



IN THE COUNTY COURT AT CENTRAL LONDON

Case No: G08YX960

Thomas More Building  
Royal Courts of Justice  
Strand  
London WC2A 2LL

Date: 18/10/2021

**Before :**

**HHJ RICHARD ROBERTS**

**Between :**

**MR RUDOLF HORVATH  
- and -  
O'CONNOR UTILITIES LIMITED**

**Claimant**

**Defendant**

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**Mr Ben Rodgers of Counsel** (instructed by **Osbornes Solicitors LLP**) for the **Claimant**  
**Mr Simon Clegg of Counsel** (instructed by **Clyde & Co LLP**) for the **Defendant**

Hearing dates: 27, 28 September 2021 and 19 October 2021  
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### **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.

.....  
HHJ RICHARD ROBERTS

## **HIS HONOUR JUDGE RICHARD ROBERTS :**

### **Introduction**

1. This is the Claimant's action for damages for personal injuries, loss and damage arising out of an alleged accident at work on 17 July 2017.
2. On 29 January 2021 HHJ Freeland QC ordered that there be a trial of the issue of liability<sup>1</sup>.
3. Mr Rodgers of Counsel appears on behalf of the Claimant and Mr Clegg of Counsel appears on behalf of the Defendant. I am grateful to both Counsel for their skeleton arguments.
4. There are two files of documents. References to page numbers in the footnotes below are to these files of documents.

### **Common Ground**

5. The Parties agree that from 16 May 2017:
  - i) The Claimant was employed by the Defendant as a waste disposal operative, namely a picker, at the Defendant's demolition waste disposal plant at Five Weirs Walk in Sheffield.
  - ii) The Claimant was tasked with visually checking waste material and picking out pieces of metal passing along a low level belt leading the materials into a crushing machine and throwing the pieces of metal onto the ground.
  - iii) On Monday 17 July 2017, the Claimant attended the Accident and Emergency Department of Sheffield Teaching Hospital with a crush injury to his right hand.
6. Mr Clegg accepted at the outset of the case that if the Court finds that the Defendant has not proved that the claim was fraudulent, judgment should be entered for the Claimant. One can easily see why that admission was made:
  - i) Mr Armitage's evidence in cross-examination was that the Claimant carried out his work from a platform which had been added to a McCloskey R105 screener in November 2016. It was put to Mr Armitage in cross-examination that the Defendant's Head of Health and Safety, Sam Rawcliffe, says in his witness statement, dated 12 May 2001<sup>2</sup>,  
  
"21.... The product that goes onto the machine is pre-screened and therefore no material would need to be picked out. The machine is also not designed to accommodate someone to pick through the material. ...

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<sup>1</sup> File 1, 208-211 at 210

<sup>2</sup> File 1, 337

22. In addition to this, both the rubble master and screener are designed specifically so no material can fall from the machines.”

- ii) The Claimant says at paragraph 10(x) of the Particulars of Claim, dated 7 January 2020<sup>3</sup>,

“Negligently and contrary to Regulation 9(1) of PUWER, failed to ensure the Claimant received adequate training for purposes of health and safety;”

Although the Defendant alleges at paragraph 8(e) of the Defence, dated 13 March 2020<sup>4</sup>, that the Claimant had received appropriate training, the Defendant has disclosed no health and safety training records, nor served any witness statement from an employee who says he trained the Claimant.

### **Contemporaneous medical records**

7. There are four contemporaneous medical records of relevance to the issue for trial:

- i) The Accident and Emergency Department at Sheffield Teaching Hospital’s triage sheet timed at 13:07 on 17 July 2017<sup>5</sup>. This says, “Building a wall at home states banged right hand.”

- ii) A note by Nurse Robson in the Accident and Emergency Department at 15:20 on 17 July 2017<sup>6</sup>. This says,

“Injury right hand.

Poor history – daughter translating. Patient building a wall at home which fell and crushed right hand.”

- iii) Sheffield Teaching Hospital’s hand unit record dated 18 July 2017<sup>7</sup>. This says,

“Works in factory with rocks fell off belt onto right hand concrete rocks? 50kg.”

- iv) The first GP consultation, on 24 July 2017 (a week after the accident)<sup>8</sup>. It is said,

“Spoke to daughter – crush injury to hand at work 17/7/17.”

### **Claimant’s case**

8. The Claimant moved to England in December 2016.

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<sup>3</sup> File 1, 25

<sup>4</sup> File 1, 162

<sup>5</sup> File 2, 582

<sup>6</sup> File 2, 589-590

<sup>7</sup> File 2, 615

<sup>8</sup> File 2, 502

9. The Claimant started working for the Defendant on 15 or 16 May 2017<sup>9</sup>.
10. The Claimant's case is that on 17 July 2017 he was acting in the course of his employment with the Defendant, working at a conveyor belt. He says that he was working on a McCloskey R105 screener or a very similar machine. The Defendant has provided photographs of a McCloskey R105 screener<sup>10</sup>. In his witness statement, dated 21 April 2021, he says at paragraph 24<sup>11</sup>,

“While I worked on Belt 1 it was nearly horizontal with the ground. There was a stack of 3 pallets which served as a platform that I stood on. I measure 173cm tall, and when I stood on the ground the conveyor was too high. I used some pallets from the storeroom and would return them at the end of the day.”

At paragraph 29 he says<sup>12</sup>,

“As I recall as there was no grill or adequate protection on the upper belt little pieces of debris regularly flew from the upper belt. They would sometimes hit me while I was working but they did not injure me. I was wearing my helmet, gloves and goggles.”

11. In his witness statement, dated 21 April 2021, the Claimant says<sup>13</sup>,

“31. On the day of the accident, in the late morning near midday, a block of concrete, which was large and heavy, fell from the upper level of the machine and crushed my hand.

...

34. We reported the accident to Trevor Armitage, the manager. He did not call an ambulance, but arranged for another colleague to drive me to hospital.

35. I do not know the name of the man who drove me to hospital:- he was English, around 40 years old; of average height; had short, dark hair and his role was to register incoming lorries.

36. My manager, Trevor Armitage, told me through my Slovakian colleague to say that I had an accident at home. If I did that, they would keep paying me whilst I was off work and I would have a job to return to.”

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<sup>9</sup> The Claimant's contract for services with the Defendant is dated 16 May 2017 (file 2, 456). In his witness statement the Claimant says at paragraph 6 (file 2, 217) that he believes his employment began on 15 May 2021.

<sup>10</sup> File 1, 1190-1194

<sup>11</sup> File 1, 222

<sup>12</sup> File 1, 223

<sup>13</sup> File 1, 223-224

12. The Claimant calls his daughter, Renata Pechova, as a witness<sup>14</sup>. She says that she accompanied him to the Accident and Emergency Department on 17 July 2017 and to the Hand Clinic on 18 July 2017, and interpreted for him on both occasions.
13. The Claimant also adduces evidence from:
  - i) His son, Rudolf Horvath Junior<sup>15</sup>, who says he saw the Claimant in the Accident and Emergency Department on 17 July 2017 and visited Trevor Armitage with Stefan Klima after the accident;
  - ii) Stefan Klima<sup>16</sup>, a family friend, who says he had meetings with Trevor Armitage before and after the accident;
  - iii) His daughter in law, Alena Horvathova<sup>17</sup>, who says that she saw the Claimant at his daughter's house on the way to the Accident & Emergency Department.

### **Defendant's case**

14. The Defendant's case is that the Claimant did not have an accident at work on 17 July 2017. The Defendant's site manager at the Sheffield demolition waste disposal plant, Trevor Armitage, saw the Claimant shortly before he was due to start work on 17 July 2017 near to the site entrance. He says that the Claimant was heavily intoxicated so he told him not to enter the site and to go home.
15. The Claimant was not paid for the 17 July 2017. The Defendant says that the Claimant's time sheets record that he did not work any hours at all on 17 July 2017. If he had worked from 6 am to 11am on the accident date, his hours would have been recorded accordingly and he would have been paid for those hours.
16. Mr Armitage says in his witness statement, dated 27 July 2020, at paragraph 18<sup>18</sup>, that he was the first aider on site and if anyone had an accident, he would know about it. Mr Armitage says that no employee of the Defendant took the Claimant to the Accident and Emergency Department at Sheffield Teaching Hospital.
17. The Defendant calls the following witnesses:
  - i) Trevor Armitage, the site manager<sup>19</sup>;
  - ii) Mary Griffin, the Defendant's HSEQ Support and Insurance Claims Manager<sup>20</sup>.
18. The Defendant has also served a witness statement from Sam Rawcliffe, the Defendant's head of Health and Safety<sup>21</sup>. On 14 September 2021 the Defendant

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<sup>14</sup> Witness statement, dated 19 April 2021 – File 1, 272-280

<sup>15</sup> Witness statement, dated 19 April 2021 – File 1, 256-262

<sup>16</sup> Witness statement, dated 27 April 2021 – File 1, 287-291

<sup>17</sup> Witness statement, dated 19 April 2021 – File 1, 281-286

<sup>18</sup> File 1, 297

<sup>19</sup> Witness statement, dated 22 July 2020 – File 1, 296-298

<sup>20</sup> Witness statement, dated 12 May 2021 – File 1, 299-301

served a Notice under the Civil Evidence Act 1995<sup>22</sup> stating it was not calling Mr Rawcliffe, who is abroad, to give oral evidence. The notice states, “The costs of Mr Sam Rawcliffe attendance in giving evidence would be disproportionate to the issues at hand.”

