

A MOCK HEALTH & SAFETY TRIAL

By

Peter Rogerson JP

CAST

COURT STAFF

1	Usher	Mr Henry Bellows
2	Court Clerk	Miss Verity Wearing

MAGISTRATES

3	Chairman of the Bench	Mrs Anne Judge
4	Magistrate 1	Mr A Trueman
5	Magistrate 2	Mr Terry Fairlee

LAWYERS

6	Prosecutor	Mr Gerald Manders
7	Defence Solicitor	Miss Diane Fender

PROSECUTION WITNESSES

8	The Complainant	Mr Arthur Brain
9	HSE Inspector	Mr Ivor Law HSE

DEFENCE WITNESSES

10	Managing Director	Mr George Crossley
11	Administration Manager	Miss Victoria Crossley
12	Lorry Driver	Mr Harold G V Driver

NOTES FOR BENCH CHAIRMAN

For full authenticity, the Bench Chairman and the two Magistrates will not see the script until the start of the trial. They must make their own decisions on what they hear on the day, so must be denied the opportunity to draw conclusions individually and must wait to discuss as a group. A separate sheet of guidance notes is attached on Chairman's duties.

The scene opens in the courtroom. The Clerk, Miss Verity Wearing is present with the Prosecutor – Mr Manders, Miss Fender – the Defence Solicitor and the Usher.

Usher (shouts) All Stand

All in the room stand up.

The three Magistrates enter the room and bow slightly staying standing in their places.

Chairman Good morning

Clerk Good morning your Worships

Chairman Please sit down (all sit down)

Clerk (to Usher) Could you call Mr George Crossley?

Usher (shouts) Call George Crossley.

Mr Crossley enters the courtroom. Usher shows him to the 'dock'. The dock in this case is a seat behind the defence solicitor.

Clerk Can you confirm that you are George Crossley, Managing Director of Saltburn Distribution Services Ltd and that you are authorised to represent them in this case?

Mr Crossley I am.

Clerk Your Worships – The case before you is a trail which involves Saltburn Distribution Services Ltd who are represented by Mr George Crossley their Managing Director. They have pleaded on guilty to two offences – under Regulation 3(2) of RIDDOR for failing to report an over-three day injury to an employee and under Regulation 3(1) of the Management of Health & Safety at Work Regulations 1999 for failing to carrying out a suitable risk assessment. They are represented by Miss Diane Fender of Grimm, Gubbins & Co. The prosecutor is Mr Gerald Manders of the Health & Safety Executive.

Would you like to sit down Mr Crossley?

Do we have all the witnesses present?

Prosecutor (stands up) Yes your Worships, I have two witnesses, Mr Ivor Law, an inspector with the Health and Safety Executive and Mr Arthur Brain who is the complainant. I believe that Miss Fender has one witness in addition to Mr Crossley the defendant.

Clerk Perhaps you would like to outline the case Mr Manders.

Prosecutor

Certainly your Worships. The case, your worships relates to an incident which occurred on the 21st September 2004 at the premises of Saltburn Distributions Services Ltd in Lingdale Road, Skelton. The prosecution will prove that there was an accident at the premises involving a hand-operated electric fork lift truck. The truck was being operated by an unqualified, unsupervised young man, Mr Arthur Brain who is the complainant and who was injured in the accident. Mr Brain was absent due to injury for at least 3 days following the accident which was neither reported to the Health and Safety Executive within the required ten days, nor recorded in the accident book. You will hear Mr Brain explain how the incident occurred and confirm that he was injured in that accident. On the 18th of November 2004 an HSE Inspection, Mr Ivor Law, visited the premises and confirmed that the accident had not been recorded in the accident book, a failure which together with the failure to report the accident gives rise to the first charge. When the Managing Director, Mr. Crossley was asked about the incident he said that he wasn't aware that there had been any injury.

The elements of proof for this offence, your worships, are that the prosecution has to prove that an accident occurred which caused a three day injury and that the accident in question was not recorded in the accident book nor reported to the relevant authority, in this case the HSE. You will see the accident book, marked with the name of the company provided. It is clearly marked 'January 2004 onwards' and you will see that there are no entries in it whatsoever.

Secondly the company were requested to supply evidence of the risk assessment relating to the operation of the fork lift truck which was in force at the time of the incident. This they were unable to provide. The regulation **requires** "...every employer to make a suitable and sufficient assessment of the risks to the health and safety of his employees whilst they are at work..."

