

HSE Press Release: E069-04

## Supervisor fined for not doing safety check

A rail gang supervisor was fined a total of £2,000 for failing to carry out essential safety checks before work started on the installation of access steps at Waterloo Road in Sittingbourne on 11 March 2003. The gang drove a metal spike through a 33Kv oil filled cable. Fortunately there were no injuries, and services were not affected.

HSE investigated the incident and discovered that the supervisor, Mr Jason Robert Grindley, had not carried out a cable avoidance tool (CAT) scan to check for hidden cables where excavation work was to take place.

HSE's HM Railway Inspector Paul Appleton, who oversaw the investigation said: "This was a lucky escape. What makes this case so serious is that Mr Grindley not only failed to do the CAT scan, he misled others by telling them that he had. He then tried to cover up his error. He admitted all this during the investigation.

The law requires such checks to be undertaken before work starts, and that workers should take reasonable care of their own health and safety and that of others. I think the fine reflects the Magistrates' concern that none of this was done."

Mr Grindley pleaded guilty to two charges; breaching regulation 4 of the Construction (Health, Safety and Welfare) Regulations (CHSWR) 1996, and Section 7 of the Health and Safety at Work etc., Act (HSW Act) 1974 at Sittingbourne Magistrates' Court on 18 May 2004. The Court fined Mr Grindley £1,000 for each breach and awarded costs of £1,000 to HSE.

Mr. Grindley had a duty to assess site safety and in particular carry out a CAT scan to check for hidden cables at a site where a gang was to install access steps at a railway access point at Waterloo Road, Sittingbourne. He told the Controller of Site Safety that the site had been scanned two weeks prior to 11 March 2003, the day when work began. When interviewed by HSE Mr Grindley admitted that he should have carried out a CAT scan. He also admitted that he had misled others into believing that this had been done, and that after the accident he had tried to cover up the error and expressed remorse.

Regulation 4 of the CHSWR states:

(1) "Subject to paragraph (5), it shall be the duty of every employer whose employees are carrying out construction work and every self-employed person carrying out construction work to comply with the provisions of these Regulations insofar as they affect him or any person at work under his control or relate to matters which are within his control.

(2) It shall be the duty of every person (other than a person having a duty under paragraph (1) or (3)) who controls the way in which any construction work is carried out by a person at work to comply with the provisions of these Regulations insofar as they relate to matters which are within his control.

(3) Subject to paragraph (5), it shall be the duty of every employee carrying out construction work to comply with the requirements of these Regulations insofar as they relate to the performance of or the refraining from an act by him.

(4) It shall be the duty of every person at work-

(a) as regards any duty or requirement imposed on any other person under these Regulations, to co-operate with that person so far as is necessary to enable that duty or requirement to be performed or complied with; and

(b) where working under the control of another person, to report to that person any defect which he is aware may endanger the health or safety of himself or another person.

(5) This regulation shall not apply to regulations 22 and 29(2), which expressly say on whom the duties are imposed.

Regulation 12(8) of the CHSWR states: "No excavation work shall be carried out unless suitable and sufficient steps have been taken to identify and, so far as is reasonably practicable, prevent any risk of injury arising from any underground cable or other underground service."

Section 7 of the HSW Act states: "It shall be the duty of every employee while at work... to take reasonable care for the health and safety of himself and of other persons who may be affected by his acts or omissions at work...."

The maximum fine for a breach of a regulation in a Magistrates' Court is £5,000 and for a breach of Section 7 of the HSW Act the maximum fine is also £5,000