19. The Defendant has also adduced surveillance evidence taken of the Claimant on five occasions in February and March 2019. There is a witness statement from Jack Johnson, surveillance operative, dated 12 April 2019<sup>23</sup>. I have seen surveillance showing the Claimant on 28 February 2019.
20. In his second witness statement, dated 12 July 2021<sup>24</sup>, the Claimant deals with the covert surveillance evidence and in particular the surveillance on 28 February 2019. He says at paragraph 7<sup>25</sup>,

“On 28 February 2019 I am seen coming out of a shop at around 3pm with a can of beer, I give a can of beer to another man, I am seen standing, smoking, drinking a can of beer, checking my phone, and we are then joined by a third man. The second man is my friend who is the father of my son’s fiancée. I do not know the third man well. He is also Slovakian.”

### **Claimant’s evidence**

21. The Claimant gave evidence through a Slovakian interpreter. In his evidence in chief, he said that he was currently unemployed. He confirmed that the signatures on his witness statements, dated 22 April 2021<sup>26</sup> and 12 July 2021<sup>27</sup>, were his and that both witness statements were true. He was referred to a plan<sup>28</sup> and he said that this showed a big pile of waste, the loading machine, the Defendant’s offices to the right and the machine he was working on at the time of the accident. He said he was standing at the point indicated by the red arrow when the accident happened. He was standing on three pallets as a platform. He was injured by a block of concrete falling on his hand from the highest belt, which was near the loader. The concrete fell from belt four. He was referred to another photograph<sup>29</sup>. He said this did not show the exact position of the machine.
22. In cross-examination, he was referred to the Defendant’s photographs of the crusher machine<sup>30</sup>. He said this was the screening device, where material gets sorted into different sizes. He agreed that the machine was very similar to that shown in the Defendant’s photograph but it was not the same machine. He was shown this photograph and he said the machine he was working on was similar. It was put to him

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<sup>21</sup> File 1, 335-339

<sup>22</sup> File 1, 410

<sup>23</sup> File 1, 411

<sup>24</sup> File 1, 249-253

<sup>25</sup> File 1, 250

<sup>26</sup> File 1, 230

<sup>27</sup> File 1, 252

<sup>28</sup> File 1, 233

<sup>29</sup> File 1, 243

<sup>30</sup> File 2, 1191

that the Defendant's two photographs<sup>31</sup> were the same machine, from a different angle. He did not agree. It was put to him that the Defendant's photographs showed the picking station, where he stood to do his work. He disagreed.

23. It was put to him that the Claimant's photograph<sup>32</sup> showed side screens.
24. He agreed that from May 2017 to July 2017 he worked on the Defendant's site as a picker and always in the same position. He agreed he worked five or six days a week. Prior to the accident, no large pieces fell from above. At the time of the accident he was wearing a helmet, goggles, gloves and his usual work clothes.
25. He agreed that if he had been standing on the platform, concrete could not fall on him from above but said he was not standing there. He had been taught to stand on three pallets.
26. He said that a colleague, Jozef Vereb, was loading the waste from the pile at the time of the accident. He said that he was in a higher position to him and could see the accident.
27. He said that Mr Vereb offered the job with the Defendant to the Claimant's son first. When he arrived in England in December 2016, his son let him have the job with the Defendant. He said that Mr Vereb's facebook profile said he worked for a company in Prague. He agreed that Mr Vereb was an important witness. He said he had not tried to contact Mr Vereb. He said he did not use Facebook and did not know how it worked.
28. It was put to him that Jozef Vereb's last payslip was dated 5 April 2017<sup>33</sup> and the Claimant did not start working for the Defendant until May 2017. It was put to him that he and Mr Vereb never worked together. The Claimant said that Mr Vereb was working for the Defendant on 17 July 2017, and left working for the Defendant one month later.
29. The Claimant was referred to a photograph of his overalls<sup>34</sup>. He said that he had two overalls.
30. It was put to him that he said in his witness statement, dated 22 April 2021, at paragraph 34<sup>35</sup> that he said he reported the accident to Mr Armitage. He said Mr Armitage and an elderly man saw his accident from the office. He was asked again if he reported the accident and he said, "They saw it – they witnessed it". He added, "They did not even call an ambulance". He was asked what Mr Vereb said to him when he came over to him after the accident. He said he could not recall, he was in shock. He said that Mr Armitage told him to say at hospital that he had had an accident at home, in his garden.
31. He said Mr Vereb was interpreting for him. He was asked whether anyone had mentioned him going to hospital at that point. He said his manager had arranged for

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<sup>31</sup> File 2, 1190

<sup>32</sup> File 1, 235

<sup>33</sup> File 1, 333

<sup>34</sup> File 2, 473

<sup>35</sup> File 1, 224

someone to drive him to hospital. He said he was afraid he would be sacked. He was promised he would be paid for six days and the job would be kept open for him.

32. He said that he thought he had his mobile phone with him. He decided to go to his daughter's house. He was asked why he did not telephone her to see if she would be at home. He said his daughter lived nearby. He agreed he arrived unannounced. When he arrived at hospital, the Defendant's driver left. He did not know his name. His daughter, Renata, had a conversation with the driver. He agreed that it may have taken about 45 minutes between the accident occurring and walking into the Accident and Emergency Department at Sheffield Teaching Hospital. He agreed that at hospital he went to the reception. He arrived at 13.07<sup>36</sup>.
33. He was asked how Mr Armitage would have found out if he had said at hospital that he was injured at work. He replied, "I don't know". It was put to him he must have thought that Mr Armitage would find out. He said that he did not say this because he was afraid he would lose his job.
34. He agreed that he was triaged at 13.19 and he told the triage nurse that he was building a wall at home when he banged his right hand.
35. He agreed that thereafter he was examined by Nurse Robson at 15.20<sup>37</sup>. He agreed it was important to tell the medical staff about how his accident occurred. He said he lied because of his agreement. He was referred to Nurse Robson's report, which said he was discharged. He said he and his daughter then went home. He was asked whether any medical staff were told on 17 July 2017 that he was injured at work. Initially he said that after the first examination, they went to see a nurse and said the accident happened at work. She told them to tell this to the doctor at the hand clinic. Subsequently, he said this nurse was Nurse Robson.
36. He was asked why he changed his mind and told Nurse Robson that the accident occurred at work. He said that having spoken to his daughter, he was worried that his boss might not keep his word. He said he changed his mind during the examination with Nurse Robson.
37. It was put to him, but he did not accept, that he went home that night and decided he would try to implicate being injured at work. He was referred to the Hand Assessment of 18 July 2017<sup>38</sup>, which refers to rocks falling off a belt onto his right hand. It was put to him that this was the first time he had said the accident occurred at work. He said he did not know if Mr Armitage would find out what he said to the doctors. It was put to him that at this point, he would have thought he was going to be paid by Mr Armitage. He replied that he was concerned the Defendant would not pay him and that was why he told the truth. He said he changed his mind.
38. He agreed that he had a good enough relationship with Mr Armitage, who always paid him the hours he worked.
39. He said he had never turned up for work drunk.