When Mr Crossley was interviewed, he said that at the time of the alleged incident, he was not aware he needed a risk assessment. Mr Law observed that there were at least six people on the premises and Mr Crossley admitted that there were eight people employed at the premises including himself. He would therefore have been required to record his findings. The prosecution contends that admissions by Mr Crossley, together with the circumstances surrounding the accident, clearly demonstrate that there was either no risk assessment carried out or that it was in any event neither suitable nor sufficient. The failure of the company to carry out a risk assessment is the substance of the second charge.

Prosecutor

May we call the first witness – Mr Arthur Brain?

Usher

Call Arthur Brain

Mr Brain enters and the Usher shows him to the witness stand. The Usher hands him the card in his left hand and places the Bible in his right hand. The Usher then sits down.

Clerk Could you take the Bible in your right hand and read the words on the card?

Mr Brain I swear by Almighty God that I will tell the truth, the whole truth and nothing but the truth.

Clerk Could you tell the court your name and occupation?

Mr Brain I am Arthur Brain and I am a warehouse despatch assistant.

Clerk You are going to be asked some questions. Could you please give your answers slowly and clearly to the Magistrates?

Prosecutor Good afternoon Mr Brain. On the 21st of September last year were you employed by Saltburn Distribution Services Ltd?

Mr Brain Yes

Prosecutor And what were you doing just before lunchtime that day?

Mr Brain I was stacking shelves and a truck arrived and the driver said it was only one pallet and he was in a hurry. Mr Crossley had been called away so I got the forklift and took it off.

Prosecutor Had you been trained to use the forklift?

Mr Brain No – but I knew how to use it because when Jim the warehouseman left the company I often used it if Mr Crossley was away.

Prosecutor Did you unload the pallet successfully?

Mr Brain Yes – but on the way back into the warehouse the truck hit a drainage channel and the load wasn't on right and a box fell off the top on to my foot. I didn't notice at the time, but later my ankle began to hurt and swell up.

Prosecutor When did you notice the injury?

Mr Brain When I got home and took off my safety boots, it was sore and there was a bit of a mark.

Prosecutor Did you report the injury to Mr Crossley or anyone else?

Mr Brain I had a week off because of the swelling and when I got back I reported it to Mr Crossley, but he told me it was nothing to do with him.

Prosecutor Thank you Mr Brain.

Clerk Could you wait there Mr Brain?

Do you wish to cross examine, Miss Fender?

Miss D Fender Thank you. Mr Brain, you are a keen footballer, aren't you, in fact are you not the leading scorer for Saltburn Rovers?

Mr Brain (proudly) Yes, I've scored fifteen goals this season.

Miss D Fender And that despite being unable to play for a month through injury?

Mr Brain Yes.

Miss D Fender Is it the case that you played in the first round of the Teesside Cup and scored the opening goal?

Mr Brain Yes.

Miss D Fender Was it an evening match?

Mr Brain Yes, all weekday games are played in the evening.

Prosecutor stands up

Prosecutor (interrupting) Your Worships, I cannot see the relevance of this line of questioning.

Miss D Fender Please bear with me your Worships, the relevant will become obvious shortly.

Chairman Please get to the point quickly Miss Fender.

Prosecutor sits down

Miss D Fender You didn't play the full cup game, did you?

Mr Brain No

Miss D Fender You were taken off injured after a tackle and a penalty was awarded to Saltburn Rovers. Is this the case?

Mr Brain Yes, but it wasn't a penalty really, my ankle just gave way.

Miss D Fender (incredulously) You allowed the referee to give a penalty which should not have been given??!!

Mr Brain Yes, but it was crucial – it decided the match!

Miss D Fender What was the date of the match, Mr Brain?

Mr Brain I can't remember.

Miss D Fender Let me refresh your memory – I have here a copy of the match report in the Saltburn Advertiser which I submit in evidence. It may surprise your Worships to find that the match took place in the evening of Tuesday 21st of September.

Miss Fender passes the newspaper article to the Usher who passes it first to Mr Brain to look at and then takes it from Mr Brain and hands it to the Clerk who passes it up to the Magistrates.

I put it to you Mr Brain that you took to the field that evening because you were perfectly fit, and that you used the football injury to try to obtain compensation from the company after being approached by a firm of accident solicitors Messrs Trickett, Grabbitt and Runn.

