



Neutral Citation Number: [2023] EWHC 3302 (KB)

Case No: QB-2022-001577

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21 December 2023

Before:

DAVID PITTAWAY KC
(Sitting as a Deputy Judge of the High Court)

Between:

PETER MANNING

Claimant

- and -

DNATA CATERING UK LIMITED

Defendant

Oliver Campbell KC (instructed by **Drysdales**) for the **Claimant**
Patrick Blakesley KC (instructed by **Clyde & Co**) for the **Defendant**

Hearing dates: 14,15,16 November 2023

Approved Judgment

This judgment was handed down remotely at 10.30am on [date] by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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DAVID PITTAWAY KC

David Pittaway KC:

Background

1. The claim arises out of an accident sustained by Mr Manning whilst at work on 25 June 2019 at London Stansted Airport. Mr Manning was employed by DNATA Catering UK Limited (“DNATA”) as a food equipment loader at DNATA’S depot at Long Border Road, Stansted, Essex. His job required him to load catering carts (“carts”) onto "high lift" catering lorries. The lorries would then be used to transport the carts to aircraft. DNATA operates in a number of airports including London Stanstead airport.
2. It is Mr Manning’s case that the accident occurred as he was tightening a nylon strap around a cart in the back of a lorry for onward transport to an aeroplane. As he tightened the strap, the metal hook became disconnected from one of the rails on the internal side of the lorry. He fell backwards, striking the corner of another cart, sustaining a fracture to his second lumbar vertebra. He has made an incomplete recovery from the accident. He has been left with a permanent physical and psychological disabilities. He is unlikely to be able to resume employment requiring physical capabilities.
3. I heard oral evidence over the course of two days from witnesses who are employed, or had been employed, by DNATA. There is no dispute that Mr Manning sustained an injury to his back whilst loading a cart on to a lorry, R68GMJ (“R68”), on the day in question. The cause of Mr Manning’s accident is, however, contested. Other than Mr Manning, there were no witnesses to the accident. A demonstration board made up of rails of different sizes was produced on behalf of Mr Manning. A short video has also been prepared, which I have found of limited assistance.
4. The main factual dispute relates to the fixings for the straps in lorry R68. The lorry was scrapped in late 2020, sometime after the claim had been notified to DNATA’s insurers. Although a photograph of the fixings was taken by a fellow employee of Mr Manning after the accident, it does not show whether the metal hook on the strap was able to go through a circular hole on one of the internal rails in the lorry. Lorry R68 was not inspected by DNATA or its insurers, Mr Manning’s solicitors, or indeed, any experts. The photographs, which I have seen, do not provide any evidence of the sizing of the rails, which is of critical importance to this claim. There are a large number of photographs of the insides of other lorries, which are of limited assistance.
5. It is agreed that lorry R68 had two sets of rails positioned horizontally along each side of the lorry at two levels. One set provided fixings with vertical slots, suitable for a rectangular spring loaded catch. The other provided circular holes through which a hook could be passed, emerging out of the adjacent hole. The strap with the hook in use on the date of the accident has been available in Court. Attached to each strap is a ratchet which can be used to tighten the strap around the catering cart to the inside wall of the lorry.
6. The claim is advanced on the basis that on this particular lorry, R68, the depth of the rail containing the circular holes was insufficiently deep to allow straps with metal hooks to go through a circular hole and emerge through an adjacent hole. No measurement of the depth of the rails is available. At a late stage in submissions, Mr Campbell queried whether the dimensions of the hook on the straps varied, based on a reference in a witness statement, however, until then, I had understood that there was

an acceptance that there was only one size available, and that had been the basis upon which the cross-examination by both parties had taken place.

7. There were two other lorries that differed from those that had only rails with circular holes. One lorry KX05 only had a rail with rectangular vertical slots, another lorry had a similar configuration to lorry R68. No measurements of the rail with circular holes on that lorry are available.
8. It is alleged that there was a failure to provide a safe system of working, in that the straps supplied were not of the correct size and shape to fit securely into the holes in the rail, and that there was a breach of the Manual Handling Regulations 1992. It is said that DNATA failed to comply with its own risk assessment from January 2015, which identified the stowage straps as a hazard or, indeed, provide appropriate training. Further that DNATA was on notice of a problem with securing straps on lorry R68 as a result of the complaints made by Mr Manning to his line manager, Mr Gardiner.