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<sup>36</sup> File 2, 582

<sup>37</sup> File 1, 589-590

<sup>38</sup> File 2, 615

40. He was referred to his weekly time sheet for week ending 23 July 2017<sup>39</sup>. It was put to him that the time sheet did not show him working on Monday 17 July.
41. It was put to him that Jozef Vereb did not work at the Defendant's premises from 23 April 2017. It was put to him that a Mr Carny worked there until 1 March 2018.
42. He was referred to the Defendant's injury log<sup>40</sup>. It was put to him that there was no record of him being injured. He said he did not know how to explain this failure to record his accident.
43. He said the Defendant had not disclosed CCTV footage.
44. He said that he obtained a sick note. He and his son went to the Defendant's workplace to hand them the sick note. He had not spoken to Mr Armitage since the accident. He was asked the point of his visit and said he wanted to hand them the sick note. The Defendant said he did not want to accept the sick note and threw him out of the office. He said he took this sick note because he was not sure the Defendant would stand by the agreement. It was put to him the meeting never took place. The Claimant said his friend Mr Klima sent a copy of the sick note.
45. He said he did not know that Mr Armitage did not own the Defendant. It was put to him that he could have reported the accident by telephone or to the company's postal address, which he sent the sick note to.
46. He said that if he had arrived at work intoxicated, the hospital staff would have mentioned this.
47. He was referred to his Reply to Defence at paragraph 3<sup>41</sup>, where he says he could have been mistaken for Marian Rodak. He said he saw him on site once. He said that he meant that he could have been mistaken for Jozef Vereb. He was referred to paragraph 8b) of the amended Defence. He said he had not seen Mr Bohus Carny working at the site. He was referred to Mr Carny's payment certificate. It was put to him that there were pay certificates for Mr Carny from May 2017<sup>42</sup> until March 2018<sup>43</sup>, when the site closed. He said that he had not seen Mr Carny at the site. He said that Mr Vereb worked at the Sheffield depot for four weeks after the accident. He agreed that Mr Vereb and Mr Carny were two different people.
48. He was referred to his witness statement<sup>44</sup>. It was put to him that on returning home from Slovakia, he did not go home but went straight to buy alcohol and was drinking at 3pm in the street.
49. In re-examination, he said that at hospital his x-ray was taken before his examination by Nurse Robson.

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<sup>39</sup> File 2, 1246

<sup>40</sup> File 1, 409

<sup>41</sup> File 1, 166-167

<sup>42</sup> File 1, 309

<sup>43</sup> File 1, 330

<sup>44</sup> File 1, 251

50. He was asked what the connection was between Jozef Vereb and Bohus Carny. He said that Mr Vereb was living as the tenant or house mate of Mr Carny.

**Stefan Klima**

51. In examination in chief, Mr Klima confirmed his witness statement, dated 27 April 2021<sup>45</sup>, was true.
52. The Claimant's witness Mr Klima says at paragraphs 9-13<sup>46</sup>,

“9 A few days after the accident, Junior came to see me. They said that the boss had ignored them when they had tried to hand in the sicknote and to report the accident. They did not know what to do next.

10 Mr Horvath Junior and I drove to the Claimant's workplace at Five Weir Walk, Sheffield, to persuade the boss to record the accident and to pay sick pay. Both of us walked right through into what looked like an open-fronted workshop.

11 The boss and I spoke in the presence of Mr Horvath Junior for about five minutes. The boss told me that the Claimant had not had an accident at work but he had been injured at home. He told us he was not interested in hearing more and told us to leave the site.

12 I insisted that the Claimant was entitled to sick pay. I was also asking why an accident report had not been done. He was reluctant to discuss anything. I was talking most of the time.

13 I found the boss to be extremely unpleasant and dismissive. I told him that the Claimant would be speaking to a lawyer. The boss said to the Claimant that he was free to do so but he would not get anywhere with a claim because he had been hired as a contractor. I told the boss that I believed that the Claimant was entitled to compensation.”

53. In cross-examination he confirmed he did not see the accident take place and he was reliant on what the Claimant had said. He said that the first he knew about the Claimant's injury was when the Claimant's son came to see him on the evening of 17 July 2017 or a few days afterwards. He was told that the Claimant had said at hospital that the accident happened at home. He said he insisted that the Claimant had to put the record straight.
54. He said that he spoke to the Claimant directly. He told the Claimant to obtain a sick certificate. He said that subsequently he went to the Defendant's Sheffield site and spoke to someone who told him the claim must be made to UK & Ireland Construction. He said he sent the sick certificate by post. He said that after the

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<sup>45</sup> File 1, 291

<sup>46</sup> File 1, 289

accident, he visited the Defendant and told them the Claimant had had an accident at work. He said that the Defendant did not agree this in words but by their facial expression they did. The Defendant told him he must leave or they would call the police. He agreed the Defendant did not in fact call the police.

55. He said he gave the Claimant advice. This included advising the Claimant to instruct a solicitor.
56. He said he submitted a HSE RIDDOR report two months later<sup>47</sup>. It was pointed out to him that the report was submitted on 28 September 2017 and the Claimant had already instructed a solicitor. It was put to him that he was trying to bolster the claim. He said the information on the RIDDOR report was based upon what the Claimant told him.

### **Mr Rudolf Horvath Junior**

57. Mr Rudolf Horvath Junior gave oral evidence. He confirmed the signature on his witness statement, dated 19 April 2021, and that the statement was true<sup>48</sup>. He said that shortly before giving evidence, he had gone outside for a cigarette and seen his father. He had said nothing to his father. His father had said, “Everything is repeating”.
58. He was referred to paragraph 21 of his statement<sup>49</sup>. Mr Klima told him that he knew from Mr Carny that there was a vacancy at the Defendant’s site. He said that Mr Vereb was working there before the Claimant. He said that when he received the call about his father’s injury, he was at home. It was around midday. When he arrived at hospital, his father had already been bandaged. He arrived after his father had been examined. The left leg of his trousers was covered in blood.
59. He said that he and his father had a discussion in the waiting area. He said the Claimant and his sister explained that the Claimant suffered an accident at work, when a piece of concrete 30x30cm fell on his hand. He insisted they tell the truth. His father and sister went into another assessment at which he was not present. It was put to him that after speaking to him, his father and sister did the opposite. He said his sister was told the report could not be changed. The three of them left at the same time.
60. It was put to him that the Claimant’s overalls were not covered in blood.
61. He said that the same evening or a few days later he went to see Mr Klima. Mr Klima said they had to put the record straight on how the accident occurred.
62. He agreed that he had found Mr Vereb on Facebook.
63. In re-examination, he said that he did not like the Claimant’s agreement with Mr Armitage.

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<sup>47</sup> File 2, 496

<sup>48</sup> File 1, 256-262

<sup>49</sup> File 1, 260

## Renata Pechova

64. Renata Pechova, the Claimant's daughter, gave evidence. In her evidence in chief she confirmed her signature to her witness statement, dated 19 April 2021<sup>50</sup>. She confirmed that her witness statement<sup>51</sup> was true.
65. In cross-examination, she said of her statement at paragraph 8 of her statement, "I could see from a distance that something was wrong with him", she was seven or eight metres from the Claimant when she could see that something was wrong. She was sitting on the sofa in the entrance to the kitchen when she saw him. She could not see what was wrong. When he came closer, she could see he was pale, shaking and holding his hand, which was covered in blood. She agreed that she gave him some paper tissue to cover the wound. She agreed he was not covered in blood, the blood was only on his hand. Ms Pechova says at paragraph 9 of her statement<sup>52</sup>,
- "I asked him what had happened. He replied that a block of concrete had fallen on his hand at work."
66. Ms Pechova said she went to hospital with the Claimant in a company van. She could not remember whether she asked the company driver his name. She did not think she asked her father the driver's name. In her statement, she says that her father told her in the van in Slovakian that his boss had told him that they must not say the accident happened at work. She said the driver told her several times that the boss wanted them to say that her father got injured at home.
67. She said that when they arrived at Sheffield Teaching Hospital, the driver left them. It was put to her that at hospital she and her father could have said anything about his injury. She said they could not because her father was anxious to keep his job and look after two young children. She said she called her brother twice.
68. She agreed that she told the receptionist at hospital that the accident occurred at home. She said that she said this because her father told her to do so. She said she told Nurse Robson that her father was building a wall which fell and crushed his hand. She said that at the end of the medical assessment, she told the nurse the true account of how her father sustained his injury. It was put to her that she said at hospital three times that the accident happened at home, namely to the receptionist<sup>53</sup>, and twice to nurses<sup>54</sup>. She said that she said at the hospital twice that her father's accident happened at home. She agreed that she told the receptionist that it happened at home. She said a male nurse was present and he bandaged her father's hand. The second nurse showed her the x-ray. There were little cracks in his hand and one severe fracture, which required surgery. When she saw this, she realised the injury was serious and it would take a long time to heal.
69. She was asked how her father's boss would find out what she said to a nurse at Sheffield Teaching Hospital. She replied she did not know. She was asked why they

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<sup>50</sup> File 1, 280

<sup>51</sup> File 1, 272-280

<sup>52</sup> File 1, 273

<sup>53</sup> File 2, 582

<sup>54</sup> File 2, 589-590

would tell the hospital the accident happened at home if the boss would never find out. She said she was not sure if he would be able to find out. She said she had no experience with accidents at work. She said she told a nurse at hospital that the accident occurred at work and this nurse said the records could not be updated and she could not change the medical notes. It was put to her that Nurse Robson had her father's notes in front of her and could have added that the Claimant now said the accident occurred at work. She said she had not seen the nurse taking notes while seeing her father. She then said that the nurse she told the accident occurred at work was a different nurse to the nurse taking notes. She said the nurse was bandaging her father's hand and she did not know if she was taking notes.