Mr Brain No that's **not** true. I was needed in the team and couldn't let them down even through my ankle hurt but it gave way.

Miss D Fender Thank you Mr Brain, I have no further questions, unless your Worships would like to ask any questions.

Chairman No, we have no further questions. Thank you for coming Mr Brain, you may either leave the court or sit at the back.

Usher shows Mr Brain to seat at the back of the Court.

Prosecutor stands

Prosecutor In that case I will call my next witness Mr Ivor Law.

Usher (loudly) Call Mr Law

Mr Law enters and the Usher shows him to the witness stand. The Usher hand him the card in his left hand and places the Bible in his right hand. The Usher then sits down.

Clerk Could you take the Bible in your right hand and read the words on the card?

Mr Law I swear by Almighty God that I will tell the truth, the whole truth and nothing but the truth.

Clerk Could you tell the court your name and occupation?

Mr Law I am Ivor Law and I am a principal inspector with the Health and Safety Executive.

Clerk You are going to be asked some questions. Could you please give your answers to the Magistrates slowly and clearly?

Prosecutor Good afternoon Mr Law. On the 15th of October last year were you on duty at the Health and Safety Executive Offices at Middlesbrough?

Mr Law Yes.

Prosecutor And did you receive a telephone call from a Solicitor?

Mr Law Yes.

Prosecutor Who was the Solicitor?

Mr Law Miss Sue Trickett of Messrs Trickett, Grabbitt & Runn.

Prosecutor What was the nature of the call?

Mr Law It was an enquiry for details of an accident at the premises of Saltburn Distribution Services to one of their employees Mr Arthur Brain.

Prosecutor And what did Miss Trickett say had happened?

Miss D Fender stands up.

Miss D Fender Objection, your Worships, unless Miss Trickett is here to give evidence in person, this is hearsay and cannot be considered by the bench.

- Chairman (consults colleagues)** We must agree. Could you confine yourself to the facts Mr Manders?
- Miss D Fender sits down.**
- Prosecutor** I am sorry your Worships, Mr Law, what actions did this telephone call cause you to take?
- Mr Law** I telephoned the company and asked the receptionist if I could speak to the person responsible for Health & Safety and she said that she didn't know who was responsible.
- Miss D Fender stands up.**
- Miss D Fender** Objection your Worships. What the receptionist did or did not say is a matter for conjecture.
- Chairman** Mr Law could you please refrain from repeating third party statements. The Bench will disregard the comment and its implications.
- Mr Law** I am sorry, your Worships.
- Miss D Fender sits down.**
- Prosecutor** Did you eventually speak with someone?
- Mr Law** Yes, I spoke to Mr George Crossley.
- Prosecutor** Was Mr Crossley aware of the incident?
- Mr Law** No.
- Prosecutor** So what action did you take?
- Mr Law** I arranged an appointment with Mr Crossley for Thursday the 18th November at 10.00 in the morning.
- Prosecutor** When you arrived at the company what did you find?
- Mr Law** Generally, the company seemed to be clean and organised and there were six people employed at the premises. I met Mr Crossley and I asked him if there were any employees not present and he said that two people were away. I asked him if they were all employees and he said that they were. There were 5 vehicles in the car park. I met Mr Crossley and asked to see the Health and Safety policy, the accident book and copies of all risk assessments. There was a general Health & Safety file which appeared to have been compiled several years previously as it was covered with dust. It contained several risk assessments but nothing relating to fork lift truck operation.
- Prosecutor** Was there any entry in the accident book?
- Mr Law** No – there was no records of any accidents at all.
- Prosecutor** Is this the accident book?
- Mr Law** Yes.

Prosecutor passes the accident book to the Usher who passes it first to Mr Law to look at and then takes it from Mr Law and hands it to the Clerk who passes it up to the Magistrates.

Prosecutor You will see, your worships that this is the book in operation at the time and that there is no entry. Mr Law, did Mr Crossley appear aware of the accident involving the fork lift truck?

Mr Law He said that no one had been injured in the company since it was formed in 1992.

Prosecutor But was Mr Crossley aware of the incident?

Mr Law He was aware of an incident where a box fell off a fork lift truck, but didn't seem to feel that any injury had been caused.

Prosecutor So did you interview Mr Brain?

Mr Law Yes, and he was adamant that he had injured his ankle in the accident at work and had been off work for over a week as a result.

Prosecutor Should the injury have been reported to you within ten days?

