



Western

Australia

RECORD OF INVESTIGATION INTO DEATH

Ref No: 5002/11

I, Kevin TAVENER, Coroner, having investigated the death of **Anthony John BRADANOVICH**, with an Inquest held at Perth Coroners Court on 3 August 2012 and 6 & 7 September 2012 find that the identity of the deceased person was **Anthony John BRADANOVICH** and that the death occurred on 23 January 2011 at Wiluna as a result of exertional heat stroke in the following circumstances –

Counsel Appearing:

Kate Ellson assisted the Coroner

John Ley (Herbert Smith Freehills) appeared on behalf of Toll Transport Pty Ltd

Philip Urquhart appeared on behalf of Newmont Yandal Operations Pty Ltd

Michael Schwikkard (Jackson McDonald) appeared on behalf of Byrnecut Mining Pty Ltd & Byrnecut Australia Pty Ltd

Kristen Kitney (Summers Legal) appeared on behalf of Cartwright Holdings Pty Ltd

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BACKGROUND

Mr Anthony John Bradanovich (the deceased) was born on 22 April 1975, the youngest of three children. At the time of his death he was 35 years old¹ and lived with his parents in Herne Hill.

After leaving school, the deceased became an assistant cabinet maker and later, following his strong interest in trucks, he obtained a truck haulage license.² He then worked for trucking companies driving to the Pilbara and the Kimberley. He also drove occasionally to the wheat-belt and the Eastern States.³ Generally, the deceased was a good driver who preferred to travel on his own.⁴ He was last certified as medically fit to drive a commercial vehicle on 11 October 2010.⁵

On 10 January 2011, Mr Anthony John Bradanovich answered an advertisement in the Western Australian newspaper, calling for a driver to work for Cartwright Holdings Pty Ltd ('Cartwright').⁶ Over the following two days, the deceased met with the owner of Cartwright, Mr Tony Seragusana. Mr Seragusana explained the nature of the work to the deceased and asked him about his driving experience; he also copied the deceased's relevant work documents. An informal induction was made in that there was an undocumented conversation about safety; after the induction, Mr Seragusana contacted one of the deceased's referees and decided to hire the deceased.⁷

¹ His date of birth being 22 April 1975: Ex. 1, Vol.1, Tab 9, Matthew Bradanovich, 16.05.2011, para 4; Ex. 1, Vol. 1, Tab 4, Detective Senior Constable Leslie, 14.09.2011, p 5; Ex. 1, Vol. 1, Tab 5, Life Extinct Certification

² Ex. 1, Vol.1, Tab 9, Matthew Bradanovich, 16.05.2011, para 5-7; Ex. 1, Vol. 1, Tab 35, Heavy Vehicle Driver's License, Anthony John Bradanovich

³ Ex. 1, Vol.1, Tab 9, Matthew Bradanovich, 16.05.2011, para 9 & para 12; Ex. 1, Vol. 1, Tab 34, Tony Bradanovich, application for Line Haul Truck-Driver position, 2010, p 1

⁴ Ex. 1, Vol.1, Tab 9, Matthew Bradanovich, 16.05.2011, para 11-12, para 14

⁵ Ex. 1, Vol. 1, Tab 35, signed Commercial Vehicle Driver Medical Assessment Form, John Anthony Bradanovich; Ex. 1, Vol. 1, Tab 42, *Occupational Health & Safety Regulations 1996*, Reg 3.131(1)(b)

⁶ Ex. 1, Vol.1, Tab 8, Seragusana, 10.02.2011, para 5-6

⁷ Ex. 1, Vol.1, Tab 8, Seragusana, 10.02.2011, para 8-31

the deceased started work for Cartwright on Friday 21 January 2011.⁸ That same afternoon the deceased collected a Western Star Prime Mover, (registration 1AOR424), from Cartwright in Wangara, Perth.⁹ He was given instructions to deliver a consignment of goods to the Jundee Mine Site in Wiluna.¹⁰

At about 6.30pm 21 January 2011, the deceased collected two trailers from Toll Express ('Toll') at Perth International Airport.¹¹ Each trailer was individually registered, being trailers 1THG260 and 1GB399.¹² The deceased left the depot at about 8.00pm.¹³

At about 11pm the deceased arrived in Wubin and collected a third trailer, registered 1TJQ745.¹⁴ Another truck driver, Mr Smith, told the deceased about the turnoff five kilometres out of Wiluna; in particular, Mr Smith told him to keep a look out for the "Newmont Jundee Operations Sign".¹⁵ At about 1am on Saturday 22 January 2011, the deceased left Wubin heading for the Jundee Mine site, driving the Western Star Prime Mover and its three trailers.¹⁶

According to Mr Cooper, the deceased was scheduled to arrive at the Jundee mine site by 4pm on Saturday 22 January 2011.¹⁷ Mr Seragusana was of the view it was only a 12 hour trip, but he did not expect the deceased to arrive at the mine site until Sunday morning,

⁸ Ex. 1, Vol.1, Tab 8, Seragusana, 10.02.2011, para 32

⁹ Ex. 1, Vol. 1, Tab 4, Detective Senior Constable Leslie, 14.09.2011, p 4 & p 7

¹⁰ Ex. 1, Vol. 1, Tab 4, Detective Senior Constable Leslie, 14.09.2011, p 7

¹¹ Ex. 1, Vol. 1, Tab 11, Cooper, 10.02.2011, para 6, para 25-26; para 29; Ex. 1, Vol. 1, Tab 4, Detective Senior Constable Leslie, 14.09.2011, p 7

¹² Ex. 1, Vol. 1, Tab 4, Detective Senior Constable Leslie, 14.09.2011, p 8

¹³ Ex. 1, Vol. 1, Tab 11, Cooper, 10.02.2011, para 38

¹⁴ Ex. 1, Vol. 1, Tab 11, Cooper, 10.02.2011, para 25-26; para 29; Ex. 1, Vol. 1, Tab 4, Detective Senior Constable Leslie, 14.09.2011, p 8

¹⁵ Ex. 1, Vol. 1, Tab 12, Smith, 03.05.2011, para 36; Ex. 1, Vol.1, Tab 8, Seragusana, 10.02.2011, para 49; Ex. 1, Vol. 1, Tab 61, Photographs, 10, 11, 15, 16 and 19; there being two signs then containing a reference to "Jundee Operations" – one in Wiluna (photograph 5, Tab 61, Vol. 2, Exhibit 1) and one on the right hand side of the Gunbarrel Highway (photographs 15, 16, 17 and 19, tab 61, Vol. 2, Exhibit 1)

¹⁶ Ex. 1, Vol. 1, Tab 4, Detective Senior Constable Leslie, 14.09.2011, p 4 & p 8

¹⁷ Oral evidence, Cooper, 03.08.2012, ts59; Ex. 1, Vol. 1, Tab 11, Cooper, 10.02.2011, para 12; Ex. 1, Vol. 1, Tab 4, Detective Senior Constable Leslie, 14.09.2011, p 11

or lunchtime Sunday at the latest.¹⁸ Mr Hunt, the leading hand storeman for Byrnegut Mining Pty Ltd (Byrnegut)¹⁹ at the time, expected a truck, but not at any set time.²⁰

Around breakfast time, the deceased called his parents at home. The deceased spoke to both of them, but it was difficult, because the phone was cutting out.²¹ During the conversation, the deceased mentioned to his father that he might have to turn around because he thought he had missed a turn off.²² He didn't specify what turn-off it was, but he told his mother that he was in "Leinster, Wiluna".²³ This call was made at 9.49am on Saturday and was the last time either of the deceased's parents spoke to him.²⁴

At about 2pm on Saturday 22 January 2011, the Wiluna Swimming Pool Manager, Sean Lennon, saw the deceased in Wiluna.²⁵ The deceased wanted to know where he could buy a pie, and they talked about how he would get to Jundee.²⁶

At about 3.35pm on Saturday 22 January 2011, Mr Sione Latu Kefu was driving along Wongowol Road, with his wife and family. About 55 or so kilometres out of Wiluna, as they were travelling east, Mr and Mrs Kefu noticed a bogged truck.²⁷ Mr Kefu pulled over and went to

¹⁸ Ex. 1, Vol.1, Tab 8, Seragusana, 10.02.2011, para 48 & para 54

¹⁹ Byrnegut Australia Pty Ltd (BAPL) is presently the mining contractor at Jundee mine site, and has been since 1 July 2011. At the time of The deceased's death, Byrnegut Mining Pty Ltd (BMPL) as trustee for Byrnegut Mining Unit trust was the mining contractor at the Jundee site and no longer conducts mining operations. The majority of witnesses refer to this entity as Byrnegut so this name is used throughout the finding when referring to the evidence.