70. It was put to her that there was no journey to hospital in a company van.
71. In re-examination, she said she was at Sheffield Teaching Hospital for four or five hours with her father and they left at five or six p.m. She was referred to the medical records<sup>55</sup>. She said that she and her father saw a medical practitioner in a side room privately once while they were at hospital. Then they had to go to the x-ray room. After the x-ray she was called by another nurse or doctor, who showed her on a computer images of her father's hand and explained the kind of injury he had sustained. She was asked how long after the x-ray she told the nurse that the accident occurred at work and she said she could not remember how long but it was not very long.

### **Alena Horvathova**

72. Alena Horvathova gave evidence in support of the Claimant. She confirmed the electronic signature on her witness statement, dated 19 April 2021, and confirmed that the statement was true<sup>56</sup>. Ms Horvathova is the partner of the Claimant's son.
73. In cross-examination, she agreed that when she saw the Claimant on 17 July 2017, he was not covered in blood but bleeding from his hand quite heavily. She said that the Claimant's daughter, Renata, got a tissue to put on the Claimant's wound. He already had a cloth on his hand. She said she did not see how the Claimant travelled to his daughter's home. She did not see a vehicle.

### **Defendant's witnesses**

#### **Trevor Armitage**

74. The Defendant's depot manager, Trevor Armitage, gave evidence. In evidence in chief, he confirmed the signature<sup>57</sup> on his witness statement was his and confirmed that his witness statement, dated 22 July 2020<sup>58</sup>, was true.
75. The Defendant's depot manager, Trevor Armitage, says in his witness statement, dated 27 July 2020<sup>59</sup>,

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<sup>55</sup> File 2, 589

<sup>56</sup> File 1, 282-285

<sup>57</sup> File 1, 298

<sup>58</sup> File 1, 296-298

“6. I was Rudolph’s line manager.

7. On the 17th of July in between 5-6 am (it was getting late), I was driving along Five Weirs Walk when I noticed Rudolph on the pavement with his bike around 100 yards from the entrance.

8. I had just turned the corner when I saw him. He was all over the place and unsteady. I could tell he was intoxicated.

9. If he had been walking in a normal manner I wouldn’t have stopped.

10. I pulled up and he was definitely intoxicated and he wasn’t ready for work. I cannot have anyone who was like that coming into work. I have enough on without having to risk anyone through alcohol or drugs. The management was very strict.

11. When I spoke to him he smelt of alcohol. We had a conversation along the lines of where did he think he was going and I said he couldn’t come to work like that and that he needed to go home.

12. I also asked him if he would be capable of getting home. He just turned round his bike and went away back up the street from the way he had come from.

13. All this time he was no more than 1 m away from me. He absolutely stunk of alcohol.

...

18. I am a first aider on the premises, if anyone has an accident, I would know about it. Never in my time on the yard did anyone have to be taken to A&E as a result of an accident. From site yes, but not in the yard.”

76. In examination-in-chief he was referred to two photographs<sup>60</sup>. He said that these photographs showed a McCloskey R105 screener. He said that the man in the photograph may be him. He said that the Claimant worked as a picker at the Sheffield site. As a picker, he would have stood on a picking station, as shown in the Defendant’s photograph<sup>61</sup>. He was referred to a photograph which showed a finger cassette<sup>62</sup>. He said that the belts on the McCloskey R105 screener were set to go slowly. The picker would remove plastic and metal and throw it to the ground. He

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<sup>59</sup> File 1, 296-297

<sup>60</sup> File 2, 1190

<sup>61</sup> File 2, 1190

<sup>62</sup> File 2, 1191, bottom photograph

said the photographs<sup>63</sup> were taken after the Claimant had made his claim. He said that the picking stations were put on the McCloskey R105 screeners in 2016.

77. In cross-examination, it was put to him that this was the first time that he had said that the picker would stand on a platform to pick out bits of metal and plastic from the aggregate. He said that in addition, the Claimant would fill the machines with diesel. The Claimant's principal job was as a picker.
78. He was referred to the Claimant's self-employed subcontractor's registration form<sup>64</sup>. This states that the Claimant was a reinstator – tarmacer. He agreed that this was not true and was stated so that the Claimant could be paid under the Construction Indemnity Scheme. He said that under the Construction Indemnity Scheme, the employer deducts tax at a flat rate of 20% and it is for the sub-contractor to pay any higher rate tax. Mr Armitage said that the Claimant was self-employed. He was referred to a record of payments to one of the employees, Mr Bohus Carny<sup>65</sup>. He agreed that Mr Bohus Carny was not working in construction.
79. He said that an employee, Mark Armindryde, was a bookkeeper working at the depot. He did not know if Mr Armindryde was working at the time of the accident. He worked three days a week.
80. Mr Armitage said that the Claimant came to work on a bicycle. On 17 July 2017 between 5 and 6 am he saw the Claimant walking down Five Weirs Walk with his bicycle. He could tell the Claimant was intoxicated because he was staggering and unsteady on his feet as he pushed his bicycle and his breath smelt of alcohol. He said he sent the Claimant home. He spoke to Luke Caplice, the Claimant's direct supervisor, about sending the Claimant home. He said that he did not remember making a note in the site diary. He did not institute disciplinary proceedings because he had sent the Claimant home and he was not on site. He said he could not have anybody on site who was intoxicated. He said that he made it clear to the Claimant that he had to go home. Turning up for work intoxicated was gross misconduct.
81. He was referred to one of the photographs<sup>66</sup>. He said the pile of rubble on the left was the aggregate which was to be recycled. He said there were a lot of holes on the finger cassette. He said that the photograph in file 2, at page 1194 shows the Sheffield site.
82. He said that the time sheets would be handwritten and he typed them up and scanned them through to the Defendants' Manchester office. He was referred to the Claimant's time sheet for the week ending 28 May 2017<sup>67</sup>. He said the Claimant would complete it by hand and he would type it up. There were five or six agents at the depot who would be typing up time sheets for contractors under their supervision. He said he was the depot manager and the other agents were not the depot manager. He said that Luke Caplice would have run men under him and would have been working in the yard at the time of the accident. The recycling was one of the activities going on in the yard. He said there were two pickers, the Claimant and a Mr Carny.

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<sup>63</sup> File 2, 1190-1191

<sup>64</sup> File 2, 455

<sup>65</sup> File 1, 1217

<sup>66</sup> File 2, 1192

<sup>67</sup> File 1, 1243

83. He said that on his telephone he had an app to report incidents on site. He said that he knew by 26 July 2017 that the Claimant was not returning to work for the Defendant. He was referred to a note<sup>68</sup> relating to a telephone conversation with him on 26 July 2017. The note says,
- “Rang Mr Trevor Armitage on Wed 26.7.17 at 5.41 pm. I asked about Mr Horvath if he was still on site? The information I was given was that Mr Rudolf Horvath turned up on our client O’Connor’s site on Monday 17.7.17 but was totally intoxicated and was told to leave site by Mr Trevor Armitage as this is totally not acceptable as he would be a danger to himself and other staff on site and handling machinery.”
84. He said that he thought that by 26 July 2017 he had probably replaced the Claimant. There would have been a replacement employee to do the Claimant’s job within a few days or a week. He said that Mr Carny was the other picker. When the McCluskey machine was not in use, the picker would be doing other duties, such as sweeping up, tidying up, filling vehicles with diesel. There was always something to do.
85. He said that Luke Caplice was hands on. When he moved from the Defendant to his own business, Luke Caplice moved with him. He said Mr Caplice parted company from him two years ago and went to live in Ireland.
86. He said that all employees received induction by Human Resources and the documents were held by the Health and Safety Department in Sheffield.
87. He was referred to the photograph of the site<sup>69</sup>. He said that his office was the pitched roof at the end of the page. He said that a Charlotte Campion worked in there. Mr Caplice had no office and was out in the yard all day.
88. He said that he had no recollection of seeing Mr Klima a few days after 17 July 2017.
89. He agreed that there was CCTV on site and this should have shown the Claimant if he was at work on 17 July 2017. It was put to him that the Claimant’s solicitors sent a letter of claim on 17 August 2017 and that the Defendant would have wanted to preserve the CCTV. Mr Armitage said that the CCTV was not his responsibility, but that of IT in Manchester. He said he had no recollection that any request had ever been made for any CCTV.
90. He was referred to the Claimant’s time sheet for the week ending 23 July 2017<sup>70</sup>. He said that all time sheets were sent on Saturday. The weekly time sheet says that the Claimant finished work on 14 July 2016. He said that this was a mistake, and should say 2017. He was asked if he wrote this form in 2018 and he denied this.