Mr Law Yes.

Prosecutor Was the injury in fact reported to you within that time?

Mr Law No, it wasn't reported at all.

Prosecutor Did you ask Mr Crossley if he had carried out a risk assessment for the fork lift truck?

Mr Law He said that he didn't need one and that the Health and Safety policy and risk assessments had been done by a firm of consultants when the business had employed more people.

Prosecutor How many people were employed by the business at the time of your visit?

Mr Law Mr Crossley said that there were only four, but he had previously said that there were eight people employed on the premises which concurred with my own observations.

Prosecutor Do you agree that there was a legal requirement for a risk assessment on the fork lift truck?

Mr Law Yes.

Prosecutor Thank you Mr Law

Prosecutor sits down.

Clerk Could you wait there Mr Law?

Do you wish to cross examine, Miss Fender

Miss D Fender stands up.

Miss D Fender Thank you. Mr Law, you are an experienced Health & Safety Inspector aren't you?

Mr Law Yes, I have been a principal inspector for five years and have over twenty years experience with the HSE.

Miss D Fender How many people were employed in the business?

Mr Law I counted six and Mr Crossley said there were eight.

Miss D Fender Were they all employed by Saltburn Distribution Services Ltd?

Mr Law Yes, they appeared to be.

Miss D Fender Did you check the Pay As You Earn records for the company?

Mr Law No, but Mr Crossley had said that there were eight people employed at the company.

Miss D Fender I think you will find that he said that there were eight people employed at the *premises*. Were you aware that there was a second company, Saltburn Marketing & Sales Ltd operating from the premises and that they employed four people including their Managing Director, Victoria Crossley?

Mr Law No, Mr Crossley didn't mention it.

Miss D Fender He had no reason to – it was his daughter's company and nothing to do with him. Do you accept that Saltburn Distribution Services Ltd only employed the other four people mentioned by Mr Crossley which included himself?

Mr Law I suppose it's possible.

Miss D Fender So a risk assessment wasn't needed?

Mr Law If this were the case then a record of the findings would not have been needed, but a risk assessment should still have been done.

Miss D Fender But do you agree that a written risk assessment was not needed?

Mr Law It would have been prudent for the company to keep a record to prove that it had been carried out.

Miss D Fender You decided to report this with a view to prosecution? Would it not be normal practice to issue an enforcement notice to give the company time – say a week – to carry out a risk assessment?

Mr Law Yes, but not where injury had been caused.

Miss D Fender By injury do you mean a 'three day' injury – an injury which necessitated three or more days off work?

Mr Law Yes.

Miss D Fender So let us look at the alleged injury. It would appear that Mr Brain was off work for a week following the incident. Is this the case?

Mr Law Yes.

Miss D Fender So this would be a 'three day' injury?

Mr Law Yes.

- Miss D Fender** But what if the injury was not caused by the 'incident'?
- Mr Law** As far as I am concerned Mr Brain suffered an accident at work which caused an injury which resulted in a week away from work.
- Miss D Fender** But if the injury had been superficial you would not have prosecuted?
- Mr Law** Probably not.
- Miss D Fender** Should a 'three day' injury have been reported to you?
- Mr Law** Yes.
- Miss D Fender** But it wasn't was it?
- Mr Law** No.
- Miss D Fender** Is it possible that this was because there was no 'three day' injury caused by the accident?
- Mr Law** No, because Mr Brain said his injury had been caused by the incident.
- Miss D Fender** Thank you Mr Law, I have no further questions. Do your Worships have any questions for this witness?
- Chairman** No, we have no further questions. Thank you for coming Mr Law, you may either leave the Court or sit at the back.
- Usher shows Mr Law to a seat at the back of the Court.**
- Miss Fender sits down, the Prosecutor rises.**
- Prosecutor** That completes the case for the prosecution, your Worships.
- The Case for the Defence Opens**
- Miss D Fender stands**
- Miss D Fender** I open the case for the defence and call the Managing Director of Saltburn Distribution Services Ltd, Mr George Crossley, to the stand.
- The Usher shows Mr Crossley from his seat behind the defence solicitor to the witness stand. The Usher hands him the card in his left hand and places the Bible in his right hand. The Usher then sits down.**
- Clerk** Could you take the Bible in your right hand and read the words on the card?
- Mr Crossley** I swear by Almighty God that I will tell the truth, the whole truth and nothing but the truth.
- Miss D Fender** Thank you. Could you give the court your name and occupation?
- Mr Crossley** George Michael Crossley and I am the Managing Director of Saltburn Distribution Services Ltd.
- Miss D Fender** Do you have any other directorships?

