

Occupational Health
and Safety Tribunal Canada



Tribunal de santé et
sécurité au travail Canada

Ottawa, Canada K1A 0J2

Citation: Monam Industries Inc., 2010 OHSTC 14

Date: 2010-10-08
Case No.: 2010-23
Rendered at: Ottawa

Between:

Monam Industries Inc., Appellant

TRANSLATION

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 confirmed.

Decision rendered by: Katia Néron, Appeals Officer

Language of decision: French

For the appellant: Jacques Pelletier, President, Monam Industries Inc.

REASONS FOR DECISION

[1] This concerns an appeal filed on May 31, 2010 by Jacques Pelletier, President of Monam Industries Inc., against a May 21, 2010 direction issued by Health and Safety Officer (HSO) Régis Tremblay under subsection 146 (1) of the *Canada Labour Code* (the Code).

[2] Mr. Pelletier argued that the direction concerned is not founded.

Background

[3] During a January 27, 2010 general inspection conducted in the work place of Monam Industries Inc. located in Chambly, Quebec, HSO Tremblay observed that the rear tires of one of the two lift trucks operated by the employees in the warehouse at that location, the Klark brand lift truck #286, was damaged. In HSO Tremblay's opinion, the wear on these tires was such that it could affect the stability of the lift truck while it was being operated, for the following reason.

[4] The rear wheels of a lift truck are the drive wheels and turn continually while the lift truck is moving. As a result, in HSO Tremblay's opinion, poor condition of the tires on these wheels may cause the lift truck to overturn.

[5] Following this observation, HSO Tremblay obtained from Mr. Pelletier an Assurance of Voluntary Compliance (AVC) requesting, under point 11 of this document, that the necessary steps be taken to correct this situation by February 10, 2010.

[6] In signing the AVC, however, Mr. Pelletier indicated to HSO Tremblay that no corrective action would be made with regard to the tires concerned because, in his opinion, the damage to these tires could not affect the stability or the safe operation of the lift truck.

[7] HSO Tremblay informed Mr. Pelletier that only the opinion of a qualified person could satisfy him that the wear on the tires concerned did not make the lift truck unstable while it was being operated.

[8] After written messages aimed at obtaining the corrective action requested were exchanged and were unsuccessful, HSO Tremblay decided to visit the location again on April 28, 2010. At that time he had a mechanic from the company measure the diameter of the left rear tire of the lift truck in order to ascertain the wear and compare it with the manufacturers recommended standards. These standards were provided to him by Jean-Louis Marcoux, an experienced instructor in the safe operation of lift trucks who works in technical support at Liftow Ltd., a dealer in lift trucks. These specifications recommend that a tire with a diameter, when new, of 22 inches be changed when its diameter, at the centre of the tire, reaches 19 $\frac{3}{4}$ inches. The diameter measured that day at the centre of the tire was 21.6 inches.

[9] Despite this result, being of the opinion that the tires concerned were nevertheless much damaged on the sides (pieces torn away and deep cracks), HSO Tremblay decided to take photographs and send them to Mr. Marcoux in order to obtain his opinion. In a May 5, 2010 email to HSO Tremblay, Mr. Marcoux wrote as follows:

[Translation]

At first glance these tires are completely finished.
There are no longer any traction marks.
The cracks on the sides and in the centre appear to be quite deep.
I strongly recommend that they be changed.

[10] On the basis of this opinion, and since Mr. Pelletier still refused to replace the tires concerned, HSO Tremblay decided to issue the direction that is the subject of the present appeal. The direction reads as follows:

[Translation]

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

DIRECTION TO THE EMPLOYER UNDER
SUBSECTION 141(1)

On April 28, 2010, the undersigned health and safety officer conducted an inspection of the work place (OHS follow-up) operated by Monam Industries Inc., an employer subject to Part II of the *Canada Labour Code* and located at 2130, boulevard Industriel, Chambly QC, the said location sometimes known as _____.