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<sup>68</sup> File 2, 1077

<sup>69</sup> File 1, 233

<sup>70</sup> File 2, 1246

91. He was referred to a photograph<sup>71</sup> of the machine. He said the picker would be standing on the yellow platform. This was the safest place on the machine. The belt in front of the platform was set at the lowest level.
92. He was referred to the witness statement of the Defendant's Head of Health and Safety, Sam Rawcliffe, dated 12 May 2021, at paragraph 21<sup>72</sup>, which states,

“The machine is also not designed to accommodate someone to pick through the material. ”

He said this was a matter of opinion. He considered it was safe to have a picker working on the McCloskey R105 screener. He said he had the same machine being used with a picker standing on the platform in his present business.
93. He was referred to another photograph<sup>73</sup>. He said that this showed the McCloskey R105 screener parked up and not in working use. The screener was in its stationary position. When the screener was in use, it was as shown in the photographs in file 2 at pages 1190 – 1194.
94. He agreed he made no record of sending the Claimant home. He said he remembered 17 July 2017 because that was the last day the Claimant worked for the Defendant. It was put to him that he was lying in his telephone call on 26 July 2017 and was lying now, and he denied this. It was put to him that he said the Claimant was drunk in the early hours of 17 July 2017 to provide an explanation for why he was not paid that day. He denied this. He said he did not tell the Claimant to tell the hospital the accident happened at home. He said he did not ask a driver to take the Claimant to hospital. He did not speak to the Claimant's daughter.
95. He said that the photographs in file 2 at pages 1192 – 1194 were probably taken by a drone.
96. It was put to him that the photographs at file 2, 459-462 were of Bohus Carny. It was put to him that the Facebook photographs at 461-462 were also of Bohus Carny but were said to be of Jozef Vereb.
97. He was referred to the Claimant's self-employed subcontractor's form<sup>74</sup> and contract for services<sup>75</sup>. He said that he would not necessarily have gone through these forms with the Claimant. Luke Caplice may have gone through the forms with him or it may have been someone from Human Resources.
98. He said that the previous manager overseeing the yard had had platforms put on the side of the McCloskey R105 screener. He referred to the purchase order from

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<sup>71</sup> File 2, 1190

<sup>72</sup> File 1, 337

<sup>73</sup> File 1, 235

<sup>74</sup> File 2, 455-456

<sup>75</sup> File 2, 457

Precision Engineering Services Limited, dated 11 November 2016<sup>76</sup>, for a crusher safety platform and the invoice<sup>77</sup>.

99. He said he started working for the Defendant as a driver and digger.

### **Mary Griffin**

100. Mary Griffin, the Defendant's HSEQ Support and Insurance Claims Manager, gave evidence on behalf of the Defendant. In her evidence-in-chief she confirmed that the signature on her witness statement, dated 12 May 2021<sup>78</sup>, was hers and that her witness statement was true.

101. The Defendant's witness Mary Griffin says in her statement, dated 12 May 2021<sup>79</sup>,

"7. As far as I am aware, Mr Horvath did not work on the 17th July 2017 and his payment certificates show he was not paid for work on this date, exhibited under MG1.

8. In order to be paid to reflect the hours he worked, Mr Horvath would've found in a weekly timesheet. This was then submitted on a weekly basis to UK & I Construction Limited. O'Connors clarify with UK and I construction Limited that the time is submitted that the individual has actually completed and then then it is the responsibility of UK and I construction Ltd to pay.

9. The last date in which Mr Horvath was paid was for the week ending 16 July 2017. A copy of all his payment certificates are exhibited under MG2.

10. Had Mr Horvath worked on the 17 July 2017 as alleged, we would have processed a payment even for just one day and there would have been a further payment certificate on file."

102. Ms Griffin says in her witness statement, dated 12 May 2021, at paragraphs 18-19<sup>80</sup>,

"18. The same searches that identified Mr Carney and Mr Vereb were undertaken to search for Mr Marian Rodak.

19. These searches did not provide any results and therefore Mr Rodak could not have worked at O'Connors at any time."

103. In cross-examination, she said that sub-contractors were paid under the construction scheme by UK & I Construction Services. She was referred to the Claimant's

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<sup>76</sup> File 2, 1269

<sup>77</sup> File 2, 1268

<sup>78</sup> File 1, 299-301

<sup>79</sup> File 299-300

<sup>80</sup> File 1, 301

subcontractors registration form<sup>81</sup>. She said she had nothing to do with this form. It would have been filled out by UK & I Construction Services. She did not deal with the payroll.

104. She was referred to her witness statement at paragraph 10<sup>82</sup>. She said that the Defendant served a disclosure statement<sup>83</sup>. She said that she completed the disclosure statement. She said that the Defendant did have an office in Sheffield but she did not travel there to carry out her search for documents. The Defendant's site closed down in 2018. She was asked where she found the handwritten note dated 26 July 2017<sup>84</sup>. She said she found it in the Defendant's Health and Safety file. She was asked where the photographs referred to in the Defendant's disclosure list at item 12<sup>85</sup> came from. She said they came from Health and Safety. She did not know who Luke Caplice was.

### **Issue of fraud**

105. The Parties agree that the issue in the case is whether the Defendant has proved on the balance of probabilities that the Claimant's claim that he sustained an accident at work on 17 July 2017 is fraudulent in that he did not suffer an accident at work on 17 July 2017. I bear in mind that a serious allegation such as fraud requires cogent evidence to be found proved.

### **Findings**

#### **HMRC CIS scheme for non-construction work**

106. The Defendant completed an HMRC CIS scheme for non-construction work form for the Claimant<sup>86</sup>. This states that the Claimant was a reinstator – tarmacier. This allowed the employer to deduct tax at a flat rate of 20%. Mr Armitage agreed that the Claimant was not a reinstator – tarmacier.
107. It would seem from the Claimant's first witness statement that he took the initiative in asking the Defendant to complete this form. He says at paragraph 11<sup>87</sup>,

“I initially had a lot of tax deducted from my pay but my son's friend, Stefan Klima, completed an application for me as a result of which my tax rate was cut. I did not understand what needed to be done or how it could be done so I relied on Mr Klima.”

108. I find that the completion of this form reflects adversely on the credibility of both the Defendant and the Claimant and shows that they are both prepared to lie to a government agency. However, I find that whilst this reflects negatively on the

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<sup>81</sup> File 2, 455-456

<sup>82</sup> File 1, 300

<sup>83</sup> File 1, 193-196

<sup>84</sup> File 2, 1077

<sup>85</sup> File 2, 1195

<sup>86</sup> File 1, 255

<sup>87</sup> File 1, 219

Defendant, it is of limited relevance in deciding whether the Defendant has proved that the Claimant did not sustain an accident at work on 17 July 2017.

### **Contract for services**

109. The contract between the Claimant and UK & Ireland Construction<sup>88</sup> states that it is a “contract for services”. The Defendant accepted that the Claimant was an employee and that his contract was for service, not services.
110. Again, whilst I find that this reflects negatively on the Defendant as an employer, I find that it is of limited relevance in deciding whether the Defendant has proved that the Claimant did not sustain an accident at work on 17 July 2017.

### **Training documentation**

111. The Defendant has not disclosed any documents to show that the Claimant received Health and Safety training. Again, whilst this reflects negatively on the Defendant as an employer, I find that it is of limited relevance in deciding whether the Defendant has proved that the Claimant did not sustain an accident at work on 17 July 2017.