Mr Crossley Yes, I am a non-executive director of Saltburn Marketing & Sales Ltd.

Miss D Fender Who is the Managing Director of that company?

Mr Crossley My daughter, Victoria Crossley.

Miss D Fender Do you recall the events of the 21st of September?

Mr Crossley Yes, I returned from a business meeting late that afternoon to find that one of the cartons delivered earlier from Redcar Micro was damaged and that the damage had been caused by the clown Arthur Brain fooling around with the fork lift truck.

Miss D Fender Was he trained to use the fork lift truck?

Mr Crossley No, and he had been told not to use it. I knew that the delivery was coming and told him to manhandle the cartons one by one onto another pallet and use the pallet truck.

Miss D Fender What was the nature and value of the load?

Mr Crossley There were twenty cartons of electrical goods each weighing about five kilos. They were worth about £120 each.

Miss D Fender Were you annoyed by the incident?

Mr Crossley I was bloody livid. He is always doing stupid things.

Miss D Fender So did you speak to him?

Mr Crossley No, he sneaked off home and his mother rang in the following morning with some cock and bull story about an industrial injury – I think he was scared of coming in and getting into trouble.

Miss D Fender So you don't believe he was injured?

Mr Crossley No.

Miss D Fender Did he approach you and tell you about the injury when he returned from work?

Mr Crossley Yes, but I told him to get lost. Everyone knows he got the injury playing football – it was in the Advertiser.

Miss D Fender So you didn't report the injury or record it because as far as you were concerned no injury had happened?

Mr Crossley That's correct.

Miss D Fender How many people does your company employ?

Mr Crossley Four including myself.

Miss D Fender Have you ever compiled a risk assessment on the fork lift truck?

Mr Crossley No, we didn't need to – Health and Safety doesn't apply to us – we are too small – not that we're not careful, because we are. We have a clean accident record. In any case I only used it rarely when we had a very big load. Most of our suppliers have tail lifts so we take the stuff off with a pallet truck.

Miss D Fender So you felt that the risk was negligible?

Mr Crossley That's right.

Miss D Fender So you had in fact assessed the risk and found that there was no risk?

Mr Crossley I suppose so.

Miss D Fender You do have a health and safety system don't you?

Mr Crossley Yes, we got consultant in to look at the operation and report. That Health and Safety chappie to the file.

Miss D Fender So you did have a health and safety system in place?

Mr Crossley Well yes.

Miss D Fender Thank you Mr Crossley.

Miss D Fender sits down.

Clerk Could you wait there Mr Crossley

Do you wish to cross examine, Mr Manders?

Prosecutor stands up

Prosecutor Thank you. Just a few questions Mr Crossley. When did you bring in the health and safety consultants?

Mr Crossley About 1992.

Prosecutor And when did you purchase the fork lift truck?

Mr Crossley About eight years ago.

Prosecutor And who is trained to operate the fork lift truck?

Mr Crossley I operate the fork lift truck. I taught myself. No-one else is allowed to.

Prosecutor Do you often buy from Redcar Micro?

Mr Crossley Yes, we are one of their best customers.

Prosecutor And have you other suppliers for the product they supply?

Mr Crossley Yes, one or two.

Prosecutor So their employees would be encouraged to support your version of events?

Mr Crossley I resent that implication – I am sure that they will tell the truth.

Miss D Fender Your Worships, I hope that Mr Manders is not questioning the integrity of my witnesses!

Prosecutor Not at all your Worships. I withdraw the comments.

I have no further questions. Do your Worships have any further questions for this witness?

Chairman No we have no further questions. You may return to your place Mr Crossley.

Usher shows Mr Crossley to his seat behind the defence solicitor. The Usher then sits down.

Miss D Fender Thank you your Worships. In that case I will call my next witness Miss Victoria Crossley.

Usher (loudly) Call Miss Crossley.

Miss Crossley enters and the Usher shows her to the witness stand. The Usher hands her the card in her left hand and places the Bible in her right hand. The Usher then sits down.

Clerk Could you take the Bible in your right hand and read the words on the card?

Miss Crossley I swear by Almighty God that I will tell the truth, the whole truth and nothing but the truth.

Clerk Could you tell the court your full name and occupation?