Evidence

9. Mr Manning gave evidence that he had been employed by the Post Office in various capacities until he moved to DNATA as a loader about four years before the accident. His account of what occurred was that he was in the process of securing the catering carts with straps with hooks in the rear of the lorry R68. He said in his witness statement, and in oral evidence, that the dimensions of the rail with circular holes in that lorry were too small to permit the hook to engage securely. In cross-examination he said that, when using lorry R68, he always tried the circular holes first, establishing that the hook did not fit through the adjacent hole, before securing the hook to the vertical slot. He, therefore, attached the hook to the vertical slot, twisting the hook as far as it would go, to a horizontal position. He tightened the strap by hand to take out the slack, then using his body weight further tightened the strap. As he was completing the manoeuvre, the hook popped out of the vertical slot in the wall. He was thrown backwards, losing his balance, striking his back against the corner of another cart.
10. He gave evidence that the driver of lorry R68 on the day of the accident, Adrian, regularly chose that lorry to drive because that it had a lower tailgate, which he was able to access more easily with his mobility problems. Adrian has not supplied a witness statement nor given oral evidence. Mr Manning contended that he was, therefore, used to securing the carts on that particular lorry. In cross-examination, he agreed that he had loaded carts onto lorry R68 on a very regular basis, probably three or four carts each day he was working on that particular lorry. He said that, because the dimensions of the circular holes were too small, he always used the metal hook on the vertical slots. He was critical of the availability of straps. He said that the spring-loaded straps were largely kept for the lorry KX05, which only had vertical slots on the rails.
11. Mr Manning was also critical of the training processes in place at the depot. He was critical of the training provided by Mr Catlin, whom he said in his witness statement gave the training in the café over coffee, where he was asked to sign various pieces of paper confirming that he had received training. In fact it appears from Mr Catlin's evidence that there was three days of in-house training on a computer which was signed off in the café and six days onsite training. He complained in his witness statement about a lack of investment in health and safety, and particularly about the condition of some of the lorries, which he described as old, dilapidated and sometimes

unroadworthy. He said that DNATA transferred them to Stansted after use at Heathrow and Gatwick. Mr Manning said that he had complained to his shift leader, Mr Gardiner, on about six occasions about the absence of appropriate straps but had been told to get on with the job. He complained more generally about a shortage of straps until after his accident.

12. Mr Manning was interviewed by Mrs Bicker, Operations Manager, on the day of the accident, whilst he was in hospital and being medicated with morphine. The account that she wrote down does not refer specifically to the use of the vertical slots or the dimensions of the circular holes in the rails. Mr Manning disputed in his witness statement that is what he had told her. It is, however, not inconsistent with the account being put forward, in that it refers to the strap not being properly secured and coming away from the fixing.
13. Mr Knappett, a former employee, gave evidence. He is a Canadian and worked for DNATA for six/nine months as a loader, after he came to the UK. He was at the time a young man of 20. His evidence was that he worked on lorry R68 and he gave similar evidence to Mr Manning, namely that he was not able to attach the hook securely through the circular holes. In his witness statement he said that the correct straps to fit in the slots were spring loaded but there were only one or two of these straps on lorry R68. The majority of straps had hooks. He said that the straps which were provided for lorry R68 were of the wrong design and he was required to wedge the hooks into the vertical slots and hope that they would hold in place for the trip to the aircraft. He said that on many occasions when using lorry R68, the hooks would fly out of the holes, including on one occasion when he was struck in the face. He said that on other lorries the metal rail protruded by about 5cms from the wall of the lorry, whereas on lorry R68 they only protruded about 2cms out from the wall and this is why the hooks would not fit through the holes. He identified another problem with lorry R68, namely that metal rails were too high and more suitable for securing the tall cages rather than the catering carts.
14. At the end of his evidence, I asked Mr Knappett to demonstrate how he secured the hook to the vertical slot, he instantly placed the hook into the vertical slot and twisted it towards the horizontal to make it secure.
15. Mr Blakesley attacked Mr Knappett's credibility. He cross-examined Mr Knappett on the basis that his resignation from DNATA took place before he was about to be investigated for gross misconduct. A female employee had reported to Mrs Bicker, operations manager, that she had been filmed having sex with Mr Knappett in the back of a lorry and he had sent the video to other drivers. Mrs Bicker did not attend the discussion between her superior, Mr Wood, and Mr Knappett. Mr Knappett maintained that he left because DNATA had lost two contracts and that on the basis of last in, first out, his short-term contract had not been renewed. He resolutely denied that he had been indulging in improper conduct or that he had been told by Mr Wood that he was to be investigated for gross misconduct.
16. Mr Glassman, another former employee, gave similar evidence to Mr Knappett. He was employed as an HGV driver loading and unloading catering carts onto the aircraft, and also removing the used carts and cannisters from flights returning to Stansted. He said in his witness statement that none of the drivers wanted to drive lorry R68 because it was very old and it was difficult to secure the catering carts on the inside wall of this