### **Luke Caplice**

112. Mr Armitage said that the Claimant’s immediate supervisor was a Mr Luke Caplice, who was on site on 17 July 2017. Mr Armitage said that he informed Mr Caplice on 17 July 2017 that the Claimant was intoxicated prior to entering the Defendant’s depot and he had sent him home. Mr Armitage said that when he ceased working for the Defendant and opened his own business in 2018, Mr Caplice initially worked with him, before moving to live in Ireland.
113. The Defendant did not call Mr Caplice as a witness or adduce any evidence that any attempt had been made to obtain a witness statement from him.
114. I find that it counts against the Defendant that Mr Caplice has not been called as a witness and that there is no evidence that the Defendant has taken any steps to obtain a statement from him.

### **Claimant’s method of working**

115. The Claimant says in his first witness statement, dated 22 April 2021, at paragraphs 23-24<sup>89</sup>,

“23. My usual working position and my position at the time of the accident is marked ‘C’ on Exhibit RH1, RH2 and RH3. To be precise, I was standing between Belt 1 and the red bins.

24. While I worked on Belt 1 it was nearly horizontal with the ground. There was a stack of 3 pallets which served as a platform that I stood on. I measure 173cm tall, and when I

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<sup>88</sup> File 2, 457

<sup>89</sup> File 1, 222

stood on the ground the conveyor was too high. I used some pallets from the storeroom and would return them at the end of the day.”

116. The Defendant says in reply to the Claimant’s request under CPR Part 18, dated 10 August 2021<sup>90</sup>, in response to request 4, that the Claimant’s role on site was a picker. In response to the question, “What duties did he perform typically?”, the following reply is given<sup>91</sup>,

“4.1 A picker.

4.2 The plastic, paper and small pieces of steel going through the screeder was not able to be extracted by the screeders magnet. The picker would identify any steel, plastic or paper via the main belt in the middle of the crusher which then fed onto the other three arms. The picker would be stood in the picking cage. The cage was for the picker to stand on. It had bars around it so they could not fall off. In order to access the picking station, there was a ladder. We attach copies of the invoices to show the picking station was ordered, delivered, and installed on site by Precision Engineering in 2016.”

117. The purchase order from the Defendant to Precision Engineering Services Limited for the crusher safety platform is dated 11 November 2016<sup>92</sup>. The invoice from Precision Engineering Services for the platform is dated 14 November 2016<sup>93</sup>.
118. The Defendant’s case is that the Claimant would stand in a yellow picking cage, as shown in the Defendant’s photographs<sup>94</sup>. The picking cage can also be seen in the Claimant’s photographs<sup>95</sup>.
119. Mr Rodgers submitted that the Court should not accept the Defendant’s reply to the Claimant’s request because it had only been provided approximately six weeks prior to the trial.

### **Finding as to the Claimant’s method of working**

120. I have no hesitation in preferring the Defendant’s evidence that the Claimant did not stand on three pallets to do his work as a picker but stood on a safety platform, which was a yellow picking cage. This is far more probable because:

- i) There is no doubt that the Defendant commissioned a safety platform as this is shown in the purchase order, dated 11 November 2016<sup>96</sup>, and the invoice from Precision Engineering Services Limited<sup>97</sup>.

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<sup>90</sup> File 1, 204B-204F

<sup>91</sup> File 1, 204E

<sup>92</sup> File 2, 1269

<sup>93</sup> File 2, 1268

<sup>94</sup> File 2, 1190-1194

<sup>95</sup> File 2, 464-465

<sup>96</sup> File 2, 1269

- ii) The Claimant is unlikely to have spent ten hours a day, five or six days a week standing on three pallets when there was a specially commissioned platform.

121. I find that my finding that the Claimant did not stand on three pallets seriously undermines his account of an accident at work.

### **Did debris regularly fly from upper belt and strike Claimant?**

122. The Claimant says in his witness statement, dated 21 April 2021, at paragraph 29<sup>98</sup> that little pieces of debris regularly flew from the upper belt and hit him while he was working but did not injure him.

123. Mr Armitage said that big pieces of infill did get through onto the conveyor belt, but not very often.

124. I also note that the Defendant's witness Mr Rawcliffe, Head of Health and Safety, says in his witness statement<sup>99</sup>,

“21. ... The machine is also not designed to accommodate someone to pick through the material. ...

22. In addition to this, both the rubble master and screener are designed specifically so no material can fall from the machines.”

125. I reject the Claimant's account that little pieces of debris regularly flew from the upper belt and hit him while he was working. I find this is unlikely, bearing in mind:

- i) I accept Mr Armitage's evidence that the conveyor belts were moving at a slow speed;
- ii) I accept that the conveyor belts were at the angle shown in the Defendant's photographs<sup>100</sup>. I accept that the Claimant's photograph<sup>101</sup> shows the McCloskey R105 screener when parked up. This is supported by the fact that the digital properties of the photograph<sup>102</sup> show that it was taken at 17:06 on Sunday 30 July 2017, when nobody was at work.

### **Claimant's case that he was misidentified**

126. The Claimant says in his first witness statement, dated 21 April 2021<sup>103</sup>,

“47 Trevor Armitage has stated that I was wheeling a bicycle when he saw me. I have not ridden a bicycle for many years and never in England. I took the bus to get to work. I had a

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<sup>97</sup> File 2, 1268

<sup>98</sup> File 1, 223

<sup>99</sup> File 1, 337

<sup>100</sup> File 1, 1190-1194

<sup>101</sup> File 2, 485

<sup>102</sup> File 1, 293

<sup>103</sup> File 1, 227

weekly bus pass which I bought with cash. I did not keep these bus passes and I do not have a copy of my weekly bus pass for that week or previous bus passes. If Trevor Armitage saw someone drunkenly wheeling a bicycle to work on that day or any other day it was not me.”

127. He continues at paragraph 48 that he had a Slovakian co-worker at the Sheffield site, who cycled to work, and he has referred to by several names: Jozef, Marian and Bohus. He continues at paragraph 49,

“I recall I actually saw this Slovakian man him in Darnall, which is a suburb of Sheffield, in around Spring 2018 and he told me he had been sacked.”

128. In his Reply to the Amended Defence, he says at paragraph 4<sup>104</sup>,

“To clarify, the Claimant is not averring the Slovakian co-worker was drunk on the day of the accident, but that if a Slovakian employee was seen wheeling his bicycle on that day it may have been this co-worker, but in any event, it was not the Claimant.”

### **Jozef Vereb**

129. The Claimant says in his first witness statement, dated 21 April 2021, at paragraph 7<sup>105</sup> that the accident was witnessed by a Slovakian man, Jozef Vereb. The Claimant accepted in cross examination that Mr Vereb is an important witness. However, there is no witness statement from Mr Vereb and no evidence that the Claimant has made any effort to obtain a witness statement from him.

130. In the Defendant’s witness statement of Mary Griffin, dated 12 May 2021, it is said at paragraph 16<sup>106</sup>,

“Mr Vereb was not working with O’Connors at the time of the alleged accident. His last payment was on the 5 May 2017 which would have represented work for the week ending 23 April 2017.”

131. Ms Griffin exhibits Mr Vereb’s sub-contractor pay certificates in her exhibit MG4<sup>107</sup>. The last payment certificate ends on 23 April 2017<sup>108</sup>.

132. I find that Mr Vereb stopped working for the Defendant on 23 April 2017. The evidence of the Defendant’s witness, Mary Griffin, is supported by Mr Vereb’s sub-contractor pay certificates. As a consequence, I reject the Claimant’s evidence that Mr Vereb was a witness to an accident to the Claimant at the Defendant’s Sheffield site

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<sup>104</sup> File 1, 177

<sup>105</sup> File 1, 218

<sup>106</sup> File 1, 227

<sup>107</sup> File 1, 331-334

<sup>108</sup> File 1, 334

on 17 July 2017. I find that the reason that the Claimant has not even sought to obtain a witness statement from Mr Vereb is because he knows very well that Mr Vereb was not working for the Defendant at the time.

### **Bohus Carny**

133. I accept Ms Griffin's evidence that:

- i) Mr Carny worked as a sub-contractor for the Defendant until 1 March 2018, when the Defendant's site closed;
- ii) Mr Carny was not sacked.

