

Occupational Health
and Safety Tribunal Canada



Tribunal de santé et
sécurité au travail Canada

Ottawa, Canada K1A 0J2

Citation: Canada Post Corporation v. Canadian Union of Postal Workers, 2011 OHSTC 22

Date:	2011-09-16
Case No.:	2011-44
Rendered at:	Ottawa

Between:

Canada Post Corporation, Applicant

and

Canadian Union of Postal Workers, Respondent

Matter: An application for a stay of a direction

Decision: The stay of the direction is granted

Decision rendered by: Mr. Michael McDermott, Appeals Officer

Decision language: English

For the applicant: Ms. Cheryl A. Edwards, Counsel, Heenan Blaikie LLP

For the respondent: Mr. Gerry Deveau, National Director, Ontario Region, Canadian Union of Postal Workers

Canada

REASONS

[1] This concerns an application for a stay of a direction filed on August 25, 2011, by the Canada Post Corporation (the Corporation). The direction was issued by Health and Safety Officer Lindsay S. Harrower (HSO) on August 3, 2011.

Background

[2] The direction in question was issued by the HSO following investigation of a work refusal pursuant to paragraph 129(1) of the *Canada Labour Code* (the Code) and a finding of danger. The substance of the refusal and of the HSO's decision relates to road, shoulder and traffic conditions on certain parts of Eramosa Road, Guelph, Ontario. The direction issued to the Corporation under section 145(2) of the Code states as follows:

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

Specifically, foot delivery to the points of call located from 705 – 671 Eramosa Road, Guelph, Ontario, is in the opinion of the Health and Safety Officer a danger to Letter Carrier Remegius Cheeke and any other persons asked to service these points of foot delivery, due to the hazard of being struck by a vehicle.

Therefore, you are HEREBY DIRECTED, pursuant to paragraph 145(2)(a) of the Canada Labour Code, Part II, to take measures to correct the hazard or condition that constitutes the danger immediately.

[3] Canada Post filed an application to appeal the direction in which they are seeking a varied direction that would more accurately identify the area of danger as being the current conditions of the road as opposed to the points of calls themselves. A stay has been requested to facilitate a jointly agreed upon means of correcting the danger.

[4] A telephone conference hearing was held with the parties on Monday, September 12, 2011. At the outset of the hearing I drew attention to the criteria observed by the Appeals Officers when exercising discretion to grant a stay of a direction arising from paragraph 146(2) of the Code. The criteria are as follows :

- 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 or she 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 workplace.

Is the question serious as opposed to frivolous or vexatious?

[5] The essence of the applicant corporation's appeal is that the HSO erred when finding that foot delivery to specific points of call 705 to 671 on the south side of Eramosa Road constituted a danger within the meaning of the Code. Instead, the Corporation claims that the area of danger relates to points of call 741 to 705 on the same side of Eramosa Road and that the danger concerns access to those points of call rather than the points of call as such. Counsel for the applicant also reports the Corporation having received a measure of agreement with its position from the HSO in a discussion with him that took place subsequent to making his decision and issuing the direction in question. The respondent, on the other hand, maintains that the finding of danger with respect to points of call 705 to 671 is justified. No suggestion has been made that the request for a stay is either frivolous or vexatious. A genuine disagreement between the parties exists over facts applying to the safety of foot delivery on the south side of Eramosa Road that, as matters currently stand, will need to be assessed on its merits. Consequently, I find that there is a serious question to be resolved.

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

[6] The applicant corporation claims that specific identification in the direction of foot delivery to points of call 705 to 671 Eramosa Road prevents it from exploring measures, in consultation with the local workplace health and safety committee and the union, which could ensure safe delivery to those points of call. A number of possible measures are identified in the appendix to the letter filing the appeal and request for a stay dated August 25, 2011, that would need to be considered on their merits. However, Counsel for the applicant claims there is a risk that exploration and implementation of such measures could contravene the direction and inhibit consultation on possible solutions. According to Counsel, that plus the consequent interruption of the public service of mail delivery to those points of call constitutes significant harm to the Corporation.

[7] Mr. Deveau, for the respondent, while confirming the union's readiness to explore means of ensuring safe delivery, maintains that the wording of the direction does not prevent such exploration. He cited news of recent installation by the Corporation of a group mail box on the north side of Eramosa Road that will, it appears, be serviced by foot delivery and provide **mail service for, rather than to** (my emphasis) residents of the points of call in question. His view is quite cogently expressed. However, as he admitted himself, it is a matter of terminology.

[8] In my view there remains room for interpretation of the terminology and a consequent risk of perceived contravention of the direction. There appears to be a need to clarify just where the danger in this matter is located. Should a stay not be granted, I accept that the consultative process will be inhibited and the search for a resolution frustrated. I am satisfied that not granting a stay would cause the significant harm described by the applicant.

What measures will be put in place to protect the health and safety of employees or any person granted access to the workplace if a stay is ordered?

[9] Counsel for the applicant confirmed that foot delivery to points of call 741 to 671 on Eramosa Road would cease and that foot delivery to points 705 to 671, currently suspended, would not be restored until a resolution to the safety issues concerned is arrived at in consultation with the workplace health and safety committee and the union.

[10] While I find these undertakings to meet the third criterion listed in paragraph 3 above and that a stay will be granted on condition that they remain respected, I do not accept the suggestion made by Counsel for the applicant that the stay should be in place until the parties arrive at a jointly agreed resolution. Firstly, any measures agreed to by the parties with the intent of modifying the direction would need to be considered by an appeals Officer on their merits. Secondly, although I am confident that the parties do not intend to delay their discussions, it is too elastic a concept that could drag on interminably. I will set the term of the stay to be until a decision on the merits of the appeal is rendered.

Decision

[11] Having found the required criteria to be met, I am granting a stay of the direction issued to the Canada Post Corporation by Health and Safety Officer Lindsay S. Harrower on August 3, 2011, on condition that the undertakings given by Counsel for the Corporation detailed in paragraph 9 above remain in place. The stay will remain in force until an appeals officer renders a decision on the merits of the substantive appeal.

Michael McDermott
Appeals Officer