²⁰ Oral evidence, Hunt, 07.09.2012, ts153

²¹ Ex. 1, Vol.1, Tab 9, Matthew Bradanovich, 16.05.2011, para 21; Ex. 1, Vol.1, Tab 10, Mary Bradanovich, 16.05.2011, para 25 & para 30

²² Ex. 1, Vol.1, Tab 9, Matthew Bradanovich, 16.05.2011, para 20-33

²³ Ex. 1, Vol.1, Tab 10, Mary Bradanovich, 16.05.2011, para 22-23

²⁴ Ex. 1, Vol.1, Tab 9, Matthew Bradanovich, 16.05.2011, para 34; Ex. 1, Vol.1, Tab 10, Mary Bradanovich, 16.05.2011, para 32; Ex. 1, Vol. 1, Tab 43, Telstra call charge record for 0488574464; Ex. 1, Vol. 1, Tab 44, Telstra call charge record for 0892964631

²⁵ Ex. 1, Vol. 1, Tab 13, Lennon, 28.01.2011, para 10, para 13-15; Ex. 1, Vol. 1, Tab 4, Detective Senior Constable Leslie, 14.09.2011, p 8

²⁶ Ex. 1, Vol. 1, Tab 13, Lennon, 28.01.2011, para 21-27

²⁷ Ex. 1, Vol. 1, Tab 14, Sione Kefu, 25.01.2011, para 3-6; Ex. 1, Vol. 1, Tab 15, Tracey Kefu, 25.01.2011, para 3-8; Ex. 1, Vol. 1, Tab 4, Detective Senior Constable Leslie, 14.09.2011, p 3

check to see if he could help. He went to the driver's door and knocked, but no one answered. He could not see anyone inside and he did not notice anything else to make him concerned. He thought the driver had been picked up.²⁸ Mr Kefu didn't have a phone or a two way radio with him, so he could not contact anyone else.²⁹

During that same Saturday, one truck from Perth was expected at the Jundee Mine site. According to both Mr Hunt and Mr York, it was not uncommon for trucks to arrive late, or turn up on a Saturday or Sunday and they expected the truck would turn up sometime on Sunday.³⁰ It was not until it didn't arrive on Sunday night that they became concerned.³¹ Mr Hunt called Byrne-cut at the Toll yard, but there was no answer. According to Mr Hunt, he did not have a contact number for Toll Express, or their drivers.³²

At 4.41pm on Sunday 23 January 2011 the police were notified that a man had been found on the Gunbarrel Highway (Wangawol Road) near 'The Crossing', about 23 kilometres out of the Wiluna Town Centre.³³ The man was later identified as Mr Anthony John Bradanovich.³⁴ Police attended and found the deceased lying at the base of a dam wall. He was wearing his khaki work shorts, work boots and had his blue work singlet wrapped around his head and neck.³⁵ From the direction of footprints, police surmised that he had been walking in a westerly direction along Wongawol Road.³⁶ Police searched the deceased for identification, and found, among other things, a set of keys and a mobile

²⁸ Ex. 1, Vol. 1, Tab 14, Sione Kefu, 25.01.2011, para 13-19

²⁹ Ex. 1, Vol. 1, Tab 14, Sione Kefu, 25.01.2011, para 23

³⁰ Oral evidence, Hunt, 07.09.2012, ts154; Ex. 1, Vol. 1, Tab 25, York, 25.01.2011, para 3-4

³¹ Ex. 1, Vol. 1, Tab 24, Hunt, 25.01.2011, p 1-2; Ex. 1, Vol. 1, Tab 25, York, 25.01.2011, para 3-4

³² Ex. 1, Vol. 1, Tab 24, Hunt, 25.01.2011, p 2

³³ Ex. 1, Vol. 1, Tab 4, Detective Senior Constable Leslie, 14.09.2011, pp 1-2; Ex. 1, Vol. 1, Tab 16, Ashwin, 26.01.2011, para 22-30; Ex. 1, Vol.1, Tab 17, Ellis, 29.01.2011, para 15-23

³⁴ Ex. 1, Vol. 1, Tab 3, P92 Fingerprint identification, 27.01.2011

³⁵ Ex. 1, Vol. 1, Tab 19, Sergeant David McCutcheon, 15.07.2011, para 8-12; Ex. 1, Vol. 1, Tab 6, Senior Constable Lynda McCutcheon, 12.05.2011, para 13-14; Ex. 1, Vol. 1, Tab 7, Farley, 27.06.2011, para 9-11

³⁶ Ex. 1, Vol. 1, Tab 19, Sergeant David McCutcheon, 15.07.2011, para 15-17; Ex. 1, Vol. 1, Tab 6, Senior Constable Lynda McCutcheon, 12.05.2011, para 17

phone. One of the officers left the scene to determine whether the deceased had a vehicle nearby.³⁷ The mobile phone the deceased had been carrying was found to be flat.³⁸

An ambulance was called and the deceased was taken to the Aboriginal Medical Service in Wiluna.³⁹ At 6.35pm on Sunday 23 January 2011, Mr Anthony John Bradanovich was certified life extinct⁴⁰.

Some time later that same day, at about 5.20pm, police were notified that a truck had been found bogged some way along Wongawol Road,⁴¹ approximately 30 kilometres from where the deceased had been found.⁴² When police arrived they found it was blocking the roadway.⁴³

A post mortem was conducted by Dr Dan Moss, forensic pathologist, who formed the view that the deceased's death was consistent with exertional heat stroke.⁴⁴

There were no significant defects detected in the Prime Mover that would have contributed to, or caused, this incident.⁴⁵

At around the time the deceased was driving in the Wiluna area, it was very hot (over 40 degrees centigrade) and dry.

³⁷ Ex. 1, Vol. 1, Tab 19, Sergeant David McCutcheon, 15.07.2011, para 17; Ex. 1, Vol. 1, Tab 6, Senior Constable Lynda McCutcheon, 12.05.2011, para 24 & para 26; Ex. 1, Vol. 1, Tab 7, Farley, 27.06.2011, para 25

³⁸ Ex. 1, Vol. 1, Tab 7, Constable Farley, 27.06.2011, para 24

³⁹ Ex. 1, Vol. 1, Tab 6, Senior Constable Lynda McCutcheon, 12.05.2011, para 31-32; Ex. 1, Vol.1, Tab 21, Reimann, para 4 & para 14; Ex. 1, Vol. 1, Tab 23, Webb, para 3, & para 21

⁴⁰ Ex. 1, Vol. 1, Tab 5, Life Extinct Certification; Ex. 1, Vol. 1, Tab 22, Patient Summary; Ex. 1, Vol. 1, Tab 4, Detective Senior Constable Leslie, 14.09.2011, pp 1-2

⁴¹ Ex. 1, Vol. 1, Tab 4, Detective Senior Constable Leslie, 14.09.2011, p 3; Ex. 1, Vol. 1, Tab 7, Constable Farley, 27.06.2011, para 27

⁴² Ex. 1, Vol. 1, Tab 7, Constable Farley, 27.06.2011, para 27

⁴³ Ex. 1, Vol. 1, Tab 6, Senior Constable Lynda McCutcheon, 12.05.2011, para 32 & para 34; Ex. 1, Vol. 1, Tab 7, Constable Farley, 27.06.2011, para 31; Ex. 1, Vol. 2, Sketch by Senior Constable Lynda McCutcheon, which depicts truck partly across the roads

⁴⁴ Ex. 1, Vol. 1, Tab 45, Dr Moss, Supplementary Report to the Coroner; Ex. 1, Vol. 1, Tab 4, Detective Senior Constable Leslie, 14.09.2011, p 14

⁴⁵ Ex. 1, Vol. 1, Tab 20, Vehicle Examination Report, Budd, 04.02.2011, p 1; Ex. 1, Vol. 1, Tab 4, Detective Senior Constable Leslie, 14.09.2011, p 14

ISSUES RAISED DURING THE INQUEST

During the inquest, the circumstances surrounding the deceased's death were examined. In particular, some time was devoted to considering –

1. Whether the telecommunication and radio devices provided to the deceased were sufficient in the circumstances;
2. Why there were no written emergency breakdown instructions available to the deceased;
3. Why there were no emergency beacons or other emergency signalling devices available to the deceased;
4. Why there was no potable water provided with the truck;
5. Why there was no proper map or clear written directions given to the deceased;
6. Whether the signage indicating the turn off to the Jundee Mine site was adequate in the circumstances; and
7. Why it took so long for anyone to make inquiries about the deceased's whereabouts.

Another issue that arose for consideration was the question of what is considered to be a “remote” location.

Telecommunication and radio devices

According to Mr Seragusana, the deceased was provided with a laminated sheet of paper⁴⁶ setting out his phone number, the mine site telephone numbers and Toll's numbers.⁴⁷ Toll also provided the deceased with lists of telephone numbers.⁴⁸ On any view, telephone numbers are only useful if there is a working telephone available to the person who needs to use them.

