

Occupational Health  
and Safety Tribunal Canada



Tribunal de santé et  
sécurité au travail Canada

Ottawa, Canada K1A 0J2

**Citation:** Andre Schauz v. Tudhope Cartage Ltd., 2012 OHSTC 32

**Date:** 2012-09-20  
**Case No.:** 2012-02  
**Rendered at:** Ottawa

**Between:**

Andre Schauz, Appellant

**And**

Tudhope Cartage Limited, Respondent

**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 confirmed

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

**Language of decision:** English

**For the appellant:** Mr Andre Schauz

**For the respondent:** Ms Miriam D. Isenberg, Q.C., Barrister & Solicitor

## REASONS

[1] This matter concerns an appeal brought under subsection 146(1) of the *Canada Labour Code* (the Code) by Mr Andre Schauz, an employee of Tudhope Cartage Ltd. (Tudhope), of a direction issued by Mr Michael O'Donnell, Health and Safety Officer (HSO) with the Labour Program of Human Resources and Skills Development Canada (HRSDC).

### Background

[2] The direction was issued to Tudhope, a wholly owned subsidiary of Seaboard Harmac Transport (Seaboard). Seaboard is a carrier company that transports bulk petroleum by way of tanker trucks which frequently cross provincial boundaries. It is due to the company's interprovincial nature that Seaboard and its subsidiary, Tudhope, fall under federal jurisdiction.

[3] The direction was issued by HSO O'Donnell on January 4, 2012, pursuant to his powers under subsections 141(1)(h) and (i) of the Code. The direction reads as follows:

IN THE MATTER OF THE *CANADA LABOUR CODE* AND IN THE  
MATTER OF TUDHOPE CARTAGE LIMITED

NOTICE

TO:  
TUDHOPE CARTAGE LIMITED  
369 West Hunt Club Road  
Ottawa, Ontario  
K2E 1A6

TAKE NOTICE THAT, pursuant to subsection 155. (1) of the *Canada Labour Code*, Part II, with respect to information requested by a health and safety officer pursuant to paragraph 141.(1)(h) and (i) to be furnished by you,

YOU ARE HEREBY REQUIRED to furnish to Michael O'Donnell, Health and Safety Officer, 290 Dupuis Street, 4<sup>th</sup> Floor, Vanier, Ontario, K1L 1B5 within ten business days of the date on which this notice is served, full and correct statements giving full particulars with respect to:

**Provide documentation and information confirming the investigation results that pertain to the Internal Complaint Resolution Process (ICRP) involving former [sic.] Tudhope Cartage employee, Andre Schauz [sic.]. The requested documentation and information is to include, but not limited, to any ergonomic assessments, ergonomic equipment, assigned modified duties, etc, that were performed or was provided for Mr. Schauz [sic.].**

IN DEFAULT OF YOUR SO DOING action may be commenced against you under the appropriate provision of Part II of the *Canada Labour Code*.

Issued at Ottawa, Ontario, the 4<sup>th</sup> day of January, 2012.

[4] HSO O'Donnell's direction requested documents and information from Tudhope confirming the results of a September 2011 Internal Complaint Resolution Process (ICRP) investigation. The ICRP investigation, which involved the appellant, was related to documentation and information that was to include, but not be limited to, any ergonomic assessments, ergonomic equipment, and assigned modified duties that were performed by or provided for the appellant.

[5] The appellant is employed by Tudhope as a truck driver. He suffered a work-related lower back injury in March 2011. His employer accommodated his injury through diverse means, including allowing him to work from home from March to May 2011. Around mid-May 2011, he was found to be fit to return to work under accommodated conditions. From this time until September 2011 his employer provided him with a truck that featured an ergonomically specialized driver's seat (whenever available) and a trainee driver to do the heavy lifting required for the job. It is due to a complaint raised by the appellant about his employer's accommodations of his injury that the aforementioned ICRP investigation took place in September 2011.

[6] The direction, that is the subject of the present appeal, was issued by HSO O'Donnell as part of his investigation into a second complaint made by the appellant that was submitted at the end of November 2011. This latter complaint arose out of the appellant feeling aggrieved by his employer's plan to discontinue accommodating him with the aforementioned ergonomically-specialized truck.