vehicle. He said that the straps that were provided did not fit properly into the holes in the rails on lorry R68, with the result that the straps had to be wedged into vertical slots. He said that on numerous occasions he used lorry R68, the hooks would become dislodged from the vertical slots, sometimes causing him to stumble.

17. Mr Blakesley attacked Mr Glassman's credibility. He cross-examined Mr Glassman on the basis that he had resigned after it had been put to him that he had let the tyres down of one of his fellow employee's vehicle. It is probably convenient for me at this stage to record that, whilst Mr Glassman eventually admitted in evidence that he had done so, he was, in my view an unsatisfactory witness, who was in turns sarcastic and evasive. On its own, in my view, I would have placed little weight on his evidence.
18. Ms Curtis, Mr Manning's partner, who was employed by DNATA in the preparation of food area. She gave evidence about training processes and Health and Safety at the airport. In her witness statement she said that she had heard various drivers make complaints about not having sufficient straps on the lorries on numerous occasions. It was her evidence that there was little emphasis on providing proper training, which was firmly disputed on behalf of DNATA. She had no personal knowledge of the configuration of the rails inside lorry R68, or indeed the other lorries. I did not find her evidence to be of assistance.
19. Mrs Bicker gave evidence on behalf of DNATA. She was employed as Operations Manager at the time of Mr Manning's accident and prepared the investigation report. Although Mrs Bicker was able to assist the court as to the training processes in place at the time of the accident, she was unable to assist as to the configuration of the rails in lorry R68. She maintained that training has always been taken very seriously and conducted thoroughly through Training Support Officers, including Mr Catlin. In her witness statement she said that she had reviewed Mr Manning's training records and seen that he had received extensive training in his role, and performed well in his refresher assessments. Mr Manning and his witnesses confirmed that she was an approachable member of staff.
20. She also referred to a Hazard Book in which there were no reports of any accidents with securing the catering carts. On closer examination it became apparent that the book only referred to internal matters within the building and not to the lorries themselves. She made a second statement in which she set out in a summary form her understanding of the resignations of Mr Glassman and Mr Knappett.
21. Mrs Bicker visited Mr Manning in hospital on the day of the accident, when he was under medication, and took the details shown on the accident report form, in which he said the hook was not fully in the hole. He had thought he had connected it correctly. There is no mention of the two different types of rails or fittings to the straps. Perhaps somewhat surprisingly, following the accident Mrs Bicker had not inspected the lorry itself, or authorised the taking of photographs or dimensions. She had retained the strap which had been used and was available in Court.
22. Mr Gardiner is employed as a Service Delivery Shift Leader by DNATA, and manages a team of about 15 people. He does not remember there being any issues with Mr Manning, whom he described as a reliable worker, who got on well with other members of the team. He agreed that there were two lorries, R68 and KX05, out of the fleet which had vertical slots as well as circular holes. He gave evidence that there were sufficient

straps available, which fitted the rails in the lorries. He said that a plentiful supply of spare straps was kept near the office located at the loading bay.