The deceased had his own personal mobile phone, although phone reception around Wiluna was poor.⁴⁹ A Telstra Next G mobile phone was available to be used with the truck, and a stronger aerial is attached to the truck which allows for further coverage when the telephone is plugged into the truck.⁵⁰ Mr Seragusana offered to provide the deceased with a Next-G phone, but the deceased told him he had his own. According to Mr Seragusana a lot of his drivers do the same thing. Mr Seragusana did not persist.⁵¹

Mr Seragusana did not provide the deceased with a satellite telephone, although he acknowledged that the deceased would not have been able to use his mobile phone all the time where he was going. Mr Seragusana did not believe he would require a satellite phone, and none of his drivers had ever required one before. According to Mr Seragusana, if a driver broke down they would usually contact a vehicle close by on the radio, or by flagging them down, and then give

⁴⁶ Possibly that pictured in photograph 83, Ex. 1, Tab 60, or something similar: see Oral evidence, Seragusana, Transcript, 03.08.12, ts16, ts37-38

⁴⁷ Oral evidence, Seragusana, Transcript, 03.08.2012, ts 15-16

⁴⁸ Oral evidence, Cooper, Transcript, 03.08.2012, ts 68

⁴⁹ He discussed the reception of his phone with his parents at about 9.49am on Saturday 22 January 2011 when he used it to call his parents. At this time, The deceased told his parents he was at Leinster and had missed a turn off, but he did not elaborate: Ex. 1, Vol. 1, Tab 4, Detective Senior Constable Leslie, 14.09.2011, p 9

⁵⁰ Ex. 1, Vol.1, Tab 8, Seragusana, 10.02.2011, para 66-67

⁵¹ Oral evidence, Seragusana, Transcript, 03.08.2012, ts 16; Ex. 1, Vol. 1, Tab 4, Detective Senior Constable Leslie, 14.09.2011, p 16

them a message.⁵² If there were mpt any passing vehicles, he did not know what he would expect of his drivers.⁵³

Mr Seragusana acknowledged that it would have probably helped the deceased if he had had a satellite phone.⁵⁴ The Transport Worker's Union (TWU) and Toll both support, to some extent, the provision of satellite phones to drivers in remote locations.⁵⁵ The truck did have a UHF 40 channel radio, and when it was examined by police, it was found to be working.⁵⁶

Relevant radio channels existed which the deceased could have used to request assistance when attending Jundee Mine site. Channels eight and nine were monitored at all times. According to Mr Ward, a contract earthmover working for Newmont earthmoving, channel 40 is the main channel truck drivers use to communicate with each other, channel 9 is the Jundee mine site channel, and the Lake Violet homestead is on channel 38. In his experience, where the truck was found, it should have been able to communicate with channel 9 or 38.⁵⁷

Mr Seragusana was sure he mentioned specific channels to the deceased, perhaps channels 4 and 8, or 8 and 9, but he was not sure.⁵⁸ What he does remember though, is that Mr Smith spoke to the deceased about channels eight and nine.⁵⁹

It does not appear that anyone provided anything to the deceased in writing which might have informed him of the existence of the site

⁵² Oral evidence, Seragusana, Transcript, 03.08.2012, ts 17; Ex. 1, Vol. 1, Tab 4, Detective Senior Constable Leslie, 14.09.2011, p 16; Ex. 1, Vol. 1, Tab 12, Smith, 03.05.2011, para 26

⁵³ Oral evidence, Seragusana, Transcript, 03.08.2012, ts 22

⁵⁴ Oral evidence, Seragusana, Transcript, 03.08.2012, ts 17

⁵⁵ Ex. 1, Vol. 1, Tab 49, p 2, McGiveron, Letter to the Coroner, 02.02.2012; Ex. 1, Vol. 1, Tab 50, p 3, Sloan, Letter to the Coroner, 01.02.2012

⁵⁶ Ex. 1, Vol. 1, Tab 29, Ward, 26.01.2011, para 24; Ex. 1, Vol. 1, Tab 20, Budd, Vehicle Examination Report, p 3; Oral evidence, Seragusana, Transcript, 03.08.2012, ts 19

⁵⁷ Ex. 1, Vol. 1, Tab 29, Ward, 26.01.2011, para 26-28

⁵⁸ Oral evidence, Seragusana, Transcript, 03.08.2012, ts 17-20 and ts 47

⁵⁹ Oral evidence, Seragusana, Transcript, 03.08.2012, ts 49; Ex. 1, Vol. 1, Tab 8, Seragusana, 10.02.2011, para 46

specific channels, or advised him of the fact that they are always monitored.⁶⁰ In any event, there is no evidence to suggest one way or another, whether the deceased attempted to use any of the radio channels. What is known is that on Sunday when the General Manager of Operations for Newmont Jundee Operations, Mr Andrew Lindsay, tried to use channel 9 to contact a co-worker at the truck site, he was unable to contact him using that particular channel.⁶¹ Mr Seragusana also stated that it was not always possible to get in touch with someone on the UHF.⁶²

A site specific information card could easily be adopted; having on it a variety of emergency procedure information, similar to those supplied to pilots. The information provided could include UHF channels used in areas surrounding mine sites and be adapted to specific routes.

Emergency breakdown procedures

For reasons not apparent on the evidence, the deceased did not remain with his vehicle. It is standard, practical advice that people should stay with their vehicles in such situations; however, emergency procedures should be in place to deal with the situation where stranded people do not follow such advice.

It is appreciated that that are many commercial vehicles traversing the countryside without incident. Nevertheless, the response to emergency breakdowns cannot be dependant on passing traffic or the capacity to use such devices as mobile phones with limited coverage. Complacency is not the appropriate response when travelling in isolated, if not remote, areas.

⁶⁰ Oral evidence, Seragusana, Transcript, 03.08.2012, ts 21

⁶¹ Ex. 1, Vol. 1, Tab 26, Lindsay, 26.01.2011, p 3

⁶² Oral evidence, Seragusana, Transcript, 03.08.2012, ts 21

Cartwright Holdings Pty Ltd

Mr Seragusana said he told the deceased to remain with his truck if it broke down, but there were no written instructions in the truck advising him of what to do in case of a break down.⁶³ Mr Seragusana states that all of his drivers are told to stay with the vehicle and to wait for help to come. He said most of the drivers know to do this and they should provide information to passers by who advise him of their location when the passer by gets into phone range.⁶⁴ Mr Seragusana would then arrange for someone to attend and help them.⁶⁵ Otherwise, he expected his drivers to call him after they have dropped their load and were heading home.⁶⁶ Mr Saragusana did not hear from the deceased at all over the weekend.⁶⁷

In any event, Mr Seragusana went through an induction with the deceased while he was at the office for his interview. At that stage, he had not told the deceased that he had decided to employ him.⁶⁸

This induction itself was a sit down session where Mr Seragusana spoke to him about a number of things, not limited to safety, but including safety boots, hats, reflective vests, mine site clothing, and radio channels.⁶⁹

Mr Seragusana also told the deceased to turn his flashing beacon on when he got to the mine site, and once he left the bitumen road.

⁶³ Oral evidence, Seragusana, Transcript, 03.08.2012, ts 22; Ex. 1, Vol. 1, Tab 4, Detective Senior Constable Leslie, 14.09.2011, p 16

⁶⁴ Ex. 1, Vol.1, Tab 8, Seragusana, 10.02.2011, para 74-75

⁶⁵ Ex. 1, Vol.1, Tab 8, Seragusana, 10.02.2011, para 75

⁶⁶ Ex. 1, Vol.1, Tab 8, Seragusana, 10.02.2011, para 76

⁶⁷ Ex. 1, Vol.1, Tab 8, Seragusana, 10.02.2011, para 80

⁶⁸ Oral evidence, Seragusana, Transcript, 03.08.2012, ts 12, ts40

⁶⁹ Oral evidence, Seragusana, Transcript, 03.08.2012, ts 13

Nothing was signed to establish that the induction had occurred, nor was there anything in writing to establish its specific content.⁷⁰

The induction session between Mr Seragusana and the deceased was inadequate, as the deceased was not formally inducted into the way Cartwright's ran its business. Furthermore, the informal induction that the deceased received, before being hired by Cartwrights, was not informative enough with respect to emergency breakdown procedures. The laminated card containing operating tips, as described by Mr Seragusana in his evidence, was not sufficient to enable the deceased to inform himself about what to do in case of an emergency or breakdown.⁷¹

Not only was the session held at a point in time when the deceased had no expectation of gaining employment with Mr Seragusana, it was conducted informally. No material exists which confirms what the deceased was advised, or that he participated in and understood his obligations in relation to safety procedures.

Outback driving can be hazardous and a more formal, standardised, safety induction would enable the training and education of drivers to be better monitored. In turn, this would enable the drivers and contractors to ensure that they are kept up to date about the most current safety procedures – and not only in remote areas.