[7] On January 10, 2012, the appellant appealed the direction that is the subject of these proceedings. The appellant is exercising this right pursuant to subsection 146(1) of the Code on the grounds that he feels that the HSO's direction should be varied so as to order Tudhope to provide him with all health and safety related documentation and information pertaining to his file being that he is an employee of Tudhope.

[8] Before filing his appeal, the appellant also made the same request to another Labour Program official seeking access to his employer's file on his occupational health and safety issues. This request was made on November 21, 2011. The request was made to Mr Dave Mac Neil, a HSO from the same office. Upon receiving this request, HSO Mac Neil informed the appellant via email on November 21, 2011, that for the Labour Program to provide him with the requested information, the appellant would have to go through the process of filing an Access to Information Procedures (ATIP) request. The facts before this Tribunal do not indicate that the appellant has pursued the filing of an ATIP request.

[9] This decision will now provide a summary of the final submissions of the appellant, Mr Schauz, and the respondent, Tudhope, followed by my analysis and disposition of the matters in question.

## **Issue**

[10] My role in this appeal is to determine whether I should exercise my powers pursuant to paragraph 146.1(1)(a) to vary HSO O'Donnell's direction.

## **Appellant's submissions**

[11] The appellant is self-represented. He argued that the direction should be varied in such a way that its new reading explicitly directs the respondent to supply him with all of its health and safety documentation and information related to his employment at Tudhope. The appellant has made previous requests for this information to the health and safety representative at Tudhope, and directly to HSO O'Donnell himself. These requests were denied.

[12] The appellant argued that it is his understanding from reading HRSDC's website and its reference to the Code that he has a legal right to have access to all of the health and safety documentation that his employer possesses relating to his employee file.

[13] For these reasons, the appellant argued that the direction should be varied in the aforementioned way.

## **Respondent's submissions**

[14] It is contended by the respondent that the appellant's appeal is not easily addressed because it involves an appeal of a direction by a HSO that was issued to Tudhope that was subsequently complied with.

[15] The respondent disputes the fact of the initial claimed injury. Since this claimed injury, the appellant has filed complaints under several sections of the Code. On numerous occasions, the appellant has also filed with the Workplace Safety and Insurance Board, the Canada Industrial Relations Board, and the Canadian Human Rights Commission. Some of these proceedings have been finalized with rulings that have not been appealed, while others have been ruled upon, but are currently under appeal by the appellant.

## **Analysis**

[16] For the reasons that follow, I have decided to confirm the direction issued by HSO O'Donnell to Tudhope Cartage Limited on January 4, 2012.

[17] The power exercised by HSO O'Donnell is found under subsections 141(1)(h) and (i) of the Code. These provisions read as follows:

141.(1) Subject to section 143.2, a health and safety officer may, in carrying out the officer's duties and at any reasonable time, enter any

work place controlled by an employer and, in respect of any work place,  
may  
[...]  
(h) direct the employer to produce documents and information relating  
to the health and safety of the employer's employees or the safety of the  
work place and to permit the officer to examine and make copies of or  
take extracts from those documents and that information;  
[...]  
(i) direct the employer or an employee to make or provide statements, in  
the form and manner that the officer may specify, respecting working  
conditions and material and equipment that affect the health or safety of  
employees;  
[...]

[18] The powers set out above are discretionary powers of a HSO. In other words, these powers arise not out of the finding of a contravention of the Code, but pursuant to the discretionary authority of a HSO to determine what is needed to conduct their investigation into an occupational health and safety matter that has arisen under Part II of the Code.

[19] Based on the facts that I have received, I see no reason to interfere with the manner in which HSO O'Donnell exercised his discretionary authority for the conduct of his investigation. The HSO properly used his authority under subsections 141(1)(h) and (i) of the Code to issue a direction that he felt would allow him to have access to information that he deemed to be useful for properly handling the complaints raised by the employee, Mr Schauz.

### **Decision**

[20] Pursuant to my powers under subsection 146.1(1)(a), I hereby confirm the direction of HSO Michael O'Donnell, issued on January 4, 2012 to Tudhope Cartage Limited.

Michael Wiwchar  
Appeals Officer