

Occupational Health
and Safety Tribunal Canada



Tribunal de santé et
sécurité au travail Canada

Ottawa, Canada K1A 0J2

Citation: *Handlex Inc. (Re)*, 2010 OHSTC 8

Date: 2010-06-02
Case No.: 2010-20
Rendered at: Ottawa

Handlex Inc., Appellant

Matter: Appeal under subsection 146(1) of the *Canada Labour Code* of a direction issued by a health and safety officer

Decision: The direction is varied

Decision rendered by: Mr. Pierre Guénette, Appeals Officer

Language of decision: English

For the appellant: Ms. Anita McCormick, Director, Safety Security & Compliance

Canada

REASONS

[1] These are the reasons for my decision rendered orally on May 20, 2010.

[2] The appellant, Ms. Anita McCormick, on behalf of Handlex appealed a direction issued pursuant to subsection 145(1) of the *Canada Labour Code* (the Code) by Health and Safety Officer Amy Ferguson (HSO Ferguson) on April 30, 2010. Ms. McCormick is requesting a modification of the compliance date.

[3] A stay of the direction was requested pending the resolution of the appeal.

[4] Since Ms. McCormick did not oppose the content of the direction, I decided to proceed immediately with the appeal.

[5] I heard the appeal on May 20, 2010, in Ottawa, Ontario, by way of teleconference.

Background

[6] Handlex Inc. is a ground-handling provider for eleven airlines, at the Lester B. Pearson International Airport. The company operates on a 24hrs/7 day week basis.

[7] Following an inspection at the departure level of Lester B. Pearson Airport, HSO Ferguson identified violations of the Code. Consequently, she issued a direction with two items, to Handlex Inc. on April 30, 2010.

[8] The direction reads:

IN THE MATTER OF THE CANADA LABOUR CODE PART II – OCCUPATIONAL HEALTH AND SAFETY

DIRECTION TO THE EMPLOYER UNDER SUBSECTION 145(1)

On April 29, 2010, the undersigned health and safety officer conducted an inspection in the work place operated by Handlex Inc., being an employer subject to the *Canada Labour Code*, Part II, at 6300 Silver Dart Dr, T3 – Departure level, Room G210B, Lester B. Pearson Airport, Mississauga, Ontario, L5P 1B2, the said work place being sometimes known as Handlex Inc.

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

No./ No: 1

Paragraph 125(1)(z.01) - Canada Labour Code, Part II,

Without restricting the generality of section 124, every employer shall, in respect of every work place controlled by the employer and, in respect of every work activity carried out by an employee in a work place that is not controlled by the employer, to the extent that the employer controls the activity, ensure that members of policy and work place committees and health and safety representatives receive the prescribed training in health and safety and are informed of their responsibilities under this Part

The employer has failed to ensure that members of the work place health and safety

committee have been trained in health and safety, the Act and Regulations and have been informed of their responsibilities as committee members.

No./ No: 2

Paragraph 125.(1)(z) – Canada Labour Code Part II,

Without restricting the generality of section 124, every employer shall, in respect of every work place controlled by the employer and, in respect of every work activity carried out by an employee in a work place that is not controlled by the employer, to the extent that the employer controls the activity, ensure that employees who have supervisory or managerial responsibilities are adequately trained in health and safety and are informed of the responsibilities they have under this Part where they act on behalf of their employer

The employer has failed to ensure that supervisors and managers have been adequately trained in health and safety and are informed of their responsibilities under the Code.

Therefore, you are HEREBY DIRECTED, pursuant to subsection 145(1)(a) of the *Canada Labour Code*, Part II, to terminate the contraventions no later than May 21, 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 do not continue or reoccur.

Issued at Toronto, Ontario, this 30th day of April, 2010.

Amy Ferguson
Health and Safety Officer
Id No ON3052

Issue

[9] The issue in this case is whether I should modify the compliance date of the direction.

Appellant's submissions

[10] Ms. McCormick confirmed that the company complied with item 1 of the direction.

[11] The employer has subcontracted a health and safety organisation to provide a 3-day management training. 3 courses are scheduled in June 2010.

[12] However, a minimal number of managers will not be able to attend one of the courses because of operational requirements and scheduled annual vacations.

[13] For these reasons, she requests a modification of the compliance date for item 2 of the direction issued by HSO Ferguson on April 30, 2010.

Analysis

[14] The issue that I must address is whether the compliance date for the direction has to be modified.

[15] Under paragraph 146.1(1)(a) of the Code, an appeals officer has the power to vary a

146.1 (1) If an appeal is brought under subsection 129(7) or section 146, the appeals officer shall, in a summary way and without delay, inquire into the circumstances of the decision or direction, as the case may be, and the reasons for it and may

(a) vary, rescind or confirm the decision or direction [...]

[16] The evidence demonstrates that the employer is not appealing the direction. Ms. McCormick is simply requesting an extension of time to comply with item 2 of the direction.

[17] Ms. McCormick confirmed that the employer already complied with item 1 of the direction.

[18] In addition, she confirmed that she informed in writing HSO Ferguson of the actions taken by the employer to comply with the direction.

[19] Ms. McCormick informed me that the last 8 managers to be trained are scheduled for their training in July 2010.

[20] The appellant provided me with sufficient information to make a decision on the issue.

Decision

[21] This written decision confirms my oral decision rendered on May 20, 2010, that the compliance date for the direction is modified. Therefore, I vary the direction issued on April 30, 2010 by HSO Ferguson. The date to terminate the contravention will be modified from May 21, 2010 to August 20, 2010. The direction is appended to this decision.

Pierre Guénette
Appeals Officer

IN THE MATTER OF THE CANADA LABOUR CODE
PART II – OCCUPATIONAL HEALTH AND SAFETY

DIRECTION TO THE EMPLOYER UNDER SUBSECTION 145(1)

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The employer has failed to ensure that members of the work place health and safety committee have been trained in health and safety, the Act and Regulations and have been informed of their responsibilities as committee members.

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Without restricting the generality of section 124, every employer shall, in respect of every work place controlled by the employer and, in respect of every work activity carried out by an employee in a work place that is not controlled by the employer, to the extent that the employer controls the activity, ensure that employees who have supervisory or managerial responsibilities are adequately trained in health and safety and are informed of the responsibilities they have under this Part where they act on behalf of their employer

The employer has failed to ensure that supervisors and managers have been adequately trained in health and safety and are informed of their responsibilities under the Code.

Therefore, you are HEREBY DIRECTED, pursuant to subsection 145(1)(a) of the *Canada Labour Code*, Part II, to terminate the contraventions no later than [August 20, 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 [appeals officer], to take steps to ensure that the contravention do not continue or reoccur.

[Issued orally in Ottawa, Ontario, this 20th day of May, 2010].

Pierre Guénette
Appeals Officer