Toll Express

Mr Russell Cooper, the Linehaul Manager of Toll Express, indicated that Toll conducts a three to four hour induction for new drivers when they arrive.⁷² Drivers were required to sign off sections of the induction

⁷⁰ Ex. 1, Vol.1, Tab 8, Seragusana, 10.02.2011, para 20-22

⁷¹ Oral evidence, Mr Seragusana, Transcript, 03.08.2012, ts38

⁷² Ex. 1, Vol.1, Tab 11, Cooper, 10.02.2011, para 13

booklet confirming their understanding of the process.⁷³ In this case, Toll could not locate a signed copy of the deceased's induction,⁷⁴ and no one could say precisely when it may have been that the deceased participated in the Toll induction process.⁷⁵

In any event, Toll has provided the Court with a copy of its Western Australia Driver Induction Handbook.⁷⁶ According to Mr Welch, the induction is designed for all new subcontractors and drivers. According to Mr Cooper, a version of the book is carried with the drivers in each cab.⁷⁷ There is a section in the Booklet relating to emergency contact numbers, as they relate to Kewdale and other Depots and Agency listings.⁷⁸ Lists similar to those were found inside the truck cab, in a folder belonging to the deceased.⁷⁹ However, the only numbers on any of these lists were mobile and landline telephone number contacts and it is not apparent which one number would have best served the deceased – even if he could have called by telephone. There is nothing in the book that relates to UHF radio channels.⁸⁰

Furthermore, while there is a specific section of the Booklet that deals with Safety, there was no information concerning emergency breakdown procedures. The provision of the Toll paperwork, containing emergency numbers and contacts was not sufficient. The numbers provided were limited to the Toll Accident and Emergency number and an all hours number to a mobile phone number for Mr Cooper.⁸¹

⁷³ Ex. 1, Vol.1, Tab 11, Cooper, 10.02.2011, para 14

⁷⁴ Oral evidence, Cooper, Transcript, 03.08.2012, ts66; Ex. 1, Vol. 2, Tab 67, E-mail from Kevin Welch (Toll) to officer Posavec, 27.06.2012, 10.45am

⁷⁵ Oral evidence, Cooper, Transcript, 03.08.2012, ts65

⁷⁶ Ex. 1, Vol. 2, Tab 67, Toll Express WA Driver Induction Booklet

⁷⁷ Oral evidence, Cooper, Transcript, 03.08.2012, ts66

⁷⁸ Ex. 1, Vol. 2, Tab 67, pp 19-25, Sections 3.1 & 3.2, Toll Express WA Driver Induction Booklet

⁷⁹ Ex. 1, Vol. 2, Tab 60, Photographs numbered 88, 92, 97

⁸⁰ Oral evidence, Cooper, Transcript, 03.08.2012, ts68

⁸¹ Ex. 1, Vol. 1, Tab 38, Drivers Daily Checklist

No information appears to have been provided to the deceased about the UHF channels he could use near to site, and no other contact numbers were provided to him.⁸²

Further information and equipment, perhaps in the form of written emergency UHF channel information, and/or alternative contact information should have been provided to the deceased. Much like the emergency contact list, this is information that could readily be included on an emergency procedure card.

Emergency locator beacons and global positioning systems

The deceased was not provided with a global positioning system ('GPS'), or a distress beacon.⁸³ Although this is perhaps not unusual,⁸⁴ it is something that participants in the industry could consider. According to Mr Seragusana, a sole trader, it would not be prohibitively expensive for him to provide GPS in the truck cabs.⁸⁵

A personal locator beacon ('PLB') which provided a GPS location could have been utilised the deceased in the event that any of his calls for help by way of telephone or UHF were unsuccessful. If it were, the deceased could have activated it and his position would have been reported to rescue authorities.⁸⁶

Presently, there appears to be no law requiring truck drivers to carry emergency beacons. However, the skippers of water craft and the pilots of aircraft are required to carry devices such as these to assist rescuing

⁸² Oral evidence, Welch, 06.09.2012, ts100

⁸³ Ex. 1, Vol. 1, Tab 4, Detective Senior Constable Leslie, 14.09.2011, p 16

⁸⁴ Ex. 1, Vol. 1, Tab 12, Smith, 03.05.2011, para 26

⁸⁵ Oral evidence, Mr Seragusana, Transcript, 03.08.2012, ts36

⁸⁶ Ex. 1, Vol. 2, Tab 55, "406 Beacon Information", Australian Government, Annexure to the Statement of Sergeant Pope

authorities.⁸⁷ Consideration should be given by remote commercial road transport operators to adopting similar procedures.

Personal locator beacons are not overly expensive. Evidence before the Court suggests that they vary in price, but can be purchased for under \$500.⁸⁸ According to Mr Seragusana, if a device cost approximately \$400, it would not be too expensive for him to put into his trucks.⁸⁹

According to Mr Welch, following the deceased's death, Toll started providing a mobile device, called a 'spot device', which can be used to request assistance at varying levels. It can operate to inform people that someone is running late or it can operate as an emergency beacon. It costs approximately \$200 per unit and \$120 per year to have monitored. Currently, Toll provides the spot device only to its own drivers and only on what is classified as its only "remote" run – a route from Perth to Alice Springs.⁹⁰

Potable water

There is no evidence in this case to suggest how much water the deceased had with him, and there is no evidence that he received any instructions, or advice, about how much water he should take with him.

In the cab of the truck, an Engel refrigerator is located between the seats. When it was examined by police, it was empty.⁹¹

⁸⁷ Ex. 1, Vol. 2, Tab 55, "406 Beacon Information", Australian Government, Annexure to the Statement of Sergeant Pope

⁸⁸ Ex. 1, Vol. 2, Tab 55, "Price lists for Personal Locator Beacons", Annexure to the Statement of Sergeant Pope

⁸⁹ Oral evidence, Mr Seragusana, Transcript, 03.08.2012, ts37

⁹⁰ Oral evidence, Welch, 06.09.2012, ts95, ts 98, ts110

⁹¹ Ex. 1, Vol. 1, Tab 20, p 4, Budd, Vehicle Examination Report; Ex. 1, Vol. 2, Tab 60, Photographs of the truck, Photographs 42 and 44

According to Mr Seragusana, at one point in time there was a 20 litre water container in the truck which had been left in it after another driver had stopped working for him. However, at the time the deceased was driving it, it had gone,⁹² and Mr Seragusana did not check the cab for water.⁹³

According to Mr Seragusana he usually provides each driver with an advance to purchase food and water for their trips.⁹⁴ Mr Seragusana expects all of his drivers to carry their own water, including those drivers travelling into remote areas.⁹⁵ Toll expects the same.⁹⁶

Mr Seragusana expected drivers to take enough water with them in case they break down.⁹⁷ However, Mr Seragusana stated that he provided 25 litres of water with one particular truck – a truck that did “the Telfer run”. According to Mr Seragusana, all of his other trucks stay within 150 kilometres of a town, mostly on the bitumen, and there’s traffic up and down all day long.⁹⁸

Mr Smith told police that he has never been instructed on how much food or water to take, but that, out of habit, he takes about 5 or 6 litres of water for a trip to Jundee.⁹⁹

It is clear that the deceased had some liquids with him – police found two empty soft drink cans near the cab,¹⁰⁰ and inside the cab there was

⁹² Ex. 1, Vol.1, Tab 8, Seragusana, 10.02.2011, para 102-103

⁹³ Oral evidence, Seragusana, Transcript, 03.08.2012, ts 13

⁹⁴ Ex. 1, Vol.1, Tab 8, Seragusana, 10.02.2011, para 71 & para 73; Ex. 1, Vol. 1, Tab 4, Detective Senior Constable Leslie, 14.09.2011, p 17

⁹⁵ Oral evidence, Seragusana, Transcript, 03.08.2012, ts 13, 14

⁹⁶ Oral evidence, Cooper, Transcript, 03.08.2012, ts 72, ts79

⁹⁷ Oral evidence, Seragusana, Transcript, 03.08.2012, ts 14

⁹⁸ Oral evidence, Seragusana, Transcript, 03.08.2012, ts 14-15

⁹⁹ Ex. 1, Vol. 1, Tab 12, Smith, 03.05.2011, para 27-28

¹⁰⁰ Ex. 1, Vol. 1, Tab 6, Senior Constable Lynda McCutcheon, 12.05.2011, para 36 (Pepsi Max);
Ex. 1, Vol. 1, Tab 7, Constable Farley, 27.06.2011, para 32 (Coke)

also one small bottle of Mt Franklin drinking water, which still contained a small amount of water.¹⁰¹

Toll recommends that drivers in remote locations carry potable water.¹⁰² In the deceased's circumstances, the TWU would have expected his employer to have ensured that the deceased had a supply of cool, clean drinking water.¹⁰³

A reasonable quantity of potable water should accompany truck drivers travelling into remote areas. Such supply might be in the form of an emergency supply of 2-4 litres, which could remain in the refrigerator of each truck cab. This would provide a relatively low cost safeguard, designed to assist drivers in a remote emergency.

