

**IN THE DISTRICT COURT
AT MANUKAU**

**I TE KŌTI-Ā-ROHE
KI MANUKAU**

**CRI-2017-092-005335
[2018] NZDC 22643**

MINISTRY FOR PRIMARY INDUSTRIES

Prosecutor

v

RONIT RITESH KUMAR

Defendant

Hearing: 3 July 2018

Appearances: A Jones for the Prosecutor
V Feyen for the Defendant

Judgment: 3 July 2018

NOTES OF JUDGE DAVID J HARVEY ON SENTENCING

[1] Ronit Kumar, you are appearing today for sentence, having pleaded guilty to one charge of making a statement or giving information that you knew to be false or misleading in a material particular to an official of the Ministry of Primary Industry.

[2] The brief summary of facts is that in late 2015 you knowingly supplied a fraudulent certificate and accompanying information to a senior quarantine officer, as evidence that you were in fact trained to carry out the duties as an accredited person, when in fact you were not, and that you had had no training whatsoever.

[3] You emailed the senior quarantine officer saying you had completed a course through MIT, the Manukau Institute of Technology, and had covered numerous

subjects which you listed in the email, and this resulted with you being issued with an accredited persons certificate.

[4] You had also made these claims to a recruitment company and to your employer, and your CV contained a number of irregularities as well. There was a document that had been prepared that was somewhat clumsy, but the errors that had been contained in that document were not picked up until a later stage.

[5] Essentially, what had happened was that you had tried to be accredited to open sea containers and that requires a proper training. Now that of course involves you in taking on a considerable amount of responsibility and having a high level of trust, and the concerns that the Ministry has, is that there would be a potential damage or risk to New Zealand's biosecurity because you, as a completely untrained person, ignorant in what is required, could well have let through all sorts of problematical biosecurity issues. The purposes of the Biosecurity Act 1993 of course are to preserve, as much as possible, the environment in New Zealand, an agricultural exporting country, and the influx of diseases we are well familiar with and it requires a high level of vigilance to ensure maintenance of the biosecurity situation, as far as this country is concerned.

[6] There are a number of aggravating circumstances surrounding this offending. Your lawyer, Ms Feyen, has addressed two of them. One of course is the breach of trust, the other is that it poses a significant risk to the biosecurity of New Zealand. Further, it is deliberate and calculated; further, it is forgery in circumstances that would amount to fraud. All I can say is that you are probably fortunate that you have not been charged with a more serious and potentially imprisonable offence.

[7] In addition too, it demonstrates a willingness to get involved in an area of corruption as far as established Governmental Authorities are concerned. This country has a high level of recognition for a lack of corruption within its Governmental Agencies and an action, such as yours if undetected, would bring that down.

[8] There are a number of cases which provide some guidance as far as sentencing is concerned. Judge Blackie, in the case of *Ministry for Primary Industries v Cui*

stated, the Court must be seen as taking a firm line against offenders who break the law as far as the illegal importation of such goods is concerned.¹ This was made quite clear by the New Zealand Court of Appeal in the case of *R v Nichols* report in July 1998. Deterrent sentences must be imposed and second chances cannot be afforded. Travellers must understand they are at risk of a substantial penalty if they breach New Zealand biosecurity law.² In that particular case Ms Cui was an experienced traveller and was well aware of New Zealand's requirements.

[9] Of course, that is not the case that is on all fours with yours, nor are there any strict guideline cases that cover your situation, but certainly the range of sentences that has been imposed in biosecurity breach cases, such as that of *Ministry for Primary Industries v Cui* and also the *Ministry for Primary Industries v Dale* and *Ministry for Primary Industries v Sdeong* provides some guidance. In the case of *Ministry for Primary Industries v Dayal*, Mr Dayal had fresh plant bulbs with him when he arrived in New Zealand, which he failed to declare. He declared some items that were suitable to bring into New Zealand but actually did not declare the bulbs, and the starting point was imposed in that case of some \$8000 by way of fine.³ *Ministry for Primary Industries v Sdeong* involved dried fish and animal skins and a starting point of between \$5000 and \$6000 was sought in that particular case.⁴