134. I accept Mr Armitage's evidence that he is certain that it was the Claimant whom he saw and sent home because he was intoxicated on 17 July 2017. The Claimant was no more than one metre away from him. He spoke to the Claimant, asking him if he would be capable of getting home.

### **Marian Rodak**

135. I accept the evidence of Mary Griffin that Mr Rodak did not work for the Defendant at any time.

136. I conclude that the Claimant has raised the issue of mis-identification for the purpose of seeking to confuse the issue as to the identity of the employee sent home by Mr Armitage in the early morning of 17 July 2017.

### **Was Claimant intoxicated on the early morning of 17 July 2017?**

137. The Claimant says in his first witness statement, dated 22 April 2021, at paragraphs 46-47<sup>109</sup>,

“46 ... I was not drunk and I went to work as normal on the day of the accident. If I had been drinking surely the hospital staff would have written this on my medical records yet they did not. To turn up drunk first thing in the morning would suggest one has a drink problem which I do not and again my hospital notes help prove this as nowhere in them as it mentioned I have a drink problem.”

138. Whilst I note that the covert surveillance evidence shows that on 28 February 2019 at around 3pm, the Claimant was drinking beer in the street, I find this of no relevance to whether he was intoxicated in the early hours of 17 July 2017.

139. I find that the fact the hospital notes make no reference to the Claimant being intoxicated does not necessarily mean that he was not intoxicated between 5am and 6am. The Claimant arrived at hospital at approximately 1pm, some seven hours later. If he had been drinking late the night before, and had then slept for a few hours before

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<sup>109</sup> File 1, 218

going to work between 5 and 6am, by 1pm he may no longer have been showing signs of intoxication.

140. Mr Armitage's account is consistent with the note of the telephone conversation with him on 26 July 2017<sup>110</sup>. Mr Armitage is recorded as having said,

“Was totally intoxicated and was told to leave site by Mr Trevor Armitage as this is totally not acceptable as he would be danger to himself and other staff on site and handling machinery.”

141. I accept the evidence of Mr Armitage that when he saw the Claimant between 5 and 6am on 17 July 2017, the Claimant was intoxicated.

### **Finding as to whether Claimant was at work on 17 July 2017**

142. I have no hesitation in preferring the evidence of the Defendant that the Claimant was not at work at the Defendant's site on 17 July 2017 for the following reasons:

- i) There are no entries in the Defendant's accident book, report log or any other documentation referred to the Claimant suffering an accident at the Defendant's premises on or about 17 July 2017. The Defendant has exhibited to Ms Rawcliffe's statement, 12 May 2021, at exhibit SR11<sup>111</sup>, its incident log, which shows that the alleged accident was not recorded. The log shows that accidents which were reported, were recorded.
- ii) The Defendant has no payment certificate for the Claimant for 17 July 2017 and I accept the Defendant's evidence that there would have been a payment certificate if he had worked on 17 July 2017, as he alleges, from 6 am until about 11 or 11.30.
- iii) I accept Mr Armitage's evidence that he was the first aider at the Premises and that if the Claimant had suffered an accident, he would have attended to him. He did not do so because the Claimant was not working on 17 July 2017.
- iv) I accept Mr Armitage's evidence that on 17 July 2017 between 5 and 6am he sent the Claimant home because by reason of intoxication the Claimant was unfit to work.

### **Defendant's site diary**

143. Mr Rogers submits that the Defendant has not disclosed the Sheffield site diary.

144. Mr Armitage says that it was unlikely that he made a note of sending the Claimant home because the Claimant was intoxicated.

145. There is no evidence before the Court as to why the site diary has not been disclosed and I find that it should have been disclosed.

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<sup>110</sup> File 2, 1077

<sup>111</sup> File 1, 409

146. I bear in mind that the Sheffield site closed down in 2018 and that the Defendant's list of documents, dated 3 March 2021<sup>112</sup>, was prepared by Mary Griffin and not Mr Armitage. In these circumstances, I find that no adverse credibility finding should be made against Mr Armitage for failing to disclose the site diary or explain its absence.

### **CCTV**

147. Mr Rogers submits that Mr Armitage was aware that the Claimant was saying he had had an accident at work on the Claimant's case on 17 July 2017 and on his own case on 17 August 2017. He submits that as the depot manager, Mr Armitage was under a duty to ensure that the CCTV was preserved.
148. Mr Armitage said in cross-examination that the CCTV was not his responsibility but that of IT in Manchester.
149. I bear in mind that the Claimant's disclosure list is dated 3 March 2021<sup>113</sup> and the Defendant's Sheffield site closed down in 2018. I also bear in mind that I have not been referred by the Claimant to any document requesting CCTV footage. In the circumstances, I find that no adverse credibility finding can be made against Mr Armitage.

### **Circumstances of alleged accident**

150. I have rejected the Claimant's case that he stood on three pallets to carry out his work as a picker. I find that he stood on a yellow safety platform, as shown in the Defendant's photographs<sup>114</sup>. I find that this finding completely undermines the Claimant's case because it is unlikely that he would have sustained a crushing injury to his right hand when standing on a safety platform.
151. I do not accept that the McCloskey R105 screener would have been in the position alleged by the Claimant and as shown in his photograph<sup>115</sup> for the reasons stated at paragraph 125 ii) above.
152. I find that the accident happened at the Claimant's home when he was building a wall, which fell and crushed his right hand, as he stated at the Accident and Emergency Department on 17 July 2017.

### **Finding as to whether Claimant reported accident**

153. I find that the Claimant did not report an accident on 17 July 2017 to Mr Armitage for the following reasons:
- i) The Claimant's evidence is contradictory. In his witness statement dated 21 April 2017 he says at paragraph 34 that he and Jozef reported the accident to Mr Armitage when it occurred. In cross-examination, he said that Mr Armitage witnessed the accident.

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<sup>112</sup> File 1, 193-196

<sup>113</sup> File 1, 193-196

<sup>114</sup> File 1, 1190

<sup>115</sup> File 2, 465

- ii) The Defendant's injury or accident log<sup>116</sup> makes no reference to an accident on 17 July 2017.
- iii) I find that Jozef Vereb was not working for the Defendant after 23 April 2017.

### **Finding as to alleged agreement**

154. I reject the Claimant's contention that he entered into an agreement for the following reasons:

- i) Where there is a conflict between Mr Armitage and the Claimant, I have no hesitation in preferring the evidence of Mr Armitage. The Claimant's evidence is riddled with contradictions, as indicated above. In contrast, Mr Armitage's evidence is internally consistent and consistent with contemporaneous documentation, such as the note of the telephone conversation about the Claimant on 26 July 2017, before on the Defendant's case, they knew a claim was being brought.
- ii) Mr Armitage was not the owner of the Defendant and it is not suggested that he had any axe to grind with the Claimant. No reason has been advanced by the Claimant as to why Mr Armitage would wish to enter into such an agreement with the Claimant.
- iii) In cross examination, the Claimant said that after the examination by Nurse Robson, he told his daughter to tell another nurse that in fact he had suffered his accident at work when a piece of concrete fell onto his right hand. The Claimant then changed his evidence to say that he mentioned this when examined by Nurse Robson. He said that his daughter said that the Nurse replied that the medical record could not be changed and that he should tell the doctor when he visited the hand clinic the following day how the accident occurred. I reject this evidence as untruthful for the following reasons:
  - a) I find that if this had occurred, Nurse Robson would have added it to her report of 17 July 2017, whereas there is no reference to this<sup>117</sup>.
  - b) The Claimant called a witness, Stefan Klima. Mr Klima says in his witness statement of 27 April 2021 at paragraphs 5 and 6<sup>118</sup>,  
  
"5 I was first made aware of the accident by Mr Horvath Junior. He came to me without his father, the claimant. I believe it was on the day of the accident or very soon after the accident. Mr Horvath Junior was concerned because the claimant had been told to lie in hospital about where he got injured. I asked Mr Horvath Junior where the accident had happened. He said it had happened at work.

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<sup>116</sup> File 1, 409

<sup>117</sup> File 2, 590

<sup>118</sup> File 1, 289

6 I insisted that the claimant had to set the record straight at the hospital.”

In cross-examination, Mr Klima said a number of times that he was told that the Claimant said at the hospital that his accident happened at home and that the Claimant did not set the record straight at hospital on 17 July 2017. He said that he advised that the Claimant must tell the truth. I find that this evidence directly undermines the Claimant’s evidence, which is that he did say at the hospital on 17 July 2017 that the accident occurred at work.

