

Occupational Health  
and Safety Tribunal Canada



Tribunal de santé et  
sécurité au travail Canada

Ottawa, Canada K1A 0J2

**Citation:** J.E. Culp Transport, 2012 OHSTC 20

**Date:** 2012-06-22  
**Case No.:** 2012-35  
**Rendered at:** Ottawa

J.E. Culp Transport, Appellant

**Matter:** Appeal under subsection 146(1) of the *Canada Labour Code* of a direction issued by a health and safety officer

**Decision:** The direction is varied

**Decision rendered by:** Mr Michael Wiwchar, Appeals Officer

**Language of decision:** English

**For the appellant:** Ms Helene Culp, Office Manager, J.E. Culp Transport

Canada

## REASONS

[1] The appellant, J.E. Culp Transportation, is appealing a direction issued pursuant to subsection 145(1) of the *Canada Labour Code* (the Code) by Ms Amy Campbell, Health and Safety Officer (HSO) on May 23, 2012. The appellant is requesting that the compliance date be modified.

### Background

[2] J.E. Culp Transportation is an interprovincial transportation company based in Beamsville, Ontario.

[3] On May 17, 2012, HSO Campbell attended the work place operated by the appellant to follow-up on compliance measures relating to an Assurance of Voluntary Compliance (AVC) that was received from the employer in December 2010. During her inspection, HSO Campbell identified ten contraventions to the Code and consequently issued a direction to the appellant on May 23, 2012. I will not reproduce the direction since its substance is not under appeal.

### Appellant's submissions

[4] In its submissions, the appellant stated that the request for an extension of the compliance date of the direction is motivated by the fact that the individuals responsible for implementing the direction suffered illnesses resulting in significant absences from the work place.

[5] The appellant argued that the lost time makes it difficult to meet the requirements of the direction within the allotted time.

[6] The appellant is requesting that the date of compliance be extended to July 31, 2012, in order to make it more feasible to comply with the direction.

### Decision

[7] The issue that I must address is whether the compliance date for the direction should be modified.

[8] Under paragraph 146.1(1)(a) of the Code, an appeals officer has the power to vary a direction issued by a health and safety officer. The paragraph reads:

146.1(1) If an appeal is brought under subsection 129(7) or section 146, the appeals officer shall, in a summary way and without delay, inquire into the circumstances of the decision or direction, as the case may be, and the reasons for it and may

(a) vary, rescind or confirm the decision or direction [...]

[9] First, I believe it is important to note that the employer is not appealing the substance of the direction. The appellant is simply requesting an extension of time to comply with the direction.

[10] As a result, given the unforeseen circumstances, notably the fact that the employees responsible for implementing the changes needed to comply with HSO Campbell's direction were ill, I consider the appellant's request reasonable.

[11] Furthermore, I believe it is preferable that the appellant is given enough time to account for the time lost from these circumstances in order to assure that the measures taken to comply with the direction are done properly.

[12] Therefore, I vary the direction issued on May 23, 2012, by HSO Campbell. The date to terminate the contravention will be modified from June 29, 2012, to July 31, 2012. The direction is appended to this decision.

Michael Wiwchar  
Appeals Officer



## APPENDIX

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

#### DIRECTION TO THE EMPLOYER UNDER SUBSECTION 145(1)

On Thursday, May 17, 2012, Health and Safety Officer Amy Campbell conducted an inspection in the work place operated by J.E. CULP TRANSPORT LTD., being an employer subject to the *Canada Labour Code*, Part II, at 4815 Merritt Rd. N., R.R. #1, Beamsville, Ontario, L0R 1B1, the said work place being sometimes known as J.E. CULP TRANSPORT LTD. - Beamsville.

The said health and safety officer is of the opinion that the following provisions of the *Canada Labour Code*, Part II, have been contravened:

**No. / No : 1**

Subsection 135.(1) - Canada Labour Code Part II

For the purposes of addressing health and safety matters that apply to individual work places, and subject to this section, every employer shall, for each work place controlled by the employer at which twenty or more employees are normally employed, establish a work place health and safety committee and, subject to section 135.1, select and appoint its members.

**The employer failed to establish a Work Place Health and Safety Committee as prescribed.**

**No. / No : 2**

Subsection 135.(10) - Canada Labour Code Part II

A work place committee shall meet during regular working hours at least nine times a year at regular intervals and, if other meetings are required as a result of an emergency or other special circumstances, the committee shall meet as required during regular working hours or outside those hours.

**The employer failed to ensure work place health and safety committee meetings occurred at least nine (9) times per year in 2011, and no meetings have occurred in 2012.**

No. / No : 3

Paragraph 125.(1)(z.12) - Canada Labour Code Part II

Without restricting the generality of section 124, every employer shall, in respect of every work place controlled by the employer and, in respect of every work activity carried out by an employee in a work place that is not controlled by the employer, to the extent that the employer controls the activity, ensure that the work place committee or the health and safety representative inspects each month all or part of the work place, so that every part of the work place is inspected at least once each year.

