

Occupational Health  
and Safety Tribunal Canada



Tribunal de santé et  
sécurité au travail Canada

Ottawa, Canada K1A 0J2

**Case No.:** 2010-01  
**Decision No.:** OHSTC-10-002(S)

**CANADA LABOUR CODE  
PART II  
OCCUPATIONAL HEALTH AND SAFETY**

Canada Post Corporation  
*appellant*

and

Canadian Union of Postal Workers  
*respondent*

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February 18, 2010

This request for a stay of a direction was heard by Appeals Officer  
Richard Lafrance

**For the appellant**

Mr. Stephen Bird, Counsel, Bird Richard

**For the respondent**

Mr. Thomas McDougall, Counsel, Perley-Robertson, Hill & McDougall LLP

- [1] This matter is in regards to a request for a stay of a direction. The direction was issued on December 17<sup>th</sup>, 2009, following the investigation by health and safety officer (HSO) McKeigan of a complaint made by the Canadian Union of Postal Workers (CUPW). At the conclusion of his investigation, HSO McKeigan determined that Canada Post was in contravention of the *Canada Labour Code* (Code) because they had instituted two policy committees, contrary to subsection 134.1(3) of the Code.
- [2] On January 14, 2010, Mr. Bird, on behalf of the Corporation, appealed the direction and requested a stay of the said direction.
- [3] A hearing was held on January 28 and February 8 and 12, 2010, in Ottawa, Ontario. Having carefully considered the parties arguments, I am ordering a stay of the direction until a decision on the merit of the appeal is rendered by an Appeals Officer.
- [4] The reasons in support of this decision will be forwarded to the parties in due time.

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Richard Lafrance  
Appeals Officer

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**Decision No.:** OHSTC-10-002(S)(R)  
**Case No.:** 2010-01  
**Rendered at:** Ottawa, 04-03-2010

**Canada Post Corporation**

appellant

and

**Canadian Union of Postal Workers (CUPW)**

respondent

Matter: This concerns an application for a stay of a direction

Decision: The stay of the direction is granted

Decision rendered by: Mr. Richard Lafrance, Appeals Officer

For the applicant: Mr. Stephen Bird

For the respondent: Mr. Thomas McDougall

Canada 

## Reasons

[1] This concern an application for a stay of a direction filed on January 14, 2010 by Canada Post Corporation (CPC). The direction was issued by health and safety officer Bruce McKeigan (HSO) on December 17<sup>th</sup>, 2009.

### Background

[2] The direction under appeal has been issued by the HSO following his investigation of a complaint made by the Canadian Union of Postal Workers (CUPW). CUPW alleged that Canada Post was in contravention of the *Canada Labour Code* (the Code) because they had instituted a second Policy Committee without their consent, to deal with Rural and Suburban Mail Carriers (RSMC) occupational health and safety (OHS) matters. This, in the HSO's opinion, was contrary to subsection 134.1(3) of the Code.

[3] The direction issued to the Corporation states:

The said health and safety officer is of the opinion that the following provision of the *Canada Labour Code*, Part II has been contravened:

134.1(3)(a) – *Canada Labour Code*,

(3) An employer may establish more than one policy committee with the agreement of

(a) the trade union, if any, representing the employees;.

**The employer has established more than one policy committee without the agreement of the trade union.**

Therefore you are HEREBY DIRECTED, pursuant to paragraph 145(1)(a) of the *Canada Labour Code*, Part II, to terminate the contravention no later that January 15, 2010.

Further, You are HEREBY DIRECTED, pursuant to paragraph 145(1)(b) of the *Canada Labour Code*, Part II, within the time specified by the health and safety officer, to take steps to ensure that the contravention does not continue to reoccur.

[4] Further to a hearing held on January 28, February 8 and 12, 2010, I ordered<sup>1</sup> a stay of the direction on February 17, 2010 until a decision on the merit of the appeal was rendered by an Appeals Officer. Following are the reasons for the order.

### Analysis

[5] Subsection 146.(2) of the Code states that:

146(2) Unless otherwise ordered by an appeals officer on application by the employer, employee or trade union, an appeal of a direction does not operate as a stay of the direction.

[6] I derive my authority from the Code, and must therefore exercise my discretion in a way that furthers the objective of the legislation *i.e.* the protection of the health and safety of employees.

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<sup>1</sup> Occupational Health and Safety Tribunal Canada, Decision No.: OHSTC-10-002(S)

[7] In the exercise of my discretion to grant a stay, I have applied the following criteria developed by the Supreme Court of Canada in *Manitoba (Attorney General) v. Metropolitan Stores*<sup>2</sup> as modified and adapted by the Occupational Health and Safety Tribunal Canada (OHSTC):

- 1) The applicant must satisfy the Appeals Officer that there is a serious question to be tried as opposed to a frivolous or vexatious claim.
- 2) The applicant must demonstrate that he would suffer significant harm if the direction is not stayed.
- 3) The applicant must demonstrate that should a stay be granted, measures will be put in place to protect the health and safety of employees or any person granted access to the work place.