[10] There are some cases that have been put forward that are more analogous to your situation, namely the cases of *Ministry for Primary Industries v Lee*, *Ministry for Primary Industries v Pham* and *Ministry for Primary Industries v Sun*. These cases were discussed by counsel in their written submissions and also in oral submissions before me. As far as *Ministry for Primary Industries v Lee* was concerned, he was charged with the same offence provision and he had photoshopped photographs to show that a particular site had been ameliorated. The sentencing Judge commented that the Ministry does not have the resources to check every sea container and the defendant was accredited to do that and there was a gross breach of trust. The starting point in that case of \$4000 by way of fine was imposed.⁵ The cases of

¹ *Ministry for Primary Industries v Cui* [2015] NZDC 339.

² *R v Nichols* [1998] BCL 951.

³ *Ministry for Primary Industries v Dayal* [2017] NZDC 2341.

⁴ *Ministry for Primary Industries v Sdeong* [2017] NZDC 28978.

⁵ *Ministry for Primary Industries v Lee* Manukau District Court CRI-2015-092-4145.

Ministry for Primary Industries v Pham and *Ministry for Primary Industries v Sun* were strict liability cases and therefore differ to a slight degree from yours. Mr Pham released undeclared risk goods from a transitional facility. Mr Sun provided false or misleading or incomplete information to an official about goods to be imported.⁶ But those cases are not really strictly analogous with your case because your case involves an attempt to become an accredited person and not only doing that, but to provide false and fraudulent documentation in doing so. In my view therefore, the level of culpability for such an offence must be higher. In the case of *Ministry for Primary Industries v Lee* the defendant in that case was a trained operator. In your case you were completely untrained, and basically what would have happened, had you been accepted and given accreditation, means that you would have had absolutely no idea what it was that you were doing, and therefore, posed a significant and substantial risk to the biosecurity of New Zealand.

[11] Ms Jones has pointed out that since these cases have been decided there has been something of an increase in terms of the level of penalties that should be imposed, and certainly the risk to New Zealand biosecurity must mean that only those who have been properly accredited and properly trained, can be seen to be the proper people to deal with biosecurity issues, as far as our country is concerned. You actually kept up your façade of fraud and falsity for some considerable period of time, from October through to December, when your false errors were not picked up, and the risks arising from having untrained operators within our biosecurity system must be enormous.

[12] It is argued that the deterrence and denunciation must be the principle factors and that certainly comes through from the cases, particularly that of *R v Nichols*. This deliberate and calculated offending puts New Zealand's biosecurity at serious risk and must be deterred.

[13] The maximum penalty in this particular case is \$100,000 and it has been argued that a starting point fine of \$8000 should be imposed.

⁶ *Ministry for Primary Industries v Fam* Manukau District Court 21 June 2013 Judge Gittos, and *Ministry for Primary Industries v Sun* Manukau District Court 27 June 2015 Judge McAuslan.

[14] Ms Feyen calls it in at something a little less, based on the cases of *Ministry for Primary Industries v Lee*, *Ministry for Primary Industries v Pham* and *Ministry for Primary Industries v Sun*, but having regard to the particular and unique facts in this case, coupled with the potential for risk of having a completely untrained operator available as a biosecurity officer, I consider that the proper level should be a starting point of \$8000. I would make the observation that that is far less than 10 percent of the maximum.

[15] You entered a not guilty plea in June of 2017 and you did so on the eve of this matter going to a defended hearing. You can hardly claim a benefit for an early guilty plea in those circumstances, and I consider that a 15 percent discount for a guilty plea should be granted. I do note that you have no previous convictions.

[16] Accordingly, you will be convicted and fined \$6800 and ordered to pay Court costs of \$130.

David J Harvey
District Court Judge