Maps and directions

The evidence establishes that the same afternoon that the deceased started work for Cartwright , he was given instructions to deliver a consignment of goods to the Jundee Mine Site.¹⁰⁴

The evidence also establishes that when Mr Seragusana hired the deceased, he knew that the deceased had never been to Jundee before.¹⁰⁵

Having driven the route himself, Mr Seragusana had an expectation about the precise route that the deceased would need to take.¹⁰⁶

¹⁰¹ Ex. 1, Vol. 2, Tab 60, Photographs 69-72

¹⁰² Ex. 1, Vol. 1, Tab 50, Letter to Coroner, Sloan, 01.02.2012

¹⁰³ Ex.1, Vol. 1, Tab 49, p 3, Letter to Coroner, McGiveron, 02.02.2012

¹⁰⁴ Ex. 1, Vol. 1, Tab 4, Detective Senior Constable Leslie, 14.09.2011, p 7

¹⁰⁵ Oral evidence, Seragusana, Transcript, 03.08.2012, ts 8

¹⁰⁶ Oral evidence, Seragusana, Transcript, 03.08.2012, ts 9-10

To reach the Jundee mine site, Mr Seragusana expected the deceased to drive to Mount Magnet, across to Sandstone and through to a T-junction at Wiluna and Leonora. Mr Seragusana did not expect the deceased to go through Leinster at all.¹⁰⁷

The directions given to the deceased, by Cartwright, were wholly inadequate.

Mr Seragusana did not supply any written directions to the deceased at all, and the oral directions given to the deceased were not clear enough.

When asked about the directions he spoke to the deceased about, Mr Seragusana agreed that he expected the deceased to know exactly where he was supposed to go, from Wiluna to Jundee, after describing it to him once. Even though he had that expectation, Mr Seragusana spoke to the deceased again about the directions – just to make it clear.¹⁰⁸

When asked if it might have assisted the deceased to have had a map to enable him to navigate his way to Jundee, Mr Seragusana replied “no”. Mr Seragusana was of the view that he did not need to give him any clear written directions about how to get to Jundee.¹⁰⁹

There is no evidence that the deceased was given any written directions, or provided with a map. However, before the deceased left Perth, Mr John Smith (another driver who worked for Mr Seragusana) and Mr Seragusana sat down and talked about how the deceased could navigate his way to the site. Mr Seragusana understood that the

¹⁰⁷ Oral evidence, Seragusana, Transcript, 03.08.2012, ts 9

¹⁰⁸ Oral evidence, Seragusana, Transcript, 03.08.2012, ts 27

¹⁰⁹ Oral evidence, Seragusana, Transcript, 03.08.2012, ts 23

deceased had not been to the mine site before and so Mr Smith told him how to get there.¹¹⁰

Mr Smith told the deceased how to get to Jundee, and described the Jundee signs about 5 kilometres out of Wiluna. He did not draw a map for the deceased and he only told him how to get there.¹¹¹

Mr Smith advised the deceased to go to Wiluna and go down the truck route for 5 kilometres out of town, heading south. He told the deceased there would be two signs – a larger one on the right and a smaller sign on the left with “50kms” on it. Mr Smith told him that the bitumen road ends where the signs are, and that it turns to dirt where you turn left and that that takes you to Jundee Mine Site.¹¹²

During the discussion, the deceased asked about the turn off 5 kilometres out of town and Mr Smith went through the directions again.¹¹³

By the time the deceased arrived at Wiluna, he was still concerned about how to get to the mine and he asked Mr Lennon, the pool manager, who went through the directions again. Mr Lennon reminded the deceased of the sign to Jundee on the right, and the left turn onto the Jundee Road.¹¹⁴

However, it is clear that the deceased missed the turnoff.

¹¹⁰ Ex. 1, Vol.1, Tab 8, Seragusana, 10.02.2011, para 34-35; Ex. 1, Vol. 1, Tab 12, Smith, 03.05.2011, para 11-24

¹¹¹ Ex. 1, Vol. 1, Tab 12, Smith, 03.05.2011, para 24

¹¹² Ex. 1, Vol.1, Tab 8, Seragusana, 10.02.2011, para 35-37

¹¹³ Ex. 1, Vol.1, Tab 8, Seragusana, 10.02.2011, para 38-39

¹¹⁴ Ex. 1, Vol. 1, Tab 13, Lennon, 28.01.2011, para 26

The deceased had a country a map entitled a Road Atlas of Australia.¹¹⁵ No other maps were provided to him by anyone.¹¹⁶ The deceased did not ask for one.¹¹⁷

Mr Smith, having done the Jundee trip before, thought there might have been a ‘mud map’ on the Toll file, although it was something he noticed missing from the file the last time he did the trip.¹¹⁸ Police found a ‘mud map’, similar to that described by Mr Smith, tucked into the sun visor on the driver’s side of the cab.¹¹⁹ There is no evidence to suggest, one way or the other, whether the deceased knew that that map existed, or whether he made any use of it. The owner of the cab, Mr Seragusana, did not recognise it.¹²⁰ The mud map found inside the truck cab sun visor was of limited use – it contains no clear directions about the turn off to the Jundee mine site.

On the available evidence, it is clear that the deceased was unfamiliar with how to navigate his way to the mine site. He had never been to Jundee before, and he asked more than one person for directions. He also told his parents, when he was in Leinster on his way to Wiluna, that he had missed a turn off.¹²¹

Cartwright and Toll could have provided clear written directions to the deceased, and/or a map of some kind. Both Cartwright and Toll relied upon the deceased to ask for a map. Neither Cartwright, nor Toll Express, had any procedures in place to ensure that drivers had clear

¹¹⁵ Ex. 1, Vol. 2, Tab 60, Photographs 71 & 130

¹¹⁶ Ex. 1, Vol.1, Tab 8, Seragusana, 10.02.2011, para 72

¹¹⁷ Oral evidence, Cooper, Transcript, 03.08.2012, ts70, ts77; Ex. 1, Vol. 1, Tab 8, Seragusana, 10.02.2011, para 72; Ex. 1, Vol. 1, Tab 11, Cooper, 10.02.2011, para 36

¹¹⁸ Ex. 1, Vol. 1, Tab 12, Smith, 03.05.2011, para 23

¹¹⁹ Ex. 1, Vol. 2, Tab 60, Photographs 198 and 200. The fact that it is on the driver's side can be inferred by reference to the position of the radio lead and by comparing its position to that in other photographs, especially 50 and 53.

¹²⁰ Oral evidence, Seragusana, Transcript, 03.08.2012, ts 31

¹²¹ Ex. 1, Vol.1, Tab 9, Matthew Bradanovich, 16.05.2011, para 20-33 & para 35; Ex. 1, Vol. 1, Tab 10, Mary Bradanovich, para 22-25; Ex. 1, Vol. 1, Tab 12, Smith, 03.05.2011, para 36; Ex. 1, Vol. 1, Tab 13, Lennon, 28.01.2011, para 21-27

written directions to their destinations – other than to reply upon a driver’s request.¹²² Toll has a comprehensive set of maps available on its hard drive¹²³ and, according to Mr Cooper, it would have been very easy for someone at Toll to have printed off a map to give to the deceased before he set off.¹²⁴ However, for the sake of wasting paper, it was not usually done.¹²⁵

On any view, having clear directions and a map would have equipped the deceased with the materials necessary to navigate his way around the area properly. The ability to do so effectively may have saved his life.

The turnoff signs for Jundee minesite

The signs that the deceased must have come across (and missed) are usefully depicted in video footage taken by the police on the same day that the deceased and his truck were found.¹²⁶ They are also usefully depicted in the photographs below .¹²⁷

¹²² Oral evidence, Cooper, Transcript, 03.08.2012, ts70

¹²³ Oral evidence, Welch, 06.09.2012, ts 98

¹²⁴ Oral evidence, Cooper, Transcript, 03.08.2012, ts70, ts77

¹²⁵ Oral evidence, Cooper, Transcript, 03.08.2012, ts71

¹²⁶ Ex. 1, Vol. 1, Tab 54, DVD footage by police, 25.01.2011 of the Prime Mover and the route taken; Ex. 1, Vol. 1, Tab 48, Letter to Coroner from The deceased, 24.10.2011

¹²⁷ Ex. 1, Vol. 2, Tab 61, Photographs of the route: numbered 7, 9, 15 and16.



7

Figure 1 : Exhibit "1" tab 61 no. 7 depicts the signage at Wiluna township



9

Figure 2 : Exhibit "1" tab 61 no. 9 depicts the signage to Jundee Station



Figure 3 : Exhibit "1" tab 61 no. 15 depicts the blue signage erected by the Council along the Gunbarrel Highway directing traffic towards the Jundee mine site



Figure 4 : Exhibit "1" tab 61 no. 16 depicts the blue signage erected by the Council along the Gunbarrel Highway directing traffic towards the Jundee mine site

An application to Wiluna Council to install a sign 1800mm x 600mm, directing traffic towards the Jundee mine site along the Gunbarrel Highway was approved by the Council on 21 August 2008.¹²⁸ The sign was installed in the dimensions approved, and is the blue sign depicted in Figures 3 and 4, above.¹²⁹

The blue turn off sign on the right hand side of the road was not appropriate in the circumstances – it was not clear enough. Being blue, it was not in a colour that could be seen easily and, in combination with its position, this made it less obvious in the circumstances. Composed as it was, of white writing on a blue background, the information on it was not as clearly visible as it would have been on a traditional green and white sign.