23. He was unable to be specific about lorry R68, in particular as to whether the rails with circular holes were of insufficient dimensions to secure the metal hooks. He had no recollection of complaints being made to him by Mr Manning or other employees about the size of the holes. No vehicle defects books have been produced, although the suggestion was made that any defect in relation to the rails in the rear of the lorry would not have been included in those books.
24. Mr Catlin was responsible for training Mr Manning, when he was employed by DNATA. He gave a description of the training which Mr Manning would have undergone. He retired in 2022. He said that the training consisted of three days in the office, largely using a computer, followed by six days out on the lorries. The practical training was delivered so that Mr Manning would watch Mr Catlin and another operative then try the task himself. If he did it incorrectly, Mr Catlin would correct him. He said that Mr Manning had done well in his training, and was a good and reliable worker. He said that an employee was monitored for three months, followed by refresher training.
25. He did not remember problems with the provision or condition of straps. He said in his witness statement that he did not remember there being any problems with hooks fitting into the holes in the rails in the lorries. He said:

“The straps were all identical and had the same hooks on the ends. The hooks fit perfectly into the round holes in the lorries. They might not have fitted into the vertical slots in some of the lorries but that didn't matter since those lorries also had the same round holes as all the others. The internal specification of every lorry was the same in that they had the same holes fitted to them.”

“There would be no reason to try to hook the straps into the vertical slots on the lorries which had both fixings, since they do not fit. They hook into the round holes very easily indeed and so it's much quicker to insert the hooks into the round holes rather than messing around trying to use the vertical slots.”

“I would be surprised if the Claimant tried to fit the hook into a vertical slot, he was highly trained and experienced and knew to slide the hooks through the circular holes.”

26. He was cross-examined about the documentation that both he and Mr Manning had signed for his training. On this aspect of the case, Mr Campbell later conceded in submissions that there may be little difference between the parties. It was a matter of interpretation of the evidence given.
27. There is, however, a sharp divide between Mr Catlin's evidence about lorry R68 and Mr Manning's evidence. Mr Catlin maintained in oral evidence that he had driven lorry R68 regularly and had been able to use the straps with metal hooks on the rails with circular holes on both sides of the lorry without difficulty. In my view, the difficulty

with this part of his evidence, which was confidently given, is that he made no reference to his personal experience of lorry R68 in his witness statement.

28. Mr Day, who is employed by DNATA as a Service Delivery Team Manager, was another witness who was unable to give evidence about the configuration of the rails inside R68. He had previously worked in Training Support Officer and Shift Leader roles. He had no recollection of there being any problems with hooks fitting into the holes in the rails in the lorries. He said that generally the straps were all identical and had the same hooks on the ends. He did remember two lorries which additional vertical slots in the rails, as well as the circular holes. He said would be surprised if Mr Manning had tried to fit the hook into a vertical slot. He considered that he was highly trained and experienced and knew to slide the hooks through the circular holes. By reference to the documents he was taken to, he was able to show that orders had been placed for straps, both spring-loaded and with metal hooks, at the relevant time.

Adverse Inference

29. Before I turn to the general submissions, it is convenient to deal with the issue raised by Mr Campbell that I should draw adverse inferences against DNATA as a result of the scrapping of lorry R68 in late 2020. Mr Blakesley opposes that submission on the grounds that it was unrelated to Mr Manning's accident.

30. Mr Campbell relies upon three authorities to support his submission that, if a party either destroys evidence, or makes it difficult for a claimant to adduce relevant evidence, then the Court is entitled to draw adverse inferences, *Armory v Delamirie* (1721) 1 Stage 505, *Keefe v Isle of Man Steam Packet Company Ltd* [2010] EWCA Civ 683 per Longmore LJ at [19] – [20], *Shaw-Lincoln v Neelakanadan* [2012] EWHC 1150 (QB), *Mackenzie v Alcoa Manufacturing (GB) Ltd.* [2019] EWCA Civ 2110; and *Vardy v Rooney* [2022] EWHC 2017 (QB) per Steyn J at [71]. He concedes that it may be that DNATA's destruction of R68 was careless rather than a deliberate attempt to make it more difficult for Mr Manning to prove his case. Nevertheless he categorises it as a deliberate act, which has destroyed crucial evidence. He submits that I should draw adverse inferences.

31. At paragraph 19 of *Keefe*, Longmore LJ said:

“If a defendant fails to call witnesses at his disposal who could have evidence relevant to an issue in the case, that defendant runs the risk of relevant adverse findings see British Railways Board v Herrington [1972] AC 877, 930G. Similarly a defendant who has, in breach of duty, made it difficult or impossible for a claimant to adduce relevant evidence must run the risk of adverse factual findings. To my mind this is just such a case.”

