

Occupational Health
and Safety Tribunal Canada



Tribunal de santé et
sécurité au travail Canada

Ottawa, Canada K1A 0J2

Citation: Canada Post Corporation v. Diana Baird, 2012 OHSTC 21

Date: 2012-06-27
Case Nos.: 2011-64
Rendered at: Ottawa

Between:

Canada Post Corporation, Appellant

and

Diana Baird, Respondent

and

Canadian Union of Postal Workers, Applicant to intervene

Matter: Application for intervenor status by the Canadian Union of Postal Workers (CUPW)

Decision: The application for intervenor status is granted.

Decision rendered by: Mr. Jean-Pierre Aubre Appeals Officer

Language of decision: English

For the appellant: Ms Caroline Richard, Counsel, Bird Richard

For the respondent: Ms Diana Baird

For the applicant: Mr David Bloom, Counsel, Cavalluzzo Hayes Shilton McIntyre & Cornish LLP

Canada

REASONS

[1] The present decision concerns an appeal brought under subsection 146(1) of the *Canada Labour Code* (the Code) against a direction issued by Health and Safety Officer (HSO) Michael J. O'Donnell on November 25, 2011.

Background

[2] The direction being appealed by Canada Post Corporation was issued by the HSO at the conclusion of the latter's investigation into a refusal to perform dangerous work in relation to rural mail boxes (RMB) delivery made by respondent Diana Baird. While the appeal is directed at the direction issued by the HSO, in reality, as stated in the actual notice of appeal, the said appeal really bears only on part of the direction issued by the safety officer, that which can be more properly described as the last sentence of the said direction and which directed the immediate termination of a particular activity. This sentence reads as follows:

Nor may the Canada Post RSMC Diana Baird or any other person granted access to perform this work activity of the delivery of mail from the driver's seat through the passenger side window while causing them to remove their seat belt, when any part of their vehicle is on the travelled part of the road.

[3] In the course of preparing for the hearing of the said appeal and the holding of the usual preparatory pre-hearing teleconference, it was brought to the attention of this appeals officer that the Canadian Union of Postal Workers (CUPW), the union representing respondent Diana Baird, was seeking standing as "intervenor" in the coming hearing of the appeal. It was also brought to the attention of the undersigned that neither the appellant Canada Post Corporation nor the respondent Diana Baird would oppose the granting of intervenor status to CUPW.

[4] Submissions in support of the said application were then sought from counsel for the applicant, and given the absence of opposition from the two directly interested parties to this appeal, it is not necessary to review at length the submissions by counsel for CUPW. Suffice it to say that the applicant, in referring to the general authority of an appeals officer to grant such intervenor status under paragraph 146.2 (g) of the *Canada Labour Code, Part II* (Code) has correctly referred to the conditions that must be met to obtain such status to wit, have substantially the same interest as one of the parties, one that is greater than that of a member of the general public, and be possibly affected by the decision to be rendered, and also correctly referred the undersigned to the factors that have been considered by appeals officers in determining whether a party should be granted intervenor status.

[5] The basis for the request for intervenor status made by the applicant reads as follows:

CUPW requests that the Appeals Officer grant CUPW intervenor status on the basis that it is an interested party. The Appeal is based (in part) on the fact that Canada Post has assessed the safety of RMB delivery on the Respondent's route using the TSAT tool and has determined that delivery can be safely effected.

As the certified bargaining agent for all RSMCs (including the respondent), CUPW participates in the National Joint Health and Safety Committee (Policy Committee). The Policy Committee has approved the TSAT as an appropriate tool for the assessment of the safety of RMB delivery notwithstanding an ongoing dispute as to the nature and extent of participation by the Local Joint Health and Safety Committee and Health and Safety Representatives in the actual assessment process. The issue is before this Tribunal in file Canadian Union of Postal Workers and Canada Post Corporation, case No. 2009-05.

We are given to understand that Canada Post assessed the Respondent's route utilizing the TSAT tool and that the RMBs on the route passed the assessment. Because CUPW has agreed that a properly applied TSAT assessment is an appropriate method to assess the safety of RMB delivery, it is submitted that CUPW either substantially shares the same interest as Canada Post in this proceeding or could be substantially affected by the decision.

In addition, CUPW brings the perspective of the bargaining agent on behalf of all RSMCs and may be able to facilitate the process. We note that the other parties have taken no issue with CUPW participating as an intervenor. All of these circumstances favour the request of CUPW to be granted intervenor status.

Decision

[6] I have considered the submissions by the applicant CUPW and have formed the conclusion that it has an interest in the issue raised by this appeal that is substantially the same as one of the parties and that consequently it could potentially be affected by the decision to be rendered in the appeal. I have also taken into account the fact that neither directly affected party has opposed the granting of intervenor status to CUPW. That being the case, I have decided to grant such intervenor status to CUPW. As such, it will be authorized to take part in the hearing of the appeal, examine and/or cross-examine witnesses and provide the appeals officer with its submissions on the issues to be decided by this appeal.

Appeals Officer
Jean-Pierre Aubre