

Occupational Health
and Safety Tribunal Canada



Tribunal de santé et
sécurité au travail Canada

Ottawa, Canada K1A 0J2

Citation: Shaw Satellite Services Inc. and Shaw Satellite G.P., 2011 OHSTC 12

Date: 2011-05-20
Case No.: 2011-22
Rendered at: Ottawa

Between:

Shaw Satellite Services Inc. and Shaw Satellite G.P., Applicant

Matter: An application for a stay of a direction

Decision: The stay of the direction is granted

Decision rendered by: Mr Michael Wiwchar, Appeals Officer

Language of decision: English

For the applicant: Mr Benjamin Gabriel, Legal Counsel

Canada

REASONS

[1] This concerns a request for a stay of a direction brought under ss. 146(2) of the *Canada Labour Code* (the Code) by Shaw Satellite Services Inc. and Shaw Satellite G.P., of a direction issued by Ms Amy Ferguson, Health and Safety Officer (HSO), on March 25, 2011.

Background

[2] HSO Ferguson conducted an investigation into a work place accident that occurred in Pelham, Ontario on February 18, 2011. In the course of her investigation she issued the following direction:

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

DIRECTION TO THE EMPLOYER UNDER PARAGRAPH 141.(1)(h)

On March 4, 2011, the undersigned health and safety officer conducted an investigation regarding a hazardous occurrence which occurred at 1636 Heist St Pelham Ontario on February 18, 2011 in the work place operated by SHAW SATELLITE SERVICES INC. and Shaw Direct carrying on business under the name and style of SHAW SATELLITE G.P., being an employer subject to the *Canada Labour Code*, Part II, at 2055 Flavelle Rd Mississauga, ON L5K 1Z8, the said work place being sometimes know as Shaw Satellite G.P.

Therefore, you are HEREBY DIRECTED, pursuant to paragraph 141.(1)(h) of the *Canada Labour Code*, Part II, to produce, no later than Wednesday, March 30, 2011, the documents and information relating to the health and safety of your employees or to the safety of the work place which are identified below, and to permit the said health and safety officer to examine and make copies or take extracts of such documents and information:

- Records of all training provided to all 6 Satellite Technicians currently employed by Shaw (Sand Dicarolo, Dino Battista, Brent Collins, Ken Williamson, John Davis and Jasbir Singh)
- Electronic copy of Safety Module/Code of Conduct & Safety Module and any Refresher Installer's Training
- All Work Orders (1636 Heist St, Pelham Ontario)
- Names of persons/contractors performing Satellite operations
- 2009 signed Health Safety Committee meeting minutes (2055 Flavelle Committee)
- All e-mail communication between LB Communications and Shaw and its representatives

- All e-mail communication between Luis Bettencourt and Shaw and its representatives
- Job Hazard Analysis and Risk Assessment documentation for Satellite operations
- All Field Inspection documentation/records for LB Communications
- Job Description for Troy Sider and Dave Dubois
- Original signed Installers Number Request Form for LB Communications

Issued at Mississauga, this 25th day of March, 2011.

[HSO Ferguson signed here]

Amy Ferguson, Health and Safety Officer
Certificate Number: ON3052

To: SHAW SATELLITE SERVICES INC. and Shaw Direct carrying
on business under the name and style of SHAW SATELLITE G.P.
2055 Flavelle Rd
Mississauga, ON L5K 1Z8

[3] On March 29, 2011, a teleconference was held with Mr Gabriel representing the applicant and HSO Ferguson. Mr Gabriel presented oral submissions on the matter.

[4] At the conclusion of the teleconference I granted a stay of the direction; below are the reasons in support of my decision.

Analysis

[5] The Code under ss. 146(2) 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.

[6] My authority is derived from the Code. Therefore, I must exercise my discretion in a way that furthers the objective of the legislation which is to protect the health and safety of employees.

[7] In the exercise of my discretion to grant the 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.

1) Is the question to be tried serious as opposed to frivolous or vexatious?

[8] The applicant argued that a fundamental determination of an employer-employee relationship is required prior to the commencement of HSO Ferguson's investigation.

[9] In support of his argument, Mr Gabriel alleged that the HSO erroneously concluded that Shaw is the "employer" subject to the hazardous occurrence investigation and the direction; and the HSO failed to consider whether or not the third party employer is a party within federal jurisdiction and thus protected by the provisions of the Code.

[10] The threshold for this criterion is not stringent and as such I agree with the appellant that it has been met.

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

[11] On this criterion, Mr Gabriel submitted that if the direction is not stayed, Shaw Communications Inc., while contending not being the employer, would be required to undertake an extensive investigation using manpower and resources to determine where in their system and who in their organization would have been involved in doing e-mail communications with LB Communications and Star Choice over that period.

[12] In addition, great attrition has occurred within the company, as approximately five hundred people have departed. This situation creates added difficulties in ascertaining who communicated with LB Communication and Star Choice contractors.

[13] Finally, it is submitted that the applicant received the direction on March 25, 2011, the date of issue by the HSO, which imposes an obligation to provide the information and documents by March 30, 2011, three business days. This task cannot be accomplished in the timeframe specified and thus Shaw Communications Inc. would be in non-compliance with the direction and be in breach, i.e. be in contravention of the Code.

[14] HSO Ferguson's direction was not related to a specific contravention of the Code regarding employee health and safety. Rather, it pertained to the production of documents which she needed to complete the investigation.

[15] Shaw Communication's principal ground for appealing this direction is that the occurrence did not involve any of its employees and as such the HSO was not justified in directing them to produce documents.

[16] Based on applicant's submissions and the circumstances involved regarding this direction, I am satisfied that this criterion has been met.

3) 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?

[17] Concerning this criterion, I consider that the direction issued by the HSO for the production of information and documents does not in itself readily pertain to health and safety of employees. It does not involve a violation of the Code or Regulations neither does it relate to a particular health and safety issue. Therefore, I am satisfied that the granting of the stay would not compromise the health and safety of employees.

Decision

[18] Consequently, the application for a stay of the direction issued by HSO Ferguson to Shaw Satellite Services Inc. and Shaw Direct carrying on business under the name and style of Shaw Satellite G.P., on March 25, 2011 is granted until a decision is rendered on the merits of the appeal by an appeals officer.

Michael Wiwchar
Appeals Officer