

Occupational Health
and Safety Tribunal Canada



Tribunal de santé et
sécurité au travail Canada

Ottawa, Canada K1A 0J2

Citation: Paul Chaves v. Correctional Service of Canada, 2012 OHSTC 12

Date: 2012-04-05
Case No.: 2012-16
Rendered at: Ottawa

Between:

Paul Chaves, Applicant

and

Correctional Service of Canada, Respondent

Matter: Application for a stay of a direction

Decision: The stay request is denied

Decision rendered by: Mr Michael Wiwchar, Appeals Officer

Language of decision: English

For the Applicant: Mr Michel Girard, Counsel, Legal Services, Treasury Board

REASONS

[1] On March, 8, 2012, Mr Paul Chaves presented an appeal, accompanied with an application for a stay, of a direction issued pursuant to subsection 145(1) of the *Canada Labour Code* (the Code) on March 2, 2012, by Mr Lewis Jenkins, Health and Safety Officer, Human Resources and Skills Development Canada, Labour Program.

[2] The application for stay of the direction is made pursuant to subsection 146(2) of the Code that reads as follows:

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.

Background

[3] The applicant is employed as a Social Program Officer at Millhaven Institution (Millhaven) at Bath, Ontario. His submissions indicate that at Millhaven, prior to the issuance of the direction at hand, the safety and health committee structure was made up of three chairpersons rather than two, namely: an employer chairperson, and two employee chairpersons each of whom represents one of the two bargaining agents (UCCO and USGE).

[4] The applicant stated that in the above mentioned committee structure, the chairing of the meetings alternate between the employer chairperson and, in turn, one of the two employee chairpersons. The applicant argued that in effect, this committee structure reflects Code requirements in that the chairing of the meetings are properly shared between employer and employee groups. In his view, the additional chairperson on the employee side allows the committee to be effective and expeditious, for instance in the processing of hazardous occurrences depending upon which bargaining agent the employee involved falls under.

[5] It is within this context that the direction being appealed was issued. Specifically, the direction, addressed to the employer, outlines a contravention of subsection 135.1(7) of the Code and subsection 5(1) of the *Safety and Health Committees and Representatives Regulations*, which require that a safety and health committee have two chairpersons selected from among the members of the committee, one being selected by the representatives of the employees and the other by the representatives of the employer. The contravention is identified as follows:

The employer has failed to ensure the safety and health committee has only one employee co-chair selected by the representatives of the employees thereby causing a situation of inequality in the committee co-chair positions.

[6] The employer was directed to terminate the contravention no later than March 9, 2012, and take steps to ensure that it does not continue or reoccur.

Analysis

[7] The authority for an appeals officer to grant a stay is derived from the above aforementioned subsection 146(2) and the exercise of this discretion must be consistent with the purpose clause of the Code found in section 122.1, which reads:

122.1 The purpose of this Part is to prevent accidents and injury to health arising out of, linked with or occurring in the course of employment to which this Part applies.

[8] The three part test adopted by the Tribunal in regards to a stay application requires that:

- 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 significant harm would be suffered if the direction is not stayed.
- 3) The applicant must demonstrate that measures will be put in place to protect the health and safety of employees or any person granted access to the workplace should the stay be granted.

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

[9] I must first consider whether the question raised in this application is sufficiently serious to warrant a stay of the direction. The applicant urged that the issue under appeal is a serious one. In his view, the Code provides for minimal requirements in terms of the number of chairpersons, and the addition of one means that the committee structure in place exceeds the minimums required by the Code. The two employee chairpersons contribute to a process that is more expeditious, in that the presence of two employee chairpersons allows more rapid processing of issues than if there was only one. This committee structure is more efficient and preventative as well, and the equal sharing of meetings between employer and employees is maintained.

[10] The employer's view is that this is not an important, significant matter as contemplated in this first criterion. It is simply a procedural issue.

[11] In my view, this appeal raises a question as to whether a safety and health committee's structure reflects the Code's requirements, and as a result it raises a question which I consider to be serious. I am therefore satisfied that this first criterion is met.

2) Would the Applicant suffer significant harm if the direction is not stayed?

[12] The applicant highlights what are, in his view, the advantages of the committee structure involving two chairpersons selected by the employee safety and health committee representatives. In particular, he stated that if the direction is not stayed, and there is a return to only one employee chairperson, there would be significant delays, in

the order of three to four weeks before investigations are conducted, or even assigned, with respect to hazardous occurrences. Thus, there results a potential for harm to employees falling under that bargaining unit that he represents at the work place. The committee structure with two employee chairpersons selected by the employee representatives is, he submitted, more rapid.

[13] The respondent argued that an equal structure, with one chairperson representing employees and one representing the employer, meets Code requirements. In this case, the employer is being directed to follow that statutory obligation. It is suggested that there is no evidence of significant delays resulting from an equal number of chairpersons, other than the appellant's assertions.

[14] I have considered the arguments presented by the parties. The term "significant" is defined in the dictionary as meaning "of great importance or consequence"¹. This supports the view that significant harm implies something that is of great importance or consequence to the applicant or other employees at the work place.

[15] Although I understand from the applicant that he has his own concerns which pertain to the amount of time it may take to assign and conduct investigations with only one chairperson selected by the employees, I have not been convinced that this concern satisfies the meaning of "significant" harm as it is contemplated in this part of the stay test. What I find lacking in the applicant's submissions are specific facts concerning actual incidents or circumstances that demonstrate a very important harmful outcome or consequence to him or other employees as a result of having only one designated employee chairperson.

[16] Accordingly, I am not of the view that the applicant would suffer significant harm if the direction is not stayed.

[17] Given my decision that this second criterion has not been met, it is not necessary to examine the third criterion.

Decision

[18] Mr. Chaves' application for a stay of the direction issued by Health and Safety Officer Lewis Jenkins on March 2, 2012 is denied.

Michael Wiwchar
Appeals Officer

¹ Canadian Oxford Dictionary, 2004 Second Edition.