32. At paragraphs 81-82 of *Shaw-Lincoln*, Lloyd-Jones J said:

“Rather, Keefe is concerned with the weight which is to be attached to evidence and the circumstances in which the court may draw inferences. This is how Longmore L.J. explained it. He referred to the observations of Lord Diplock in Herrington v British Railways Board that failure to call a witness may result

in an adverse finding and then applied the same principle to a situation where a defendant has made it difficult or impossible for a claimant to adduce relevant evidence. The references to a benevolent approach to the claimant's case and a critical approach to the defendant's case fit well with this concept."

"Whether it is appropriate to draw an inference at all and, if so, the precise nature and extent of such an inference will depend on the particular circumstances of each case. Relevant considerations will include the proximity between a breach of duty and the non-available evidence, the effect of the other evidence before the court and what other evidence might have been available but which is not before the court."

33. On 10 March 2020, and again on 19 August 2020, by email Mr Manning's solicitors requested an inspection. On 22 September 2020 by email DNATA's insurers agreed to an inspection DNATA's insurers notified Mr Manning's solicitors on 3 November 2020 that R68 had been scrapped. It should be remembered, as the correspondence discloses, that these matters were taking place during the COVID Pandemic, when for much of the time, if not all, airports were closed or flights were severely restricted.
34. In my view, it is regrettable that there was a lack of communication between relevant parts of DNATA and its insurers, which led to an opportunity being missed to halt the scrapping of lorry R68 before an inspection took place. I am, however, satisfied from the email correspondence that I have read that the decision to scrap lorry R68 was unrelated to Mr Manning's accident.
35. Whilst I accept that Mr Manning is prejudiced by not being able to inspect R68, there are other matters, where, if action had been taken, would have assisted his case, in particular if the employee who had taken the photograph of the inside of lorry R68, the day after Mr Manning's accident, had also taken one of him attempting to put the hook through the circular hole. Regrettably this case is blighted by lost opportunities to investigate what occurred.
36. Set against the backdrop of the COVID Pandemic, I do not consider that it is appropriate for me to draw an adverse inference. This was not a case where I consider that DNATA had sought to thwart a proper investigation of the claim nor would I categorise it, as Mr Campbell did, as being culpably careless. They were extraordinary times for the airport industry and, I find, that it was understandable, if unfortunate, that on this occasion there was a failure of internal communication.

Submissions

37. Mr Blakesley's final submissions consist primarily of an attack on the credibility of the evidence given by Mr Manning and his supporting witnesses. He was critical of Mr Manning's explanation of how the accident occurred. He was critical of the supporting witnesses, submitting that they all had axes to grind in respect of their former employer. He defended the training processes in place and the arrangements for Health and Safety. He pointed to the fact that the demonstration board produced on behalf of Mr Manning does not contain any rails into which the metal hooks on the strap would not fit.

