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January 24, 1967

Mr. Sam L. Casalina
Safety Director
IBEW Local 1245
1918 Grove Street
Oakland, California 94612

Dear Sam:

Your letter of November 28, 1966 raises several questions concerning whether individual employees may be held responsible for accidental death, injury or damage to property in various situations.

If the accidental death, injury or damage to property occurs to a third person, the third person may proceed against either the employee, the employer or both in an attempt to prove negligence. The employer is civilly liable for negligent acts committed by his employees when they are in his service and acting within the scope of their employment. This applies even to willful and malicious acts committed without authority or directly contrary to express orders. However, if the third person recovers against the employer and it can be shown that the employee was negligent, the employer may recover against the employee for the damages. (See Labor Code Sec. 2865.)

As indicated above, the third person may elect to proceed against the employee alone and recover damages for negligence from him alone. In certain specific cases, one employee may even maintain an action against a fellow employee for injuries suffered in the course of employment, such as where the fellow employee's intoxication caused the injury. (See Labor Code Sec. 3601)

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In answer to your specific questions:

1. Where both the employer and employee cause injury, death or damage to property in a situation which they both know is hazardous, either or both could be found liable for the full damages.

2. If the employee does not know a piece of equipment is defective he could probably not be held liable in damages unless it could be shown that he should have known it or unless his negligence in some other way contributed to the accident.

3. The third situation you pose is more difficult and liability of the employee would depend on whether the use of the "short-cut method" would be considered negligent. This would depend on whether or not he should have realized the dangers involved in the use of this method.

The situations you describe also raise questions of possible criminal liability and, of course, you have specifically described in your letter an actual situation in which an employee was found guilty of manslaughter. Any situation in which it is possible to show that an individual acted in a particular manner with reckless disregard for human life or with full knowledge of the damages involved can be one in which criminal liability might well be found for resulting injuries or death.

I hope this answers your questions. Please feel free to call on me for any clarification or additional information that you may need.

Very truly yours,

/s/ DONALD S. TAYER

DONALD S. TAYER

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