Subsequent to the deceased's death the signs directing traffic to the Jundee mine site have been changed. On the evidence before the Court, the change was instigated by Newmont Mining in January 2011 and was approved by Council the same day.¹³⁰ The blue sign that was on the right hand side of the road has been replaced by a larger more traditional looking green sign, which clearly reads "Jundee Mine site 52km".¹³¹

¹²⁸ Ex. 1, Vol. 1, Tab 47, Letter to Coroner from The deceased, 24.10.2011, Enclosure 1, pp 3-4: Agenda item 9.1.2;

¹²⁹ Ex. 1, Vol. 1, Tab 51, Letter to Kate Ellson, Counsel Assisting, from Guy French, Partner, DLA Piper Australia, dated 02.08.2012, p 1

¹³⁰ Ex. 1, Vol. 1, Tab 47, Letter to Coroner from The deceased, 24.10.2011, Enclosure 2, Letter from Ms S. Tarling, to Mr S. Mann, 25.01.2011

¹³¹ Ex 1, Vol. 2, Tab 66, Photographs sourced and compiled by Sergeant Pope, 25.06.2012



Figure 5 : Exhibit "2" tab 62 no. 6 depicts the end of the bitumen road surface just past the 80km/h road sign and turn off to the Jundee mine site

The new signage is an improvement.

[The delay in trying to establish the deceased's whereabouts](#)

No one was responsible for ascertaining whether. The deceased arrived safely at his destination within a reasonable time.

Despite the deceased failing to reach the Jundee mine site, no one who might have expected him to arrive at the Jundee mine site called anyone looking for him. Mr Cooper, at Toll Express, did not know he was missing.¹³² Nor did Mr Seragusana.¹³³ Mr Hunt noticed that a truck had not arrived on Saturday, but did not make any inquiries of anyone until Sunday when he spoke to Mr York. Mr Hunt did not expect the

¹³² Oral evidence, Cooper, Transcript, 03.08.2012, ts72

¹³³ Oral evidence, Seragusana, Transcript, 03.08.2012, ts34

deceased at any give time, and he had no way of contacting Toll to find out the location of the truck, and the deceased.¹³⁴

Cartwright Holdings Pty Ltd

Cartwright expected its drivers to arrive somewhere within a specified time frame, in reasonable time.¹³⁵ The time frame is set before each driver leaves, and an expected arrival time at each point along any driver's route is created as a result.¹³⁶

Although Mr Seragusana did not expect the deceased to arrive at the mine site until Sunday morning,¹³⁷ he was scheduled to arrive between about 4pm to 4.30pm on Saturday 22 January 2011.¹³⁸ This fact accords with the time Toll expected him to arrive, and takes into account a 7 hour rest period.¹³⁹ According to Mr Cooper, the Toll Line Haul Manager, the deceased would have been expected to be leaving the Jundee mine site Sunday morning, having had the trailers unloaded and loaded overnight.¹⁴⁰

Mr Seragusana expected that the deceased would call Toll when the load had been dropped off at Jundee and give them a return trip estimated time of arrival at Wubin.¹⁴¹ Mr Seragusana did not expect the deceased to call him until he was heading home,¹⁴² and

¹³⁴ Having only a telephone number for the ByrneCut office in the Toll yard, Oral evidence, Hunt, Transcript, 7.09.2012, ts154

¹³⁵ Oral evidence, Seragusana, Transcript, 03.08.2012, ts31-32

¹³⁶ Oral evidence, Seragusana, Transcript, 03.08.2012, ts32

¹³⁷ Oral evidence, Seragusana, Transcript, 03.08.2012, ts32; Ex. 1, Vol.1, Tab 8, Seragusana, 10.02.2011, para 54-56

¹³⁸ Oral evidence, Seragusana, Transcript, 03.08.2012, ts33; Oral evidence, Cooper, Transcript, 03.08.2012, ts62; Ex. 1, Vol. 1, Tab 11, Cooper, 10.02.2011, para 12; Ex. 1, Vol. 1, Tab 4, Detective Senior Constable Leslie, 14.09.2011, p 11

¹³⁹ Oral evidence, Cooper, Transcript, 03.08.2012, ts58-59

¹⁴⁰ Oral evidence, Cooper, Transcript, 03.08.2012, ts59

¹⁴¹ Ex. 1, Vol. 1, Tab 8, Seragusana, 10.02.2011, para 79-77

¹⁴² Oral evidence, Seragusana, Transcript, 03.08.2012, ts33-36

Mr Seragusana did not expect Toll to advise him that the deceased had arrived at the mine site.¹⁴³

Mr Seragusana did not hear from the deceased all weekend.¹⁴⁴ It was around 5.30pm on Sunday 23 January 2011 when he received a call from Mr Cooper at Toll Express, asking him if he had heard from the deceased.¹⁴⁵ He says he wasn't concerned at that point because, even though it was only a 12 hour trip, he did not expect the deceased to call him until Sunday evening, around 8 or 9pm.¹⁴⁶

Toll Express

At the time the deceased was driving to Jundee, Toll had no formal procedures in place to check on the arrival of its trailers at mine sites.¹⁴⁷

Toll expected their deliveries to be on time; if the drivers are running late, the contractor, or the contractor's driver will call them to advise them of the delay and provide a new estimate time of arrival. Toll also expects that if trucks do not arrive at the scheduled time, the sites will ring the Toll after hours line.¹⁴⁸ Someone from Toll is on call to receive this information via Blackberry.¹⁴⁹ If no one called Toll Express, no one at Toll knew whether the trailers had arrived late or not.¹⁵⁰

If a truck breaks down, Toll had a procedure in place whereby other Toll drivers and companies in the area are contacted to drive along the route.¹⁵¹ Otherwise, Toll only expected to hear from drivers when they

¹⁴³ Oral evidence, Seragusana, Transcript, 03.08.2012, ts35

¹⁴⁴ Ex. 1, Vol. 1, Tab 8, Seragusana, 10.02.2011, para 78-80

¹⁴⁵ Ex. 1, Vol. 1, Tab 8, Seragusana, 10.02.2011, para 81-83

¹⁴⁶ Oral evidence, Seragusana, Transcript, 03.08.2012, ts35

¹⁴⁷ Oral evidence, Cooper, Transcript, 03.08.2012, ts59

¹⁴⁸ Oral evidence, Cooper, Transcript, 03.08.2012, ts61, ts76, ts77

¹⁴⁹ Ex. 1, Vol. 1, Tab 11, Cooper, 10.02.2011, para 43 & 79

¹⁵⁰ Oral evidence, Cooper, Transcript, 03.08.2012, ts61

¹⁵¹ Oral evidence, Cooper, Transcript, 03.08.2012, ts76; Ex. 1, Vol. 1, Tab 11, Cooper, 10.02.2011, para 43

were coming back from a delivery, although it varied as to where along the return route the call would be made.¹⁵²

On 21 January 2010, another two contractors had been sent to Jundee with freight, and another contractor was in the Leonora area. Toll did not receive any calls from anyone at the Jundee site, or Cartwright, to find out where the truck was, or to advise them that it was running late.¹⁵³ If they were going to ring, Mr Cooper would have expected a call Saturday night, or perhaps Sunday morning.¹⁵⁴ On call at the time, Mr Cooper, was available to take any calls relating to the deceased's whereabouts.¹⁵⁵

ByrneCut (BMPL)

Mr Hunt, an employee of ByrneCut, was expecting the deceased's truck to arrive on Saturday 22 January 2011. It occurred to Mr Hunt that a truck may have broken down, and he checked with the ByrneCut maintenance foreman, Stuart York to see if it had arrived. According to both Mr Hunt and Mr York, it was not uncommon for trucks to arrive on the Sunday when they were scheduled to arrive on the Saturday, and that is what they expected. Therefore, it was not until the deceased's truck failed to arrive on Sunday that they became concerned.¹⁵⁶

Mr Hunt called ByrneCut at the Toll yard, but there was no answer. He did not have any contact numbers for Toll.¹⁵⁷

¹⁵² Oral evidence, Cooper, Transcript, 03.08.2012, ts62

¹⁵³ Oral evidence, Cooper, Transcript, 03.08.2012, ts73; Ex. 1, Vol. 1, Tab 11, Cooper, 10.02.2011, para 41-42 & para 80; Oral evidence, Cooper, Transcript, 03.08.2012, ts62

¹⁵⁴ Oral evidence, Cooper, Transcript, 03.08.2012, ts78

¹⁵⁵ Oral evidence, Cooper, Transcript, 03.08.2012, ts72-73

¹⁵⁶ Ex. 1, Vol. 1, Tab 24, Hunt, 25.01.2011, p 1-2; Ex. 1, Vol. 1, Tab 25, York, 25.01.2011, para 3-4

¹⁵⁷ Oral evidence, Hunt, Transcript, 07.09.2012, ts154

According to Mr Hunt, he did not have a contact number for Toll, or their drivers.¹⁵⁸ For this reason, they could not do anything else to follow it up.