Miss Crossley I am Victoria Crossley and I am the Managing Director of Saltburn Marketing & Sales Ltd.

Clerk You are going to be asked some questions. Could you please give your answers slowly and clearly to the Magistrates?

Miss D Fender Miss Crossley, could you tell the court how many people are employed on the Langley Road site by Saltburn Marketing & Sales Ltd?

Miss Crossley Four, including myself.

Miss D Fender And what does the company do?

Miss Crossley We provide marketing and selling services to companies who are not big enough to support their own sales organisation.

Miss D Fender Would one of those companies be Saltburn Distribution Services?

Miss Crossley Yes.

Miss D Fender Are you a Director of Saltburn Distribution Services?

Miss Crossley No, but I do hold some shares in the company.

Miss D Fender Are they your biggest customer?

Miss Crossley Yes.

Miss D Fender Do you remember the incident on September 21st last year?

Miss Crossley Not really – I can remember being aware of a lorry in the yard because it had blocked by parking space, but I was really too busy to notice anything else.

Miss D Fender So you saw nothing out of the ordinary?

Miss Crossley No.

Miss D Fender Did you **hear** anything unusual?

Miss Crossley No, but I think I was on my mobile at the time.

Miss D Fender Do you have any responsibility for staff at Saltburn Distribution Services Ltd?

Miss Crossley No. We operate totally separately. **Our** work involves dealing with clients – mainly on the phone. We don't touch any goods or anything.

Miss D Fender So, if you saw one of their employees, say, doing something stupid or dangerous you wouldn't mention it to your father?

Miss Crossley I might if I noticed it but in the normal run of things, no. I really have enough to do without getting involved in other people's problems.

Miss D Fender So you would have no reason to notice any unusual happenings in the yard that day?

Miss Crossley No.

Miss D Fender Thank you Miss Crossley.

Miss D Fender sits down.

Clerk Could you wait there Miss Crossley?

Do you wish to cross examine, Mr Manders?

Prosecutor stands up.

Prosecutor Thank you. Miss Crossley, is it not the case that you and your father jointly run the two companies and the existence of two separate companies is a matter of... er... financial convenience?

Miss Crossley No.

Prosecutor So you don't discuss business with your father, Miss Crossley?

Miss Crossley Of course I do – he's a customer.

Prosecutor You only customer – is that not a fact?

Miss Crossley No, we have other clients.

Prosecutor Is Redcar Micro Ltd a client?

Miss Crossley Yes, we have done work for them.

Prosecutor So it is a cosy, mutually beneficial relationship between the three companies?

Miss Crossley I don't know what you mean.

Prosecutor I am sure that you do. Is it not the case that you have a substantial

- input into the affairs of both companies?
- Miss Crossley** Only as far as it relates to my company.
- Prosecutor** Do you know Mr Lindsay Doyle?
- Miss Crossley** Yes, he is a Director of Redcar Micro Ltd.
- Prosecutor** Is he also a very close friend?
- Miss Crossley** Well... er... yes...
- Prosecutor** So close that you both appear on the Electoral Register at your own home address?
- Miss Crossley** Well I suppose we do.
- Prosecutor** I have no further questions. Do your Worships have any questions for this witness?
- Chairman** No, we have no further questions. Thank you for attending Miss Crossley. You may leave if you wish or remain at the back of the court.
- Miss Crossley** Thank you.
- The Usher shows Miss Crossley to a seat at the back.**
- Miss D Fender** Thank you your Worships. In that case I will call my final witness – Mr Harold Driver.
- Usher (loudly)** Call Mr Driver.
- Mr Driver enters and the Usher shows him to the witness stand. The Usher hands him the card in his left hand and places the Bible in his right hand. The Usher then sits down.**
- Clerk** Could you take the Bible in your right hand and read the words on the card?
- Mr Driver** I swear by Almighty God that I will tell the truth, the whole truth and nothing but the truth.
- Clerk** Could you tell the court your full name and occupation?
- Mr Driver** I am Herbert Godfrey Vernon Driver and I deliver goods for Redcar Micro Ltd.
- Clerk** You are going to be asked some questions. Could you please give you answers slowly and clearly to the Magistrates?
- Miss D Fender** Mr Driver, can you recall being asked to deliver some goods to Saltburn Distribution Services Ltd on the 21st of September 2004?
- Mr Driver** Yes.
- Miss D Fender** And can you tell the court what happened when you arrived at the company?
- Mr Driver** Yes. I arrived at the company and reversed my van into the yard as usual and brought a loaded pallet on the pallet truck to the rear of the

van so that it could be taken off.