**The employer failed to ensure that the work place health and safety committee inspected monthly all or part of the workplace. No monthly inspection activity occurred in March or April 2012. The monthly inspection activity conducted previously was carried out by management representatives without the required participation of an employee member.**

No. / No : 4

Paragraph 125.(1)(z) - Canada Labour Code Part II

Without restricting the generality of section 124, every employer shall, in respect of every work place controlled by the employer and, in respect of every work activity carried out by an employee in a work place that is not controlled by the employer, to the extent that the employer controls the activity, ensure that employees who have supervisory or managerial responsibilities are adequately trained in health and safety and are informed of the responsibilities they have under this Part where they act on behalf of their employer;

**The employer has failed to ensure employees with supervisory or managerial responsibilities are informed of the responsibilities they have under Part II of the Canada Labour Code.**

No. / No : 5

Paragraph 125.(1)(z.01) - Canada Labour Code Part II

Without restricting the generality of section 124, every employer shall, in respect of every work place controlled by the employer and, in respect of every work activity carried out by an employee in a work place that is not controlled by the employer, to the extent that the employer controls the activity, ensure that members of policy and work place committees and health and safety representatives receive the prescribed training in health and safety and are informed of their responsibilities under this Part;

**The employer failed to ensure that members of a work place health and safety committee received training so they are informed of their responsibilities under Part II of the Canada Labour Code.**

No. / No : 6

Paragraph 125.(1)(q) - Canada Labour Code Part II, Subsection 14.20(1) - Canada Occupational Health and Safety Regulations

Before motorized or manual materials handling equipment is used for the first time in a work place, the employer shall set out in writing instructions on the inspection, testing and maintenance of that materials handling equipment.

**The employer failed to establish the prescribed instructions for inspection, testing and maintenance for the fork lift truck (S/N Y50-131-2523).**

No. / No : 7

Subsection 125.(1)(g) - Canada Labour Code Part II, Section 10.3 - Canada Occupational Health and Safety Regulations

Every employer shall keep and maintain a record of all hazardous substances that, in the work place, are used, produced, handled, or stored for use in the work place, and may either keep and maintain such a record in the work place or keep and maintain a centralized record in respect of several work places, in one work place.

**The employer failed to keep Material Safety Data sheets up to date as required and containers of hazardous substances were observed during inspection and were not labelled to identify the contents or hazardous properties of the product in the container.**

No. / No : 8

Subsection 125.1(b) - Canada Labour Code Part II, Subsection 10.49(g) - Canada Occupational Health and Safety Regulations

The provisions of Part 4 of the National Fire Code apply as follows: cabinets used for container storage of flammable liquids and combustible liquids shall conform with subsection 4.2.10

**The fire cabinet which stores the flammable and combustible products is not grounded, nor vented and has a defective handle which does not provide for a proper seal when the door is closed.**

No. / No : 9

Paragraph 125.(1)(t) - Canada Labour Code Part II, Subsection 13.13(1) - Canada Occupational Health and Safety Regulations

Every machine that has exposed moving, rotating, electrically charged or hot parts or that processes, transports or handles material that constitutes a hazard to an employee shall be equipped with a machine guard that prevents the employee or any part of his body from coming into contact with the parts or material; prevents access by the employee to the

area of exposure to the hazard during the operation of the machine; or makes the machine inoperative if the employee or any part of his clothing is in or near a part of the machine that is likely to cause injury

**The employer has failed to mount a shield on the grinder in the maintenance garage.**

**No. / No : 10**

Paragraph 125.(1)(z.03) - Canada Labour Code Part II, Section 19.1 - Canada Occupational Health and Safety Regulations

The employer shall, in consultation with and with the participation of the policy committee, or, if there is no policy committee, the work place committee or the health and safety representative, develop, implement and monitor a program for the prevention of hazards, including ergonomics-related hazards, in the work place that is appropriate to the size of the work place and the nature of the hazards and that includes the following components:

- (a) an implementation plan;
- (b) a hazard identification and assessment methodology;
- (c) hazard identification and assessment;
- (d) preventive measures;
- (e) employee education; and
- (f) a program evaluation.

**The employer has failed to implement and monitor a Hazard Prevention Program in consultation with a Work Place Health and Safety Committee with the elements prescribed by Regulation XIX.**

Therefore, you are HEREBY DIRECTED, pursuant to subsection 145(1)(a) of the *Canada Labour Code*, Part II, to terminate the contraventions no later than July 31, 2012.

Further, you are HEREBY DIRECTED, pursuant to paragraph 145(1)(b) of the *Canada Labour Code*, Part II, within the time specified by the appeals officer, to take steps to ensure that the contravention do not continue or reoccur.

Varied as identified in underlined text above, at Ottawa, this 22<sup>nd</sup> day of June, 2012.

Michael Wiwchar  
Appeals Officer