

Occupational Health  
and Safety Tribunal Canada



Tribunal de santé et  
sécurité au travail Canada

Ottawa, Canada K1A 0J2

**Citation:** Bell Technical Solutions Inc. v. Communications, Energy and Paperworkers Union of  
Canada, 2011 OHSTC 3

**Date:** 2011-02-11  
**Case No.:** 2010-47  
**Rendered at:** Ottawa

**Between:**

Bell Technical Solutions Inc., Appellant

and

Communications, Energy and Paperworkers Union of Canada, Respondent

**Matter:** An application for a stay of a direction

**Decision:** The application for a stay of the direction is granted

**Decision rendered by:** Mr. Jean-Pierre Aubre, Appeals Officer

**Language of decision:** English

**For the appellant:** Mr. William Hlibchuk, Counsel, - Ogilvy Renault LLP

**For the respondent:** Mssrs. Keith McMillan and Bill Nunn, CEPUC

Canada

## REASONS

[1] This is an application by the Appellant for a stay of a direction issued to the Appellant on November 19, 2010, by Health and Safety Officer (HSO) Karina Lopez-Sacco pursuant to paragraph 145(2)(a) of the *Canada Labour Code* (the Code).

[2] The Appellant is seeking a stay of the direction pending hearing and determination of the appeal it has filed against the above-mentioned direction pursuant to subsection 146(1) of the Code.

### Background

[3] On August 27, 2010, a work place accident involving an employee of the Appellant occurred whereby the employee fell off a wooden stepped telephone pole on which the employee had been at work.

[4] It would appear that the employee became distracted while descending the said stepped telephone pole and fell from a height of approximately 12 feet.

[5] Following this work place accident, HSO Karina Lopez-Sacco conducted an investigation on September 29, 2010, which resulted in the issuance of the direction under appeal.

[6] The Appellant is claiming that the direction issued by the HSO is overly broad because its wording makes it applicable to all approximately 3,000,000 telephone poles within the Bell Technical Solutions Inc. (BTS) network, whereas the accident and potential problem only concern stepped poles which number approximately 64,000 across the network in which BTS operates.

[7] Upon being apprised of the appeal and the accompanying application for the interim order staying the application of the direction, the Tribunal convened the parties to a hearing to receive their submissions concerning the application. Chaired by the undersigned Appeals Officer, this hearing proceeded by way of teleconference on December 22, 2010, with representatives from both the Appellant and Respondent taking part.

[8] Both parties were informed of the three part test adopted by the Tribunal in its examination and determination of such an application. This test requires the applying party or parties to satisfy the Appeals Officer that:

- the appeal raises a serious issue to be examined (prima facie case);
- the party applying for the stay is likely to suffer significant harm if the stay is not granted;
- the party seeking the stay, in lieu of complying with the direction being appealed, has taken or will take steps to

protect the health and safety of employees and other persons who could, in the interim, be exposed to the danger that the direction addresses.

[9] Both parties were heard on all three parts of the applicable test.

[10] On the first part of the test, the Appellant demonstrated that the appeal raises the issue of whether its work practices regarding ascending and descending wooden telephone poles, and in particular stepped wooden poles, are in conformity with the *Canadian Occupational Health and Safety Regulations*, and in particular subsection 12.10(1), and thus constitute a danger. In its submission on this point, the Respondent Union challenged the various points in the supporting affidavits presented in support of its application by the Appellant in a manner that deals more with the merits of the case. In my opinion, the Appellant has satisfied the first part of the test.

[11] On the second part of the test, the one bearing on the question of potential significant harm to the Appellant, BTS claims that the direction has the effect of effectively paralyzing its activities in that it prohibits any employees of BTS to climb in any wooden stepped poles where a portable ladder may not be used. As a consequence, it claims it will not be able to deliver the services required by its customers part of the Bell network where said poles need to be accessed. While it recognizes that such poles represent a relatively small percentage of the approximately 3,000,000 poles across the network served by BTS, it points out that service disruptions require a swift response and that failure to provide that service to its residential, business or institutional customers would likely cause prejudice to the public in general, not to mention the significant financial penalties it could incur by not being able to provide services within the CRTC indicators.

[12] In reply, the Respondent Union pointed out that the telephone poles directly targeted by the direction are few in numbers and questioned the risk for BTS to incur financial penalties as suggested. The remainder of its arguments, in my opinion, could be considered as being directed more to the merits of the appeal.

[13] In my opinion, the Appellant BTS has also satisfied the second part of the applicable test.

[14] As regards the third part of the test, BTS drew attention to two communications that were issued following issuance of the appealed direction. In the first such communication dated December 3, 2010 to the HSO, it was stated that all affected employees were instructed that “in cases where it is impossible to ensure that because of the nature of their work (above 2.4 meters from the nearest permanent safe level) they could not at least use one hand to secure their position, fall arrest protection should be engaged. If such indications could not be followed, employees were instructed to use either a ladder or spurs in accordance with company policy; failing the feasibility of any of the above, they were instructed to contact their manager for further instructions.”

[15] In a second communication, this one dated December 10, 2010, and immediately effective, instruction was given that all wooden poles were to be climbed with either a ladder or spurs, where feasible. This communication also had the effect of suspending temporarily rule ESP 027 regarding the climbing of stepped poles and was prohibiting until further notice the climbing of such poles using the pole steps. It also provided that where a ladder or spurs could not be used or an aerial platform needed to be accessed, further instructions were to be obtained from their manager. Finally, it indicated that any alternative method or equipment to climb poles needed to be evaluated in consultation with the policy committee, and approved by the health and safety department before its implementation.

[16] The reply formulated by the Respondent Union stated that the temporary measures being put in place were not sufficient in a day and age where other employers have adopted good solutions to prevent falls from heights. Apart from mentioning another employer that apparently was using a fall arresting device adapted to the situations covered by the direction and stating its belief that it is possible and practical to utilize fall protection devices and procedures in all working at heights activities and also suggesting that such a concept needs to be explored by the employer in consultation with the policy committee, no further comments were offered.

[17] In my opinion, the Appellant has also satisfied the third part of the test.

### **Decision**

[18] Taking into consideration as temporary, to ensure the health and safety of employees pending resolution of the appeal, the measures (Plan of action) communicated by the Appellant to HSO Lopez-Sacco on December 3, 2010, and also taking into consideration the health and safety announcement to employees made by the Appellant on December 10, 2010, for the same purpose, the application for a stay made by the Appellant on December 17, 2010 is hereby granted.

Jean-Pierre Aubre  
Appeals Officer