38. Mr Blakesley submits that the accident was not directly witnessed by anybody other than Mr Manning. The essence of DNATA's case is that the strap involved in the accident would have fitted correctly and securely into the circular holes in the rail on lorry R68. Further that Mr Manning was an experienced and properly trained loader, who had carried out this simple procedure many times without incident. He also relied upon there being no record of any previous incident or accident involving the straps or complaints about straps before the accident. His submission is that there was a sufficiently safe and reasonable system of work, properly risk assessed which took reasonable care for employees' safety. He also submitted that the pulling of the strap was not covered by the **Manual Handling Regulations 1992**. He reminded me that since section 69 of the **Enterprise Act 2013** breach of the regulations is not actionable in civil law.
39. He concedes that if DNATA did not provide straps with metal hooks that could fit into the circular holes on lorry 68, then it did not provide proper equipment for the job, and, in those circumstances it was foreseeable that a metal hook jammed into a vertical slot would dislodge and cause injury, and therefore there was a breach of duty. Mr Blakesley submits that the issue of training is of background importance only, but that, in any event, DNATA took its Health and Safety duties seriously. He submitted that if there were no straps readily available to fit into the circular holes, then the deficiency would have been identified and corrected. He submits that none of the logbooks produced referred to complaints about the straps.
40. Mr Blakesley submits that the manoeuvre had been conducted by Mr Manning on hundreds if not thousands of occasions over the four years, particularly on lorry R68, which was the lorry favoured by the driver Adrian without mishap. He relies upon the answers given in cross-examination that Mr Manning had been adequately trained contrary to the assertions he had made in his witness statement. He is particularly critical that the person who took the photograph of the rail in question did not try to put the hook through the hole, and has also not been called to give evidence. He draws attention to the absence of measurements of the depth of the hole. He relies upon the evidence, both of Mr Gardiner, that he had no recollection of complaints and Mrs Bicker. He refers to Mr Manning's evidence that he tried every time to put the hook into the circular hole as not having the ring of truth. There would have been no conceivable reason to try every time. He relies upon the evidence of Mr Catlin that he was able to fit the hook on both sides of the lorry R68 over a number of years.
41. He raises issues as to why Mr Knappett and Mr Glassman have chosen to give evidence against their former employer. He contrasts Mr Knappett's evidence with that of Mrs Bicker who gave evidence that a female employee had complained to her about his behaviour. He relies upon Mr. Day's evidence that he was responsible for the purchase of straps to show that there was no shortage of straps at the relevant time.
42. Mr Campbell robustly submitted that, notwithstanding any reasons why Mr Manning's supporting witnesses may have had for leaving DNATA, their evidence on the key issue in the case, namely the size of the circular holes in the straps should be preferred. He placed particular reliance on the absence in Mr Catlin's witness statement of the personal knowledge of the lorry R68, which he professed in the witness box.
43. He submits that Mr Manning has given a clear consistent description of the cause of the accident in letter of claim, Particulars of Claim, his witness statement and in oral

evidence. He says that I should be cautious about the accident report taken by Mrs Bicker on the day of the accident whilst Mr Manning was under medication, making assumptions as to what Mr Manning was saying. He submits that it is highly unlikely that there would have been an accident if the hook on the strap had fitted into holes. He referred me to the evidence from DNATA's witnesses that Mr Manning was a good employee who did not cut corners. He said that there is no evidence that Mr Manning stumbled backwards. His hypothesis is that Mr Manning did what he had been doing for a number of years after becoming inured to the risk of fixing the hook into the vertical slot. He relies upon the evidence of Mr Glassman and Mr Knappett that the hooks did not fit into the holes. He contrasts their evidence with that of DNATA's witnesses, who were unable to give direct evidence about lorry R68 except for Mr Catlin, whose oral evidence was at variance with his witness statement.

44. Mr Campbell submits that DNATA had obligations under regulation 3 of the **Management of Health and Safety at Work Regulations 1999** to "make a suitable and sufficient risk assessment" of the risks to which its employees were exposed. DNATA had an obligation under regulation 3 of the Management of Health and Safety at Work Regulations 1999 to "*make a suitable and sufficient risk assessment*" of the risks to which its employees were exposed. He submits that the movements of the carts were also "*manual handling operations*" for the purpose of the **Manual Handling Operations Regulations 1992**, as they involved the pushing and/or pulling of a load. He also relies on the duty in regulation 4 to "*make a suitable and sufficient assessment*" of the risks arising out of such manual handling operations, and to "*take appropriate steps*" to reduce the risk "*to the lowest level reasonably practicable*". He says that there is no distinction between the operation itself and the pulling of the strap, suggested by Mr Blakesley, which he submits is an artificial exercise that cannot be separated from the whole.
45. He is critical of the risk assessment, number DA002, dated January 2015 for the activity "*airside vehicle assessment*". He describes the collection of different straps, hooks and rails as haphazard, with different systems in use in different vehicles. He is critical of the failure to produce the Risk Assessment Manual referred to in the training manual or the Local Risk Assessments. He submits that DNATA's procedures for assessing risk, and taking steps to mitigate risk, were inadequate. He relies upon the breach as indicative that DNATA failed to take reasonable care of its employees.

Discussion

46. It is uncontroversial that lorry R68 was fitted with both vertical slots and round holes. The vertical slots were designed to be used with special rectangular fasteners which cannot accidentally become dislodged. The photographs of R68 show there is in fact provision for special fasteners for the circular holes (not hooks) that cannot accidentally be dislodged. In fact, it would appear that straps with hooks were generally used on lorries at the depot. Although a demonstration board has been produced with various rails, there is no information available as to the size and depth of the rail on lorry R68.
47. In my view, it is an important factor in this case that the account given by Mr Manning is consistent with the letter of claim dated 23 August 2019. I accept Mr Campbell's submission that Mr Manning's account has been consistent throughout the subsequent pleadings, his witness statement and his oral evidence.

