

Occupational Health  
and Safety Tribunal Canada



Tribunal de santé et  
sécurité au travail Canada

Ottawa, Canada K1A 0J2

**Citation:** Air Canada v. International Association of Machinists & Aerospace Workers,  
2011 OHSTC 10

**Date:** 2011-05-16  
**Case No.:** 2011-14  
**Rendered at:** Ottawa

**Between:**

Air Canada, Applicant

and

International Association of Machinists & Aerospace Workers, 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

**Language of decision:** English

**For the applicant:** Mr. Stephen Bird, Counsel - Bird Richard

**For the respondent:** Mr. Boyd Richardson, General Chairperson - International Association  
of Machinists & Aerospace Workers

Canada

## REASONS

[1] This concerns an application for a stay of a direction filed on April 1, 2011. The direction was issued by Health and Safety Officer (HSO) Domenico Iacobellis on February 4, 2011 and it was appealed by Ms. Rachelle Henderson, Counsel for Air Canada, on February 24, 2011.

### Background

[2] The direction under appeal was issued by HSO Iacobellis following his investigation of work refusals by three Air Canada employees employed as tow operators at Pearson airport in Toronto, Ontario.

[3] The direction states:

The said health and safety officer considers that the performance of an activity constitute a danger to the employees while at work:

Implementing the process of changing to one "D" licences employee and one "DA" licenses employee while performing towing operations constitute a danger. This new procedure adds the additional task of monitoring the radio and communicating with the various control towers while operating the tow tractor and maintaining situational awareness of the airfield. This requires that the "D" employee have his/her attention shifted between multiple tasks and possibly putting them at the risk of an incursion which may result in injury.

Therefore, you are HEREBY DIRECTED, pursuant to paragraph 145(2)(a) of the *Canada Labour Code*, Part II, to alter the activity that constitute the danger immediately.

[4] On April 15, 2011, a hearing was conducted by teleconference with Mr. Stephen Bird, Counsel for Air Canada and Mr. Boyd Richardson, General Chairperson, District Lodge 140, International Association of Machinists & Aerospace Workers (IAMAW).

[5] On April 19, 2011, the parties were informed that Air Canada's application for a stay of the direction issued by HSO Iacobellis on February 4, 2011 was granted and that a written decision with reasons would follow.

[6] The parties were informed that the stay was conditional to the immediate implementation of all of the undertakings to protect the health and safety of the employees as proposed by Air Canada and discussed during the teleconference. As well, I required that Mr. Richardson monitors the development and implementation of the undertakings and reports in writing to the Tribunal every two weeks starting April 28, 2011.

[7] Subsection 146(2) of the *Canada Labour Code* (the Code) states that:

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.

[8] 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.

[9] In the exercise of my discretion to grant a stay, I have applied the following criteria:

- 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.

## **Analysis**

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

[10] I agree with the arguments put forward by Mr. Bird, counsel for the appellant, that this is a question with health and safety ramifications and as such is neither frivolous nor vexatious. I believe that the consequences of the decision may in any event affect the operations of Air Canada as it deals with the movements of aircrafts at the airport by tow trucks. Consequently, I find that there is a serious issue to be resolved.

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

[11] Mr. Bird argues that should the direction issued by the HSO be maintained, Air Canada operations will suffer significant harm not even considering the monetary implications that this will bring about.

[12] Mr. Bird contends that Air Canada intends to operate aircraft tow operations similar to other carriers at Pearson airport. He stated that Air Canada does not have sufficient personnel trained to be “D” licensed operators to comply with the direction. Training takes more than six weeks to complete; consequently they would not meet the compliance date required by the direction. In addition this would not necessarily guarantee sufficient personnel as interest in the position is low and failure rate, for some reason exceeds 50%.

[13] Mr. Bird argued that if the direction is maintained, based on its present number of “D” licensed employees, more than 30% of its tow capacity will be affected. This predicament will impact domestic and international departures and arrivals. Based on the projected number of flights and passengers during the coming months, this could delay considerably a substantial amount of passengers a day.

[14] He stated as well that such delays in departures would have a domino effect on other airports, not only in Canada but also in other international airports.