During the previous inspection, conducted on January 27, 2010, the undersigned officer received an Assurance of Voluntary Compliance (AVC) from the employer stating, in response to point 11 noting that the left rear wheel of propane lift truck #286 is damaged, that the damage to the left rear wheel of the said lift truck in no way jeopardizes the stability or the operation of the lift truck and that no corrective action will be taken in this regard.

Accordingly, you are **HEREBY DIRECTED** under paragraph 141(1)(a) of the *Canada Labour Code*, Part II, to have conducted, by a person qualified in lift trucks, an inspection of the rear tires of the green Clark brand lift truck identified by the number 286 in black, in order to ensure that its operation does not cause a hazard or loss of control, for the protection of the operator and the occupants of the work place.

In addition, you are **HEREBY DIRECTED** to obtain and to present to the undersigned health and safety officer an inspection report signed by the qualified person no later than June 4, 2010.

Issued at Montréal, this 21st day of May, 2010. [...]

[11] On October 7, 2010, a hearing into the present matter was held by conference call.

Issue

[12] At issue in the present case is whether the May 21, 2010 direction issued by HSO Tremblay was well founded.

Appellant's Submissions

[13] While admitting that the rear tires of the lift truck concerned are damaged, Mr. Pelletier argued that, in his opinion, this wear can have no effect on the stability or the safe operation of the lift truck.

[14] Mr. Pelletier stated that he nevertheless had Bernard Tremblay of Belisle Tire, the supplier of the tires on the lift truck concerned, measure the wear on the rear tires of the lift truck. According to Mr. Pelletier, the measurement obtained is a diameter of 21 5/8 inches in the centre of the tire; according to the information provided by Mr. Tremblay to Mr. Pelletier, it is recommended that the tires concerned be replaced at a diameter of 19¾ inches.

[15] According to Mr. Pelletier, the original diameter of the rear tires of the lift truck concerned, when new, was 22.7 inches.

Analysis

[16] As indicated above, in the present case I must decide whether the May 21, 2010 direction issued by HSO Tremblay was well founded.

[17] According to the documents attached to HSO Tremblay's investigation report and the measurements taken of the tires concerned, the wear on the rear tires on the lift truck concerned is within acceptable limits under the recommended standards. These standards recommend that a tire with a diameter, when new, of 22 inches be changed when its diameter, at the centre of the tire, reaches 19 ¾ inches.

[18] On the other hand, the photographs of the rear tires of the lift truck concerned found in the documents attached to HSO Tremblay's report show that these tires are damaged.

[19] As well, in the written opinion of an experienced instructor in the safe operation of lift trucks to whom HSO Tremblay sent these photographs, these tires were [translation] "completely finished", there were "no longer any traction marks" on them, and he recommended "strongly [...] that they be changed".

[20] In light of the foregoing, I am not satisfied, as the appellant alleged, that the damage to the tires concerned may not cause a hazard of the lift truck overturning while it is being operated.

[21] As well, under paragraph 141(1)(a) of the *Code*, a health and safety officer designated under the *Code* may direct an employer to conduct an inspection or investigations. This paragraph reads as follows:

(1) Subject to section 143.2, a health and safety officer may, in carrying out the officer's duties and at any reasonable time, enter any work place controlled by an employer and, in respect of any work place, may

(a) conduct examinations, tests, inquiries, investigations and inspections or direct the employer to conduct them; [...]. [Emphasis added]

[22] On the basis of all the foregoing, I am of the opinion that it was founded for HSO Tremblay, as authorized under paragraph 141(1)(a) of the *Code*, to request that Monam Industries Inc. have conducted, by a person qualified in lift trucks, an inspection to determine whether the existing damage to the rear tires of the lift truck concerned would cause hazards or loss of control of the lift truck, in order to ensure the protection of the operator and of pedestrians who might walk near the lift truck while it is being operated.

[23] For this reason, I am of the opinion that the direction being contested in the present case must be confirmed.

Decision

[24] For these reasons, as indicated orally to Mr. Pelletier on October 7, 2010, I confirm the May 21, 2010 direction issued by HSO Tremblay.

Katia Néron
Appeals Officer