The first contact made with police was by Ms Ellis and her partner Mr Ashwin, which occurred at about 4.41pm on Sunday 23 January 2011, because they had found the deceased.¹⁵⁹ Up until that time, it does not appear that anyone was concerned enough about the deceased to call them.

In any event, it was not until 6.26pm on Sunday 23 January 2011 that a representative from Byrnescut mines called Mr Cooper (of Toll) to advise him that there had been an incident at Jundee, which he later became aware had involved the deceased.¹⁶⁰ This appears to have been the first call made by anyone at Byrnescut, about the deceased.

There was a significant delay, by those expecting the delivery by the deceased, in responding to his non-arrival; in fact no help was provided by those persons. There was a systemic failure to monitor the whereabouts and safety of the deceased, in circumstances where he was operating a vehicle in a challenging area.

What is Remote?

The TWU considers that the deceased was required to go to a “remote location”.¹⁶¹

¹⁵⁸ Ex. 1, Vol. 1, Tab 24, Hunt, 25.01.2011, p 2

¹⁵⁹ Ex. 1, Vol. 1, Tab 4, Detective Senior Constable Leslie, 14.09.2011, pp 1-2; Ex. 1, Vol. 1, Tab 16, Ashwin, 26.01.2011, para 22-30; Ex. 1, Vol.1, Tab 17, Ellis, 29.01.2011, para 15-23

¹⁶⁰ Ex. 1, Vol. 1, Tab 11, Cooper, 10.02.2011, para 45

¹⁶¹ Ex. 1, Vol. 1, Tab 49, p 2

As Toll suggests, there do not appear to be any guidelines issued by any relevant authority that defines what is meant by “remote location”.¹⁶² Toll itself uses guidelines that it has developed.

A trip is categorised as “remote” if all three of the following criteria are met¹⁶³ –

- at any stage during the trip there are no settlements, dwellings or facilities within a 20 kilometre radius, on gazetted roads;
- for the whole or part of the trip the driver will not be able to use, or have limitations using, standard telecommunications such as mobile telephones;
- at any time during the trip the driver is unlikely to encounter passing traffic for at least a 4 hour period.

If two of the criteria are met, the trip is considered “regional”.

In any type of driving, there is always a chance that the expected route will not be the route that is driven. As several of the witnesses stated, in the wet season roads can flood and the usual route may not be available. Of course, this is only one example.

There can be no doubt that the deceased had travelled a long distance to get to where he was found. Mr Seragusana estimates the distance from Wubin to the Jundee Mine site to be about 750 kilometres.¹⁶⁴ Available computer generated mapping indicates a total distance of 885 kilometres, calculated from Kingsford Smith Drive in Perth, to Wiluna, passing through Leinster.¹⁶⁵

Where the deceased’s truck was located was 54.1 kilometres from Wiluna. Where the deceased was found was 31.7 kilometres from

¹⁶² Ex. 1, Vol. 1, Tab 50, p 1

¹⁶³ Oral evidence, Welch, Transcript, 06.09.2012, ts93

¹⁶⁴ Oral evidence, Seragusana, Transcript, 03.08.2012, ts 9

¹⁶⁵ Ex. 1, Vol.1, Tab 41

Wiluna. he was .¹⁶⁶ I accept that there is no clear evidence as to what settlements may have been nearby to the deceased's break down site, although I remain convinced that it is not always the case on the drive from Perth to Jundee mine site, that the driver will be able to use standard telecommunications devices such as a mobile telephone or UHF radio. Thirdly, where the deceased was found he was unlikely to have encountered traffic for at least a four hour period – although Mr Kefu came along at about 3.35pm on Saturday afternoon, there is no evidence that anyone else discovered the truck, which was partly blocking the road, until the police came across it on Sunday.¹⁶⁷

SUBMISSIONS

Newmont Yandal Operations Pty Ltd (“Newmont”)

Newmont submitted the signage which existed at the relevant time was more than adequate for a driver who had been properly directed as to the location of the turnoff and who was maintaining a proper look out. The evidence was to the effect the directions were clear; a driver had to drive 5 kilometres on the Wongawol Road (also known as the Gunbarrel Highway) for 5 kilometres before turning left at the only T-junction, just before the bitumen becomes gravel. The signage at the T-intersection consisted of a traditional green sign¹⁶⁸ and a standard diamond shaped yellow road sign indicating an approaching left hand turn.

In 2008 a driver making a delivery to the mine site had missed the turnoff but without mishap. Following that event, Newmont sought permission from the Wiluna Council to erect yet another sign (white

¹⁶⁶ Exhibit 2

¹⁶⁷ Ex. 1, Vol. 1, Tab 14, Sione Kefu, 25.01.2011, para 3-6; Ex. 1, Vol. 1, Tab 15, Tracey Kefu, 25.01.2011, para 3-8; Ex. 1, Vol. 1, Tab 4, Detective Senior Constable Leslie, 14.09.2011, p 3

¹⁶⁸ depicted in photograph no. 9 at Ex 1, Vol. 2, Tab 61

lettering against a blue background)¹⁶⁹. Approval was obtained from the Council as to the dimensions of the sign, what it said and where it could be positioned. It was erected approximately 200 metres after the signs previously described and was placed on the other side of the road at the T-junction.

Given that the terrain is flat and there is no other signage in the immediate vicinity indicating another turn off and with nothing obstructing the three signs, it could not be said the signs (when examined in context) were “unclear”, particularly if observed during daylight hours.

Byrnecut Australia Pty Ltd (BAPL)

Byrnecut Australia noted that at the time of the incident another entity, Byrnecut Mining Pty Ltd as trustee for the Byrnecut Mining Unit Trust was the mining contractor at the Jundee site. BAPL noted the large volume of trucks that pass through mine site in Australia under their control, using Toll and other transport contractors.

BAPL cited the deceased’s mental health history which had impacted on his capacity to hold a MC licence over the ten years prior to his death; he had a history of paranoid schizophrenia with a history of multiple hospital admissions mostly relating to medication non-compliance.¹⁷⁰ As noted, on the 18 January 2010 the deceased’s treating doctor, Dr Oyewopo, was of the view that the deceased had no formal thought disorders although there were some residual paranoid delusional thoughts. The deceased as of 21 January, 2011 was mentally stable.¹⁷¹

¹⁶⁹ which is depicted in photograph no. 19 of Ex 1, Vol. 2, Tab 61

¹⁷⁰ Ex 1, Vol 1 tab 4 Report of Detective Constable Kellie Leslie, 14 September 2011, page 15; Ex 1 Vol 1, tab 30, Report of Dr Oyewale Oyewopo, 18 May 2011, page 1.

¹⁷¹ Ex 1 Vol 1, tab 30, Report of Dr Oyewale Oyewopo, 18 May 2011, page 1

The mental health of the deceased may or may not have contributed to his death. The inquest is concerned with how the deceased died, the relevant circumstances before his death and the responses upon his failure to arrive at his destination. It is understood the deceased made a decision to leave his vehicle. Even if his decision to leave the vehicle was due to his treatable, and stabilised, mental health condition that does explain the lack of an effective response to his situation.

BAPL submits that is open to find that no one was responsible for the death as the deceased was an experienced truck driver and a mature adult. BAPL cited *Van der Sluice v Display Craft Limited* [2002] NSWCA 204, in which it was said, “[t]he assessment of risk...is for the judgment of each normal adult in the light of the particular adult’s capacity.”¹⁷²

As to the delayed response in establishing the deceased’s whereabouts it is accepted that the activities of the mine are regulated by legislation which does not operate outside the mine site. It was the responsibility of the transport operators, as being the ones best equipped to monitor the progress of drivers.

Mr Cooper testified that timeliness was critical for reasons relating to the effectiveness of the mine. His evidence was contradicted by Mr Welch, of Toll, and Mr Conway and Mr Hunt of BAPL. I do not accept the evidence of Mr Cooper that the contractors at the mine were responsible for advising if a truck failed to arrive at the schedule time. The schedule time was, in fact, a period between 4.30pm on Saturday 22 January and some time Sunday morning.¹⁷³ There was no viable system in place by which Toll was advised by its customers that a truck

¹⁷² *Van der Sluice v Display Craft Limited* [2002] NSWCA 204 per Heydon JA at [74]

¹⁷³ Ex 1, Vol 1, tab 8 Statement of Saragusana, 10 February 2011, at [54] and [56]. Oral Evidence, Seragusana, 3 August 2012, Oral Evidence, Welch 6 September 2012 [117] Oral Evidence, Conway 6 September 2012 [137-138], Oral Evidence, Hunt, [153], [155-156] 6 September 2012

had, or had not, arrived at the site. The customers were under no duty to monitor the arrival of their supplier's vehicles.

Cartwright Pty Ltd (Cartwright)

Cartwright submitted the deceased was an experienced driver and someone who had been told to stay with his vehicle upon a breakdown.¹⁷⁴ It was submitted that the deceased had the option of staying with the vehicle, which had fuel, air-conditioning and water.