Miss D Fender How was this normally done?

Mr Driver Mr Crossley normally took it off with the fork lift.

Miss D Fender And if Mr Crossley wasn't there?

Mr Driver I can't recall him not being there – he always knew we were coming.

Miss D Fender So then what did you do?

Mr Driver I rang the bell and the young lad came out. I recognised him as Arthur Brain because I am a Saltburn Rovers fan and he plays up front for them.

Miss D Fender Were you in a hurry?

Mr Driver No, we stayed and chatted about football for about ten minutes. Then he said that he'd better get a move on as his boss would be back soon.

Miss D Fender And then?

Mr Driver He came out with the truck – he wasn't very good with it but Miss Crossley arrived soon after and when in and didn't comment, so I thought it was alright.

Miss D Fender What do you mean by wasn't very good?

Mr Driver He was weaving all over the place. It took him ages to get the forks under the pallet. I went to get the papers from the cab and I heard a shout of '*bloody hell*' or something like that and came round the side of the van to see one of the boxed was smashed on the floor. He said, '*it landed on me bloody foot*'. I said I hope you're alright for tonight and he said, '*its OK I've got safety boots and it just caught the side*'. He was more concerned about what his boss would say about the damaged carton when he got back.

Miss D Fender Thank you Mr Driver

Miss Fender sits down

Clerk Could you wait there Mr Driver

Do you wish to cross examine Mr Manders?

Prosecutor (stands up) Thank you

Prosecutor Just a few questions Mr Driver.

You didn't actually see the accident?

Mr Driver No.

Prosecutor But you saw Mr Brain afterwards – was he limping?

Mr Driver I couldn't tell – he was standing still.

Prosecutor Are you sure that he wasn't injured?

Mr Driver I don't know, but he was desperate to play in the cup so I don't think he would mention if it he **had** been hurt. He's a cocky little sod.

Prosecutor I have no further questions. Do your Worships have any questions for this witness?

Chairman No, we have no further questions. Thank you for attending Mr Driver. You may leave if you wish or remain at the back of the court.

Mr Driver I'll stay, thank you.

The Usher shows Mr Driver to a seat at the back and then sits down.

The Prosecutor sits down and Miss Fender rises to her feet to delivery the final summing up for the defence.

Miss D Fender Your Worships, the prosecution has attempted to create a case against this company with the flimsiest of evidence. On the admission of the prosecution witness Mr Law, it is unlikely that a prosecution would have occurred at all but for the alleged injury to Mr Brain. The incident itself would never have come to light if it had not been for the greed of Mr Brain who thought he could get some money out of the company by pursuing an industrial injury claim. It was pure chance that the Health & Safety Executive should be contacted by Sue Trickett of Trickett, Grabbit and Runn.

It is clear that Mr Crossley had a dim view of Mr Brain and it is quite possible that Mr Brain resented this and saw this as a way of getting back at Mr Crossley who obviously frightened him.

We only have the word of Mr Brain that the injury, the existence of which is not in dispute, occurred in the afternoon and not in the evening at a football match and if we believe the newspapers, Mr Brain claimed that he was injured by a foul tackle and won a penalty goal for his side as a result.

If there was no industrial injury then the first part of the prosecution case fails and we would contend that there is reasonable doubt as to the cause of the injury. Such doubt must always fall in favour of the defendant.

As to the second charge, a written risk assessment was not necessary due to the size of the company. A company with five or more employees must record the findings of a risk assessment. Saltburn Distribution Services Ltd had four employees and therefore were not so obliged.

We accept that in any event the company was obliged to carry out **some** form of assessment, but contend that the reasonable care that the company gave to the operation of the fork lift truck demonstrated minimal risk and that in any event Mr Brain had disobeyed a clear instruction from his Managing Director and operated the fork lift truck without permission. The fact that Miss Crossley observed this is irrelevant as Miss Crossley was employed by a different company.

We therefore consider that there is again sufficient doubt in this instance to safely secure a conviction.

We therefore ask your Worships find the defendant, Saltburn Distribution Services Ltd **NOT GUILTY** on both counts.

Chairman

The Bench will retire to consider.

Usher (loudly)

All stand

All stand – the magistrates file out.

All sit down.