48. I summarised what I see are the main issues in Mr Blakesley's skeleton argument. First, did the accident happen, as Mr Manning describes, when he was tightening a strap and one end dislodged suddenly, causing him to lose his footing and fall onto another cart. Second, did Mr Manning fit the end of the strap into the circular hole or vertical slot. Third, was the strap capable of fitting securely into the circular holes in the rail on lorry R68. Fourth, did Mr Manning or his colleagues complain to DNATA about straps, either generally or specifically in relation to lorry R68.
49. After careful consideration of the evidence, I have concluded that the accident did occur as Mr Manning describes, namely whilst tightening the strap the hook suddenly came loose, causing him to lose his footing and strike his back against the neighbouring cart. I am satisfied that Mr Manning attempted to secure the hook, which has been produced at Court, into the vertical slot and not the circular hole. I am satisfied that he did so because he knew the hook would not fit into the circular hole. I am satisfied that this was a manoeuvre that he had undertaken on many occasions whilst he had been loading carts onto lorry R68. I am not, however, satisfied that Mr Manning tried the hooks on the circular holes each time he was working on lorry R68. Once established that the hooks did not fit, there would have been no point in doing so.
50. It seems to me, looking at the evidence as a whole, that the methodology adopted by DNATA was haphazard and that supplies of suitable straps were not readily available or certainly not available for use on lorry R68. A safe system of work should have provided dedicated straps to fit in to the vertical holes, as occurred with lorry KX05. I am, however, not satisfied that Mr Manning or his colleagues made specific complaints about the absence of suitable straps for lorry R68. They may have made general complaints but I am not satisfied that Mr Manning raised with Mr Gardiner the absence of suitable straps for lorry R68.
51. I have to analyse the evidence that I have heard, form an impression of the witnesses who have given evidence, and assess the evidence that can properly assist me as to the cause of Mr Manning's accident. In doing so, I have taken into account what has been said in Mrs Bicker's additional witness statement as to the circumstances in which Mr Glassman and Mr Knappett left their employment with DNATA. Whilst I have already expressed grave reservations about the manner in which Mr Glassman gave evidence, I do not share those reservations with the evidence given by Mr Knappett. I am satisfied that he was an honest witness who was doing his best to assist the court.
52. I am unable to account for the reasons as to why Mr Catlin gave evidence that went beyond the content of his witness statement to include his experiences securing the carts on lorry R68. It seems to me that it is a critical feature of his evidence that he did not include this detail in his witness statement, which I would have expected him to do, if he had had that experience. I have concluded that he is not a satisfactory witness in this respect and I have rejected that part of his evidence. In the absence of his evidence on this specific point, there is no specific evidence produced on behalf of DNATA as to lorry R68 as opposed to the procedure adopted more generally by drivers on other lorries.
53. It follows that in these circumstances I consider that Mr Manning's account should be accepted, supported by his additional witnesses. I should add that Miss Curtis's evidence does not assist the court to any extent. I reject the contention that DNATA were generally lax with their training, however, I accept that there was an inadequate

supply of suitable straps which were available to the loaders. Although a breach of the **Manual Handling Regulations 1992** does not found a claim in civil law, I have concluded that the action being taken to load the carts was an operation within the regulations, and that the failure to provide suitable straps for lorry R68 was in breach of those regulations.

54. I have also concluded that it is appropriate to make a finding of contributory negligence in this case. It seems to me that Mr Manning should have known better than to attempt to attach the hook into the vertical slot. He was an experienced employee. The manoeuvre demonstrated to me by Mr Knappett was clearly unsafe, even to a lay observer. It was an incorrect procedure open to risk. It would have been open to Mr Manning to have made a full and proper complaint to Mr Gardiner, requesting suitable straps for lorry R68. In my view, it is just and equitable, having regard to Mr Manning's share in the responsibility for the accident, to reduce his damages by 25% under the provisions of section 1 of the **Law Reform (Contributory Negligence) Act 1945**.
55. I should be grateful if counsel would draw up an order and submit it to me for my approval.