

## *Verdict for Boral in claim by employee of haulage contractor – Court of Appeal rejects argument that a principal owes a duty to provide a safe system of work to an employee of a subcontractor*

*Gulic v Boral Transport Ltd [2016] NSWCA 269*

### Key Points

- Despite Boral supplying the equipment, the Plaintiff making complaints about the equipment, and having the right to direct the Plaintiff, the claim failed.
- Although a principal contractor potentially owes a duty to an employee of a subcontractor, this duty is delegable and does not extend to providing a safe system of work.
- A general complaint about equipment will not usually assist a Plaintiff to establish liability unless the complaint is about a safety issue.

### The Facts

The Plaintiff was employed as the driver of a prime mover owned by GMG, a company of which he was the sole director. GMG had a contract with Boral to haul bricks to building sites with Boral having responsibility to provide a “serviceable body” and trailer installation for the prime mover.

Although the exact mechanism of injury was contentious, the Court of Appeal found that the Plaintiff suffered a serious shoulder injury as a consequence of attempting to slam a gate shut on the trailer which had a distorted post. The equipment was designed by a company the court found was a “large organisation with a strong reputation” and in any event the Plaintiff’s expert conceded that the gate posts not negligently manufactured.

The Plaintiff had made complaints about the distorted posts and on instructions from Boral they were repaired by another company on two occasions. In fact, at the time of the incident the gates were booked in to be repaired but it was determined the problem was not sufficiently serious to escalate the booking.

### The Decision

In unanimously rejecting the Plaintiff’s appeal, the court rejected the primary trial judge’s finding that the Plaintiff and Boral were effectively in an employer/employee relationship. Instead, the court found that despite its power to direct, it owed the Plaintiff a much lower **delegable** duty to provide gates “that would not subject experienced, adult users, taking reasonable care for their own safety, to an unreasonable risk of injury”.

The following findings were crucial to the court’s decision that Boral had not breached that duty:

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- There was no indication that the companies Boral delegated the design, manufacture and maintenance of the gates to were anything other than competent, or indeed that the work they performed was negligent.
  - Although the Plaintiff had complained about the gates, he was an experienced truck driver and had not complained that the state of the gates gave rise to a safety issue. In the circumstances Boral was entitled to assume that the issue was one of inconvenience and delay rather than safety.

## Lessons Learnt

This case demonstrates that courts will continue to be cautious about applying high employment like duties on principal contractors. Further, that in the absence of a relevant complaint about safety, a principal contractor need not take urgent action in respect of maintenance.

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