Cartwright accepted that it was expected all drivers were to carry sufficient water. The company now requires each of its trucks to carry 20 litres of water. Satellite phones were not used as they had limitations in coverage.¹⁷⁵ It was said by Mr Seragusana that although GPS devices were prohibitively expensive personal locators were not in that category. Cartwright now requires drivers to confirm they have arrived at their destination.

Toll Transport Pty Ltd, trading as Toll Express (Toll), in its submission accepted it owed a duty of care not only to its own drivers but also to drivers who are contracted by other companies to drive for Toll. The company for whom the driver is providing a service likewise has a duty of care.

Toll sought to discharge its duty in a number of ways including ensuring that driver's held an appropriate licence, providing an induction and supplying a range of material to the drivers. Contractors, except for one 'remote' run, are provided with a mobile phone and a UHF radio in the prime mover. The exception is a run to Alice Springs

¹⁷⁴ Ex 1, Vol 1, tab 8 Statement of Saragusana, 10 February 2011 [74]; Oral Evidence, Seragusana, 3 August 2012

¹⁷⁵ Oral Evidence, Seragusana, 3 August 2012 [70]

which required the addition of a satellite phone, extra training and minimum quantities of food and water.

Since the deceased's death, Toll have issued drivers with a SPOT device, which is a global positioning and emergency device, operating off a satellite, which allows drivers three levels of communication, being a simple check-in, a notification of mechanical problems or otherwise and an emergency call.

Toll maintains that the Jundee run, based on its definition of remote, is a regional run not a remote run. Consequently the driver is still required to have a mobile phone and a UHF radio.

Since the incident Toll has developed, for the Jundee run only, a system whereby its customers (Byrne cut and Newmont) will advise Toll if a truck was one hour late and there is an escalating response. There was no formal system in place prior to the incident.

Remote

The definition of a 'remote location' is one that needs to be resolved as it determines the level of preparation and response to a vehicle travelling to a particular destination.

BAPL submitted that what constitutes a remote location is a matter of fact in each case. It further considered that Jundee was not a remote location, as it is only 40 kilometres from Wiluna, and the road is well travelled by a range of vehicles. It was further submitted that the Gunbarrel Highway, where the deceased travelled, was not remote.

BAPL suggested the proper test of remoteness was the destination rather than where the deceased left his vehicle. As a matter of logic, the question of remoteness determines the precautions which should be taken by a driver driving to a particular destination.

Toll has a definition for a remote run which is outlined above; by its definition Toll submit the area was not remote. Amongst other matters it is suggested was no evidence of a lack of settlement in the area where the truck bogged and there was passing traffic. The route to be followed to the Jundee mine site, without mishap, was a regional route.

The application of the Toll criteria means, from that company's perspective, they have only one remote route which takes a vehicle to Alice Springs. A definition which excludes a trip to a mine site east of Wiluna and describes it as being a regional route needs review. Wiluna, for example, is a small community with limited services and a restricted capacity to respond to emergencies. A remote trip is one which takes the vehicle to areas where mobile phone coverage is erratic or non-existent. The driver must be in a position to initiate assistance, rather than being dependent on passing vehicles or the uncertainty of satellite phones. Forty kilometres from Wiluna is not a place where, as the sun sets, one would wish to be waiting for someone to pass by so as to obtain assistance.

CONCLUSION

I find the cause of death was exertional heat stroke.

Whilst it is best practice for a person to stay with their vehicle when they break down, particularly in the described circumstances, it is not

possible to say why it was that the deceased chose a different option. To do so would be purely speculative.

What the evidence in this case does establish, however, is that the deceased was stranded, some considerable distance from his destination, for some period of time, before anyone called for help. As it turned out there was no-one expecting him to be at the mine site; consequently there was no one responsible to raise the alarm.

In addition, the evidence in this case establishes that the deceased was hindered by a number of factors, and I have identified a number of areas where I recommend certain improvement can be usefully made.

There was an insufficient amount of potable water with him in the cab. Cartwright Holdings Pty Ltd did not provide the deceased with information about the need for water, and did not determine whether the deceased had any potable water with him at all. Nor did Cartwright Holdings provide the deceased with the means to communicate with anyone by satellite, knowing that the deceased was travelling into a remote area.

RECOMMENDATION 1

I recommend that Cartwright Holdings Pty Ltd and Toll Transport Pty Ltd, trading as Toll Express review their systems relating to the way they ensure that drivers are provided with potable water. This should be done with a view to improving the ways drivers are provided with drinking water when travelling to areas outside the metropolitan area.

There were no written emergency breakdown procedures in the cab. Neither Cartwright nor Toll provided the deceased with any clear instructions about how to deal with a remote breakdown or remote area emergency.

RECOMMENDATION 2

I recommend that Cartwright Holdings Pty Ltd and Toll Transport Pty Ltd ensure that all drivers are provided with a route specific 'emergency breakdown card', including site specific emergency information such as, but not limited to, instructions about what to do or not to do in an emergency, what channels of the UHF could be used and whether they are monitored, who to call and what numbers to call in the event of an emergency. Instructions about locating and using any satellite phones, PLB, or GPS should also be set out on the card.

There was no emergency beacon or personal locator device (personal locator beacon) available to the deceased.

RECOMMENDATION 3

I recommend that Cartwright Holdings Pty Ltd considers ensuring that drivers travelling to areas outside the metropolitan area, especially to mine sites, are provided with a personal locator beacon (PLB) which provide an encoded GPS location (such as a SPOT device), together with written instructions on how to use it.

RECOMMENDATION 4

I recommend that Toll Transport Pty Ltd reviews its current systems with a view to ensuring that all drivers travelling out of the metropolitan area, especially those travelling to any mine site, are provided with a person locator beacon (PLB) which provides an encoded GPS location (such as a SPOT device), and instructions as to its use. Consideration should be give to incorporating this requirement into its contractual arrangements with sub-contractors to ensure that no driver travelling out of the metropolitan area and/or mine site can leave a depot without one.

The deceased was not provided with a map, or clear written directions to the Jundee mine site.

RECOMMENDATION 5

I recommend that Cartwright Holdings Pty Ltd and Toll Transport Pty Ltd put in place systems whereby all drivers travelling out of the metropolitan area, especially to mine sites, are provided with written directions and maps which clearly explain how to get to the expected destination. This should be done whether or not a driver asks.

Neither Cartwright or Toll had adequate systems in place to follow up on drivers running late with scheduled deliveries. Toll has now implemented such a system, but for the Perth-Jundee run only.

RECOMMENDATION 6

I recommend that Cartwright Holdings Pty Ltd and Toll Transport Pty Ltd audit their procedures to ascertain the whereabouts of late running truck drivers, with a view to ensuring that account is kept of each driver's expected time of arrival so that emergency services can be notified in a timely way should no one be able to contact the driver.

I find that the death arose by way of accident.

COMMENTS ON MATTERS CONNECTED WITH THE DEATH INCLUDING PUBLIC HEALTH AND SAFETY

This fatal incident re-enforces the need for people to stay with their vehicle, when a break-down occurs in challenging environments. The need to have sufficient quantities of water when driving in arid areas was also a matter that was confirmed.

Worksafe had prepared a report on the death. It was not helpful as it concentrated on matters which did not usefully contribute to an understanding of neither how the death occurred nor how such incidents in the future could be avoided.

One of the underlying issues that became apparent during the course of the inquest was the disconnection that has arisen between employers and employees in the long-distance transport industry. The disconnection has arisen due to commercial forces which have seen the industry broken down into a series of sub-contracting arrangements. In this case, the deceased was a sub-contractor to a company which had sub-contracted to another company. Although there may be good commercial reasons for adopting such a structure, it is necessary to ensure that safety is not inadvertently compromised. It cannot be the position that an employee's safety depended upon a customer's response to the tardiness of a delivery. The responsibility of the employer cannot be shifted in that manner. Although the overwhelming majority of trips carried out by commercial drivers in challenging environments are uneventful, that position should not generate complacency. Technology, such as Spot personal devices, is available which is inexpensive and are inexpensive and effective.¹⁷⁶ As a counter to complacency, without generating excessive expense, such devices should be provided on a wider basis, following a reconsideration of the definition of 'remote' so that the routes seen as 'regional' would attract the same provisions as the current remote routes. That is, applying the current Toll guidelines for remote travel:

- assess and provide sufficient water;
- provide a SPOT device as well as ensuring driver has a mobile phone and a UHF radio;
- provide maps as required;
- improve its emergency break-down card; and
- maintain its escalation procedure (not confined to Jundee mine).

¹⁷⁶ Welch, 6 September 201, TS 95, 96, 98, 101-103, 105 and 122.

RECOMMENDATION 7

I recommend that the definition of “remote”, as currently applied by Toll Transport Pty Ltd be broadened to take into account communication difficulties experienced outside the metropolitan area. Drivers should be able to initiate assistance whenever required, wherever they are.

Kevin Tavener
Coroner
13 November 2012