

Tribunal de santé et
sécurité au travail Canada



Occupational Health
and Safety Tribunal Canada

Ottawa, Canada K1A 0J2

Citation: Bell Canada, 2010 OHSTC 16

Date: 2010-10-15
Case No.: 2010-36
Rendered at: Ottawa

Between:

Bell Canada, Appellant

and

Communications, Energy and Paperworkers Union of Canada, Intervenor

Matter: Request for a stay of a direction in accordance with subsection 146(2) of the *Canada Labour Code*.

Decision: The request for a stay is granted

Decision rendered by: Mr. Pierre Guénette, Appeals Officer

Language of decision: English

For the appellant: Ms. Maryse Tremblay, Counsel, Heenan Blaikie

For the intervenor: Ms. Micheline Blackburn, National Representative, Communications, Energy and Paperworkers Union of Canada

Canada

REASONS

[1] This concerns an application for a stay of a direction filed on September 23, 2010 by Ms. Tremblay, on behalf of Bell Canada. The direction was issued on August 24, 2010, by Health and Safety Officer Jimmy Ammoun (HSO Ammoun).

Background

[2] The direction under appeal was issued following a workplace inspection. The direction issued to Bell Canada states:

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

No. 1

Paragraph 125.(1)(z.12) of the Canada Labour Code, Part II

The employer shall ensure that the work place committee or the health and safety representative inspects each month all or part of the work place, so that every part of the work place is inspected at least once each year.

The employer has failed to ensure that each of the following work places have been inspected monthly as prescribed:

- 725 Colborne Street, London, ON
- 100 Dundas Street, Talbot Square, London, ON
- 211 Lochiel Street, Sarnia, ON
- 1149 Goyeau Street, Windsor, ON
- 110 King Street W. Hamilton, ON
- 160 Bay Street N., Hamilton, ON
- 20 Hunter Street, Hamilton, ON
- 63 King Street, St. Catharines, ON
- 86 Market Street, Brantford, ON

Therefore, you are HEREBY DIRECTED, pursuant to paragraph 145(1)(a) of the *Canada Labour Code*, Part II, to terminate the contravention no later than September 30th, 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 or reoccur.

[3] On September 23, 2010, Ms. Tremblay, on behalf of Bell Canada, appealed the direction and requested a stay of direction. In support of the request for a stay, she submitted arguments to the Appeals Officer. The Communications, Energy and Paperworkers Union of Canada (CEP) did not oppose the request for a stay. The CEP status in this appeal is that of an intervenor.

[4] The Appeals Officer held a teleconference on September 29, 2010 to receive supplementary arguments and clarifications. The participants to the teleconference were Ms. Tremblay, counsel for Bell Canada and Ms. Blackburn, National Representative for CEP.

[5] At the end of the teleconference, I ordered a stay of the direction until a decision on the merit of the appeal is rendered. Following are the reasons for the order.

Analysis

[6] Subsection 146(2) of the *Canada Labour Code* (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.

[7] To decide on the employer's request I must exercise my discretion in a way that furthers the objective of the legislation, that is the protection of the health and safety of employees.

[8] In the exercise of my discretion to grant a stay, I will apply the following criteria developed by the Supreme Court of Canada in *Manitoba (Attorney General) v. Metropolitan Stores*¹ as modified and adapted by the Occupational Health 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 a frivolous or vexatious claim?

[9] Ms. Tremblay submitted that the appeal is about whether the employer complies with the requirements of subsection 125(1)(z.12) of the Code when the "work place health and safety committee 6005" (Committee) inspects the work place by portion of the territory on a monthly basis. Therefore, it is a question with health and safety ramifications.

¹ [1987] 1 S.C.R. 110

[10] I am satisfied by the employer' submissions that there is a serious question to be tried in this appeal.

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

[11] Ms. Tremblay submitted that Bell Canada obtained an exemption in 1999, with respect to the requirements of subsection 135(1) of the Code by Human Resources Development Canada – Labour Program. The existing Committee structure is attached to a territory rather than a specific building.

[12] Ms. Tremblay argued that if the employer is required to ensure that the Committee has to inspect each building on a monthly basis, the employer anticipates that the Committee will need an additional 30 person-hours per month to conduct those inspections and the related travel. Therefore, four additional members would have to be appointed to the Committee. The employer will have to alter the Committee structure that has been approved by the CEP and that is in place for more than ten years. Those changes would cause Bell Canada to suffer great and unnecessary costs. For those reasons, the employer considers that it will suffer significant harm if the direction is not stayed.

[13] In addition, Ms. Blackburn explained that presently a work place inspection is conducted by two members of the Committee (one manager and one employee). She said that if the direction is not stayed, then an inspection team will have to do extensive travel across Southern Ontario to comply to the direction. Consequently, those persons will be away from their office more often.

[14] I am convinced that Bell Canada will suffer significant harm if the direction is not stayed because the work organization of each work unit will be disrupted. The employer will have to assign more qualified resources to conduct inspections in each building and consequently each work unit would have to ensure the availability of additional replacement employees. In addition, the Committee's structure will have to be modified to manage these inspections.

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?

[15] Ms. Tremblay argued that if a stay of the direction is granted, the health and safety of employees will continue to be protected because the Committee will continue to perform their duties, which include work place inspection.

[16] In addition, Ms. Tremblay specified that the CEP has consented to the employer's application for stay.

[17] I believe that the employer will continue to protect the health and safety of employees or any person granted access to the work place because regular inspection of the different locations will continue to be performed by members of the Committee.

[18] For these reasons, a stay of the direction issued by HSO Ammoun on August 24, 2010, is granted.

Pierre Guénette
Appeals Officer