- c) The Claimant offers no convincing explanation for his change of mind to record that the accident occurred at work. On the Claimant’s own case there had been no communication from Mr Armitage or anyone else at the Defendant on 17 July 2017 or in the following days to say that the Defendant was going to renege on the alleged agreement.
- d) I found the Claimant’s son, Rudolf Horvath Junior, an unsatisfactory witness:
  - i) He says at paragraph 6 of his witness statement, dated 19 April 2021<sup>119</sup>, that he arrived at the Accident and Emergency Department of the Northern General Hospital on the day of the accident, and his father was in the middle of an examination, with his sister. However, neither the Claimant in his first witness statement<sup>120</sup>, dated 22 April 2021, nor his daughter Renata in her statement<sup>121</sup>, say that the Claimant’s son was at the hospital.
  - ii) It was apparent from the manner in which he gave his evidence that he was a partisan witness. At paragraph 8 he says that at hospital, “Our father was covered in blood when I met them”<sup>122</sup>. I find that was an exaggerated statement. There was blood on the Claimant’s hand but he was not covered in blood.
  - iii) He says that at hospital he insisted that the Claimant must tell the truth. If this was true, it would have been mentioned by the Claimant and his daughter in their witness statements but there is no mention of it. The Claimant’s daughter says that it was her who decided the truth should be told.

### **Sick notes**

155. On 24 July 2017<sup>123</sup>, 11 August 2017<sup>124</sup> and 23 August 2017<sup>125</sup> and 27 September 2017<sup>126</sup> and 1 November 2017<sup>127</sup> and 28 November 2017<sup>128</sup> the Claimant obtained

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<sup>119</sup> File 1, 257

<sup>120</sup> File 1, 216-231

<sup>121</sup> File 1, 272-285

<sup>122</sup> File 1, 258

<sup>123</sup> File 2, 875

sick notes and other notes followed. I find that it is of significance that none of the sick notes cite any accident at work. I conclude that the Claimant's sick notes do not support his contention that he had an accident at work because there is no reference to an accident at work in them.

### **Alleged visits to Defendant's premises after 17 July 2017**

#### **Claimant's case**

156. The Claimant says in his witness statement dated 21 April 2021 at paragraph 42<sup>129</sup> that a few days after the accident he and his son went to the Sheffield site to hand in a sick note but that Mr Armitage refused to accept it. The Claimant's son confirms this in his witness statement, dated 19 April 2021, at paragraph 11<sup>130</sup>.
157. Mr Klima says in his witness statement at paragraphs 9-13<sup>131</sup> that after Mr Armitage had refused to accept the sick note, Mr Klima and the Claimant's son went to the Sheffield site to tell Mr Armitage to record the accident and pay sick pay. The Claimant's son confirms this in his witness statement, dated 19 April 2021, at paragraph 11<sup>132</sup>.

#### **Defendant's case**

158. The Defendant denies that these meetings occurred. Mr Clegg submits in his skeleton argument at paragraphs 6 (ix),

“The Claimant asserts that he attended the Defendant's premises (he does not give a date for this attendance). The purpose of this visit, the Claimant indicates, was to hand in a sick-note. On the Claimant's case, the ‘agreement’ reached between him and Mr Armitage would still have been live and the Claimant would still have been awaiting his wages from his absence period. There is therefore on the face of it no reason for the Claimant to conduct this visit. The Defendant denies that any such visit took place.”

### **Findings as to alleged visits to Defendant's premises after 17 July 2017**

159. I accept the Defendant's evidence that no such visits by the Claimant, Mr Klima and the Claimant's son took place because:

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<sup>124</sup> File 2, 874

<sup>125</sup> File 2, 873

<sup>126</sup> File 2, 872

<sup>127</sup> File 2, 871

<sup>128</sup> File 2, 870

<sup>129</sup> File 1, 225-226

<sup>130</sup> File 1, 258

<sup>131</sup> File 1, 289

<sup>132</sup> File 1, 258

- i) I have found the Claimant to be an unreliable witness and there is no letter, email, text or other documentary evidence supporting the Claimant's contention that he attended the Defendant's premises with his son.
- ii) There would have been no reason for Mr Armitage not to accept the Claimant's sick note. The Defendant retained the sick notes sent by post, which are included in the Defendant's disclosure.
- iii) I reject Mr Klima's evidence that he attended the Sheffield site with the Claimant's son and spoke to Mr Armitage. Mr Armitage says that he has no recollection of such a meeting. I find that he would have a recollection of the meeting if it had occurred. Furthermore, if this meeting had occurred a few days after the accident, as Mr Klima says, and Mr Klima had told Mr Armitage that the Claimant had sustained an injury at work, Mr Armitage would have been likely to refer to it in his telephone conversation on 26 July 2017, and there is no reference to it in the record of that conversation.
- iv) Mr Klima says in his witness statement at paragraph 13<sup>133</sup>, "I found the boss to be extremely unpleasant and dismissive". I have found that Mr Armitage had no axe to grind. Accidents at the Defendant's site were not uncommon, as can be seen from the accident log<sup>134</sup>, and I find there would be no reason for him to act in this way.

### **Finding as to fraud**

160. Having regard to my findings above, I find that the Defendant has proved on the balance of probabilities, that the Claimant was not present on the Defendant's site on 17 July 2017 and did not sustain his injury on the Defendant's site. Therefore, I find that the Defendant has proved on the balance of probabilities that the Claimant is fraudulent and his claim is fundamentally dishonest.
161. I dismiss the Claimant's claim on the ground that it is fundamentally dishonest.

### **Costs**

162. I am conscious that I have not heard the Parties' submissions as to costs. I set out below my provisional views, which the Parties are at liberty to argue at the hand down of judgment on 19 October 2021 at 10am.

### **Party to pay costs**

163. My provisional view is that having regard to the fact that I have found that the Claimant was fraudulent and did not sustain his injury at work, the Claimant should pay the Defendant's costs of the action on an indemnity basis.

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<sup>133</sup> File 1, 289

<sup>134</sup> File 1, 409

## **CPR 44.16**

164. In the amended Defence, it is said at paragraph 12<sup>135</sup>,

“In the event that the court determines that the Claimant was not present on the Defendant’s site on 17 July 2017 then the Defendant shall not only invite the court to dismiss or strike out the claim, but it shall apply pursuant to CPR 44.16 to enforce its costs against the Claimant to their full extent.”

165. CPR 11.16(1) provides,

“Orders for costs made against the claimant may be enforced to the full extent of such orders with the permission of the court where the claim is found on the balance of probabilities to be fundamentally dishonest.”

166. I have found on the balance of probabilities that the claim is fundamentally dishonest and I am minded to find further that it would be just to order that the costs order may be enforced to the full extent against the Claimant pursuant to CPR 44.16(1).

## **Payment on account of costs**

167. CPR 44.2(8) provides,

“Where the court orders a party to pay costs subject to detailed assessment, it will order that party to pay a reasonable sum on account of costs, unless there is good reason not to do so.”

168. In the order of HHJ Freeland QC, dated 1 February 2021, it is said<sup>136</sup>,

“16. It is recorded that the parties have each agreed the other’s budget for the trial of the issue of liability, as follows:

...

b. The Claimant has agreed the Defendant’s budget for the trial of the issue of liability, in the amount of £20,705 (not including incurred costs).”

169. In the Defendant’s cost budget, dated 17 December 2020<sup>137</sup>, the Defendant’s incurred costs are said to be £18,253.89.

170. In *MacInnes v Gross* [2017] EWHC 127, Coulson J (as he then was) applied a reduction of 10% to the budgeted costs as, “It was the maximum deduction that is appropriate in a case where there is an approved costs budget”.

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<sup>135</sup> File 1, 175

<sup>136</sup> File 1, 211

<sup>137</sup> File 1, 182

171. In *Cleveland Bridge UK Limited v Sarens UK Limited* [2018] EWHC 827 (TCC), Miss Joanna Smith QC found that in respect of the incurred costs which had not been costs budgeted, the Court must determine a reasonable sum, and she approved 70%.

172. Applying the above guidance to the facts of this case:

i)	90% of £20,705 is	£18,634.50
ii)	70% of £18,253.89 (£4,008.89 + £14,245) is	<u>£12,777.72</u>
		£31,412.22

173. I am therefore minded to order that the Claimant pay the Defendant the sum of £31,412.22 on account of costs pursuant to CPR 44.2(8).

### **Order**

174. I leave it to Counsel to prepare a draft order for the hand down of judgment hearing.