arrange cover in the event that he was unable to work.
 - vi) Mr Wood arranged for and paid for his own training.
 - vii) Quayside did not control the parts of Mr Wood's work performed for it at the Fish Market.
 - viii) ABP controlled the premises. Quayside had no presence at the Fish Market
51. Mr Jones submitted that the reality of the situation was that Mr Wood was carrying out his own business and had full control over its essential functions.
52. I accept Mr Jones' submission and do not accept that Mr Wood's situation was nearer to that in the case of *Lane*. I do accept there are indicators which point both ways but the overwhelming picture I am left with is that Mr Wood was operating his own business. He clearly performed work for others including Cornwall Transport whether for monetary or non-monetary remuneration. He paid for and organised his own training. He provided his own fork-lift truck. It is of significance that he absorbed the increase in the cost of hire. He had been invoiced for damage to the Fish Market door by ABP. The paper work carried out by Mr Wood was purely ancillary to the task of loading and unloading Quayside's lorries. I have no doubt that Mr Wood would arrange cover in the unlikely event he was unable to attend through illness. Certainly, there was no evidence that Quayside had any responsibility to do this or had even contemplated it.
53. Clearly, as I have already observed, Mr Wood was something of a fixture at the Fish Market and I suspect if any of the merchants were asked they would say Mr Wood was carrying out business on his own account. Quayside's business did not require him to be at the market save for the purposes of loading and unloading their lorry which involved two or three hours work per day at the most.
54. That finding is sufficient to dispose of this action, however it is appropriate for me to comment on the remaining issues. If I had found Mr Wood to be an employee and owed the duties of an employee by Quayside I am far from satisfied that causation would have been made out. Whilst Quayside would have been in breach of duty for failing to produce a risk assessment I cannot see how such a risk assessment could be expected to identify the risks associated with ABP's occupation of commercial premises such as

the Fish Market, particularly those relating to the guarding of an area which was not under its control.

55. Lastly, even if I were to be wrong on the previous issues I would have found that ABP bore by far the greatest responsibility for this accident. ABP controlled the provision of guarding at the premises and had admitted responsibility for failing to provide adequate guarding. Had adequate guarding been provided this accident would not have occurred. No guarding or risk assessment had been carried out in relation to the loading area despite an earlier similar incident on the quayside of the Market. In these circumstances I would not have found it just or equitable for Quayside to provide a contribution.
56. In the circumstances the claim must be dismissed.