

**IN THE DISTRICT COURT  
AT WAIPUKURAU**

**CRI-2015-020-002973  
[2016] NZDC 9727**

**WORK SAFE NEW ZEALAND**  
Prosecutor

v

**MAINLAND MINERALS (N.I.) LIMITED**  
Defendant

Hearing: 31 May 2016

Appearances: D M Brabant for the Prosecutor  
N R Williams for the Defendant

Judgment: 1 June 2016

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**NOTES OF JUDGE G A REA ON SENTENCING  
[PART 2]**

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[1] On 18 April 2016 sentencing for the above named Defendant was due to be completed in the Waipukurau District Court. I was able to deal with the issue of reparation in a decision delivered on that day but there was a dispute about whether the Defendant company was in a financial position to meet a fine in addition to the reparation ordered. The matter was adjourned for a teleconference on 31 May 2016.

[2] At 9.30am on 31 May 2016 I spoke with both Counsel by telephone. Ms Brabant advised that the Defendant company had provided additional material which indicated that it was not in a financial position to meet a fine. She asked for a short time to finally consider all of the material before a final decision was made.

[3] On 1 June 2016 I received a memorandum from Ms Brabant confirming that the Informant accepts that the Defendant is not in a position to pay a fine given its current financial position. Accordingly since it is accepted that the Defendant cannot meet a fine in addition to the reparation already ordered it is not possible to impose a fine on it and therefore the matter will be dealt with solely by the reparation orders already made.

[4] Ms Brabant has asked me to undertake an analysis and arrive at what the fine would have been in accordance with the principles in *Hanham & Philp* and make a declaration as to the starting point in terms of culpability and what the end fine would have been if the company was in a position to pay it.

[5] The position, as confirmed by Ms Brabant, is that the Defendant is not in a position where a fine can be imposed upon it in addition to reparation. While during the course of the teleconference on 31 May 2016 I indicated I was prepared to accede to Ms Brabant's request and declare what the fine would have been if one could have been imposed I have reflected upon that and I do not believe that it is appropriate to do so. On the facts of this case it is accepted that the Defendant cannot pay any fine at all. For me to arrive at a hypothetical figure totally unrelated to the facts of the case before me is not part of my function and in my view would not be appropriate.

[6] To arrive at what an appropriate fine might have been there may well be issues other than the ability to pay that would be taken into account and although I have written submissions from Counsel those submissions would have to be in the context of what the real position was and not in a situation such as this. In cases such as this there cannot really be any precedent value in a one-off District Court decision as to penalty and that is certainly the case if the matter was only dealt with hypothetically. Accordingly for the reasons I have given I am not prepared to state what the fine would have been in other circumstances and I therefore decline to deal with the matter in that way.

G A Rea  
District Court Judge