

Businessman escapes jail term after killing a New Zealand picket

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30 June 2001

Derek Powell, a 53-year-old businessman convicted of manslaughter after killing a woman on a New Zealand picket line, walked out of the High Court last month without having to face jail. At the end of a two-week trial, the jury found Powell guilty of causing the death of Christine Clarke, a 45-year-old mother of two and the wife of a port worker. Powell had run Clarke down with his four-wheel drive vehicle when she joined picketing wharf workers at the Port of Lyttelton, near Christchurch late in 1999.

The presiding judge, Justice Panckhurst, on June 15 sentenced Powell to nine months' periodic detention. In the New Zealand justice system, periodic detention is a non-prison term, usually reserved for minor offenses, involving weekend community work under police supervision.

The conclusion of this case, however, had a definite political content. Justifying the manifestly light sentence, Justice Panckhurst went to considerable lengths to shift the blame for her death from Powell onto the picketing workers.

Christine Clarke died in the Christchurch Hospital intensive care unit on New Years' Eve, 2000. She had been admitted with severe head and leg injuries after being run down during the second day of the picket, organised to protest a decision by the Lyttelton Port Company to contract out its coal loading operations.

According to evidence given at the trial, Powell had already driven past the picket several times. The manager of a luxury boat importing company, he had been carrying out business at the wharf. At about midday, he returned again, driving his vehicle at speed towards the picket line before braking heavily. He then gradually moved the vehicle closer to the picket line, stopping within inches of the pickets' legs.

Twelve workers testified that Powell then suddenly

accelerated at the picket, striking Clarke and throwing her momentarily into the air before she fell back hitting her head on the ground. According to one worker who had been standing nearby, Powell "looked her straight in the eyes and booted it. He went right over the top of her."

The motives for Powell's decision to accelerate through the picket line were the subject of dispute at the trial. The prosecution argued that Powell had become either impatient or angry at being held up, and simply decided to force his way through.

All the prosecution witnesses agreed that there was no provocation or physical altercation prior to Powell's decision to drive forward. In any case Powell would have been allowed to drive on after several minutes. The defence argued, however, that Powell was suddenly subjected to physical abuse from the pickets through the open driver's side window of his vehicle, and that he had driven forward in "self-defence".

Powell had only one witness, the driver of a truck following behind his vehicle, to support his version of events. Moreover, television news footage of the picket, taken just a few minutes before the incident, showed Powell's car stationary before a calm and orderly picket line. The window of Powell's car was open, and his arm hanging outside of the vehicle.

In order to sustain the claims of an unprovoked physical attack on Powell, his defence was forced to argue that the mood of the picket suddenly changed, for no apparent reason, and this led to significant violence being committed against him. Powell denied that there had been any verbal altercation on his part which might have provoked a response from the picketers.

In summing up, the prosecution pointed out that even if Powell had felt himself under threat he could have reversed away from the picket. In taking the action he

did, he carried the responsibility for killing Clarke by driving, at the very least, in a dangerous and careless manner directly at the line of pickets.

The jury clearly concurred with the prosecution's arguments and found the businessman guilty. However, when the judge reconvened the court three weeks later for sentencing, he had decided to give significant weight to Powell's version of the events.

Justice Panckhurst began by confirming Powell's culpability in Clarke's death, which he said was a tragedy for her family. He went on to declare, however, his intention to sentence Powell on the basis that he had been "under threat" in the moments before he drove forward. To justify his position, the judge referred to television footage shot, not at the time, but earlier in the day, which he claimed showed aggressive "male picketing workers behaving badly".

In a further display of class prejudice, the judge went on to deliver a lecture to the picketers saying that, in blocking a highway, they were acting in a manner that was indefensible: "Freedom of movement on the highways is a fundamental right," he declared. "To empower a group of persons to stop traffic, even temporarily for their own purposes, was in my view to court danger."

Rounding on the police for failing to act more aggressively against the picket, the judge demanded to know why a police decision to allow the pickets onto the roadway "wasn't reviewed after the experience of the first day of the picket line". He was echoing one of the key arguments of Powell's defence, which claimed that the "illegality of the picket" was the central issue in the case.

Even the police were compelled to make a statement opposing the unusual criticism from the high Court bench. Canterbury police district commander Superintendent John Reilly denied that motorists had been "unlawfully detained" by the picket at any stage. He reiterated that Powell's actions were the result of "his own decisions" and were not imposed on him by the police, the picket or anyone else.

Justice Panckhurst's comments that the alleged "illegality" of a protest or picket in some way justifies the deliberate killing of a protester certainly reflect a deeply ingrained class hostility. More than that it points to a wider discussion in ruling circles over the necessity of far tougher police action against protests and strikes.

Following criticisms of heavy-handed police action against a protest during the state visit by Chinese President Jiang Zemin in 1999, a new set of instructions were laid down for police. Justice Panckhurst sends a signal to the police that if they wade into protesters and strikers they can expect, at the very least, to receive highly sympathetic treatment in his court.



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