**Is the question to be tried serious as opposed to frivolous or vexatious?**

[8] I agree with the arguments put forward by Mr. Stephen Bird, counsel for the applicant, that the appeal of the direction calls for the interpretation of a section of the Code which has not previously received judicial interpretation. I believe that the consequences of the decision will in any event affect the manner of the way Policy Health and Safety Committees may be established in the future. Consequently, I find that there is a serious issue to be resolved.

**Will the applicant suffer significant harm if the direction is not stayed?**

[9] On the second criteria, S. Bird contended that the direction has a significant impact on employee's health and safety as well as Canada Post's ability to fulfill its obligations under Part II of the Code.

[10] Mr. Jeff Fraser, Manager Health and Safety for the CPC, explained that the health and safety concerns of RSMCs were more extensive and different from those of the Urban Postal Operations (UPO). He went on to explain the differences between the two groups with regard to representation as well as the different nature of the work and performance of duties implied in each group.

[11] Mr. John Pollack, General Manager, Addressing and Delivery, testified that HSO McKeigan's direction would result in having RSMCs matters being referred to a "combined" Policy Committee and this would impede Canada Post's ability to have the most knowledgeable representatives participate in Policy Committees discussions. In addition, he stated that a vast majority of issues discussed at the Urban Committee have no direct application to RSMCs.

[12] Ms. Tammy Tompalski, Manager Learning and Development, testified about the inefficiencies of the present UPO Committee in addressing the needs of the UPO group.

[13] Mr. Thomas McDougall, counsel for the respondent, averred that the CPC would suffer no harm if the direction was enforced immediately. He argued that the UPO

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<sup>2</sup> [1987] 1 S.C.R. 110

Committee could very well continue as before and invite specialists in the domain of concern to discuss any specific RSMC health and safety matters.

[14] Mr. McDougall called Mr. Serge Champoux, Permanent Health and Safety Representative, CUPW who testified that the UPO Policy Committee is more than able to handle the health and safety concerns of the RSMCs. He stated that the OHS concerns of RSMCs are not much different from those of the other employees.

[15] Mr. Champoux testified that the status quo means that the Union must dedicate double time with the same resources to two committees putting great strain on the Union representatives.

[16] I retain from the evidence that while the union representatives are the same for both Policy Committees, Canada Post has different members on the two committees in order to have, as they say, the most knowledgeable representatives on the Committees.

[17] If I do not grant the stay, given the complexity of establishing and organizing an OHS Committee let alone a combined Policy OHS Committee, I believe that it could take a significant amount of time before such a committee could be functional.

[18] Considering that, the appeal will be heard on its merits May 27 and 28, 2010, and considering that OHS Committees are one of the Code's main vehicle to foster and promote health and safety in the workplace, I believe it would be more disruptive and precarious for the health and safety of RSMCs to change the present structure of the Policy Committees for the short period between now and the disposition of this appeal. Consequently, I conclude that the Corporation at large, which includes the workforce, could significantly be harmed if the stay was not granted.

[19] Before moving to the third criterion, I would like to comment on Mr. Bird's allegation that HSO McKeigan's actions gave rise to a reasonable apprehension of bias which constitutes a breach of the rules of natural justice. Mr. Bird submits that this makes Mr. McKeigan's decision void and that I am consequently required to stay the decision (direction) under appeal. Mr. Bird also argues the harm occasioned to the CPC by having to comply with a "void" decision. Mr. Bird called Mr. Fraser and Ms. Chayer-Hayers who testified on the HSO actions and communications during his investigation.

[20] There is no question that an HSO is held, in his or her investigation, to procedural fairness. However, as an appeals officer designated under the Code, I hold hearings *de novo* and am entitled to hear evidence that was not before the HSO and to substitute my views for that of the latter. For that reason, I believe it is not necessary, in the context of an application for a stay, to establish a distinction between a direction that is supposedly void and one that is appealed under different grounds.

**What measures will be put in place to protect the health and safety of employees or any person granted access to the work place if the stay is granted?**

[21] On this criterion, Mr. Bird affirmed that the status quo was the best possible way to assure the health and safety of the RSMCs. He maintained that the health and safety of the RSMCs would be enhanced, as the present structure allows for the continuation of discussion already ongoing on various issues. As well, under the present arrangement the CPC maintains knowledgeable decision makers as members of the Committee.

[22] To this, Mr. McDougall argued that the health and safety of the RSMCs would benefit if the direction was maintained, as the Union's members on those Committees would not have to be stretched to participate on two Committees. Consequently, he held that the health and safety concerns of the RSMCs would be better addressed under a combined committee.

[23] I retain from the evidence that the present structure of the two Policy Committees has been functional over the past several years. Although not perfect, as testimonies indicated, I believe that for the period of time left, until the resolution of this appeal, the health and safety of RSMCs will be better protected if the stay of the direction is granted.

**Decision**

[24] Consequently, I am granting the stay of the direction issued by health and safety officer McKeigan to Canada Post on December 17<sup>th</sup>, 2009.

Richard Lafrance

Appeals Officer