[15] After a careful review of all the arguments, I believe that if I do not grant a stay of the direction, Air Canada will suffer significant operational harm, which will also affect other domestic and international airlines.

**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?**

[16] Mr. Bird submitted that Air Canada proposes to implement a list of undertakings (Copy attached in Annex 1) that addresses the safety issues raised by the health and safety officer in his report. I compared this list of undertakings to the list of issues raised by the HSO in his report and I am satisfied that the proposed undertakings, as an interim measure, would address health and safety issues raised by the HSO in his report.

[17] However, as this is an issue that deals with a direction issued under paragraph 145(2)(a) of the Code, a “danger” situation, I have to satisfy myself that the undertakings that Air Canada proposes will in fact be developed and implemented.

[18] Consequently, as was discussed with the parties during the hearing on the stay application, I requested and Mr. Boyd Richardson agreed to monitor the development and implementation of the undertakings and to report in writing to the Tribunal on their status with a copy to the employer starting April 28, 2011 and every two weeks afterwards.

**Decision**

[19] For these reasons, Air Canada’s application for a stay of the direction issued by HSO Domenico Iacobellis on February 4, 2011 is granted under the condition that the proposed undertakings are immediately implemented until the case is heard on its merit and a decision is rendered by an appeals officer.

Richard Lafrance  
Appeals Officer

## **Annex 1**

### **Air Canada**

### **YYZ Tow Operator Appeal**

### **Appeal Case No. 2011-14**

#### **UNDERTAKINGS**

Conditional upon the granting of a Stay, Air Canada undertakes to do the following:

1. Conduct an immediate risk assessment meeting with the participation of the IAM National Health and Safety Policy Committee and YYZ IAM Local Health and Safety Committee regarding Tow operations;
2. Convene a meeting of the IAM National Policy Committee to discuss levels of participation and re-visit any concerns with the present training strategy for “D” and “D/A” Tow Operators at YYZ (referencing and implementing (as may be agreed) recommendations contained in the Transportation Research Board report identified by the HSO);
3. Re-issue safety bulletins and instruction to all “D” and “D/A” Operators on the non-permitted usage of cell phones, pagers and any other personal electronic equipment while engaged in Tow operations;
4. Have Tow Operation Managers provide daily operational safety awareness audits and briefings to all Operators;
5. In the interim, Air Canada (with the participation of the YYZ IAM Local Health and Safety Committee), shall:
  - Ensure that all “D” and “D/A” Operators hold current Restricted Operator Certificates with Aeronautical Qualifications;

- Provide additional refresher training to all “D” Operators in respect of the training received during the course of their GTAA certification courses on the safe use of radios while operating tow equipment;
- Provide additional refresher training to all “D” and “D/A” Operators in respect of the Nav Canada YYZ LBPIA identified ‘hot spots’ for elevated risk of incursion at YYZ;
- Provide training and testing for all “D/A” employees, regarding the use of the radio and knowledge of the airfield; and specifically in respect of:
  - assisting the “D” Operator with the installation of tow bars and tow pins;
  - installing/removing the bridge and opening/closing the aircraft entry door, as required;
  - maintaining communication with the “D” Operator during tows;
  - ensuring wingtip clearances are maintained by taking a position within the view of the “D” Operator;
  - ensuring the aircraft is clear from obstructions and other traffic when maneuvering in congested areas;
  - observation and monitoring of the tow tractor during tow operations and communicating hazards and/or instructions to the “D” Operator as required;
  - providing training and instruction to acquire the requisite knowledge and details of the airfield to permit the “D/A” to effectively communicate with the Towers as required;
  - installing/removing wheel chocks; and,
  - installing/removing cones.

6. Upon completion of the participation of the IAM National Policy Committee in development of a training protocol, Air Canada shall, in conjunction with the YYZ IAM Local Health and Safety Committee:

- Provide such training as is determined at the National level to the YYZ IAM Local Committee members to permit them to participate in training and assessment processes at the local level; and
- Roll-out the nationally developed program at YYZ, providing such additional training as may be required to meet the training parameters established;
- Provide feed-back and discussion to the IAM National Committee on the roll-out and any observations made by the YYZ IAM Local Committee in this regard.