Occupational Health and Safety Tribunal Canada

Tribunal de santé et sécurité au travail Canada

Ottawa, Canada K1A 0J2

Citation: Canadian Food Inspection Agency v. Public Service Alliance of Canada, 2013 OHSTC 18

Date: 2013-06-20
Case No.: 2013-19, 20 and 21
Rendered at: Ottawa

Between:

Canadian Food Inspection Agency, Applicant

and

Public Service Alliance of Canada, Respondent

Matter: Applications for a stay of directions

Decision: The stay of the directions are denied

Decision rendered by: Mr Michael Wiwchar, Appeals Officer

Language of decision: English

For the applicant: Ms Andrea Horton, Legal Counsel, Department of Justice

For the respondent: Ms Lisa Addario, Legal Counsel, Public Service Alliance of Canada

REASONS

[1] On April 8, 2013, the Canadian Food Inspection Agency (CFIA) filed appeals under subsection 146(1) of the *Canada Labour Code* (the Code) of three directions issued by Ms Bobbi Anderson, Health and Safety Officer (HSO), Human Resources and Skills Development Canada, Labour Program, on March 8, 2013. Joined to the appeals were applications to stay the three directions until the appeals are decided on their merits.

Background

[2] In October 2012, after receiving complaints filed by three employees, HSO Anderson conducted an investigation at the work place operated by the CFIA, at 5921 Frank Street, Mitchell, Ontario. Following her investigation, HSO Anderson issued a direction to the employer finding a contravention of subsection 20.9(3) of the Canada Occupational Health and Safety Regulations (Regulations), with a January 31, 2013, compliance date. On November 27, 2012, HSO Anderson visited the work place again, for the purpose of conducting a second investigation. Three additional directions were issued to the employer on March 8, 2013, under paragraph 125.(1)(*x*) of the Code. All three directions are identical with the exception that each one refers to a specific employee (i.e. Employee #1, #2 and #3). The direction pertaining to Employee #1 reads as follows:

> IN THE MATTER OF THE *CANADA LABOUR CODE*
> PART II – OCCUPATIONAL HEALTH AND SAFETY
>
> DIRECTION TO THE EMPLOYER UNDER SUBSECTION 145(1)
>
> On November 27th, 2012, the undersigned health and safety officer conducted an investigation in the work place operated by CANADIAN FOOD INSPECTION AGENCY, being an employer subject to the *Canada Labour Code*, Part II, at 5921 Frank St., Mitchell, Ontario, N0K 1N0, the said place being sometimes known as CFIA – Great Lakes Specialty Meats of Canada Inc..
>
> The said health and safety officer is of the opinion that the following provision of the Canada Labour Code, Part II, has been contravened:
>
> No. / No : 1
>
> Paragraph 125.(1)(x) – Canada Labour Code Part II, -
>
> The employer shall comply with every oral or written direction given to the employer by an appeals officer or a health and safety officer concerning the health and safety of employees.
>
> **The employer failed to comply with the original direction issued on December 14th, 2012 to appoint a competent person to investigate the**

> **allegations of violence that remain unresolved as reported by Employee #1 in February 2012.**
>
> Therefore, you are HEREBY DIRECTED, pursuant to paragraph 145(1)(*a*) of the *Canada Labour Code*, Part II, to terminate the contravention no later than March 28, 2013.
>
> Further, you are HEREBY DIRECTED, pursuant to paragraph 145(1)(b) of the *Canada Labour Code*, Part II, within the time specified by the health and safety officer, to take steps to ensure that the contravention does not continue or reoccur.
>
> Issued at London, this 8th day of March, 2013.

[3] On May 27, 2013, I held a teleconference to hear the stay applications. Present at the teleconference were Ms Horton and Ms Dagenais for the applicant, Ms Addario, Mr Kingston and Mr Yoboua for the respondent, and HSO Anderson.

[4] The following are the reasons in support of my decision not to grant the stay, which I rendered on May 30, 2013.

[5] The authority of an appeals officer to grant a stay is derived from subsection 146(2) of the Code, which reads as follows:

> 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

[6] In deciding the stay applications, I applied the following three criteria:

1) The applicant must satisfy the appeals officer that there is a serious question to be tried as opposed to a frivolous or vexatious complaint.

2) The applicant must demonstrate that he or she would suffer significant harm if the direction is not stayed by the appeals officer.

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 work place.

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

[7] At the teleconference, both parties agreed on the fact that the question to be tried was a serious one.

[8] For the applicant, the seriousness of the question derives from the statutory lack of authority for the HSO to issue a direction to the employer under subsection 20.9 of the Regulations under Part XX - Violence in the Work Place. The applicant sustained that

HSO Anderson could not issue a direction to the employer to appoint a competent person to investigate the alleged violence, without first directing the employees to try to resolve the issue by providing the employer with details and particulars to work with. Additionally, the applicant raised the vagueness of the complaint to support its position that there is a serious question to be tried.

[9] The respondent is also of the opinion that there is a serious question to be tried based on the fact that no action has been taken by the employer to investigate the issue of alleged violence, even though it was escalated to the vice-president.

[10] I indicated to both parties that I was of the opinion that the question to be tried is a serious one. Therefore, I am satisfied that the threshold for this first criterion has been met.

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

[11] The applicant submitted that it would suffer two significant harms. The first one results from the vagueness of the allegations. The applicant contended that in order to implement HSO Anderson's directions, it would have to appoint a third party to investigate the alleged violence without being able to provide to that party any details or particulars to carry out its mandate. The applicant maintained that for that third party to achieve its mandate appropriately, it must be provided at least with the nature of the allegations, the perimeter of work to be covered, and the names of the managers involved in the violence.

[12] The second alleged harm is a breach of natural justice that could result from the managers having to be investigated as they are not able to respond to the allegations.

[13] I find that even if the arguments of the applicant on the vagueness of the allegations and the breach of natural justice might be relevant in consideration of the merits of this case, I do not find that they amount to a significant harm for the employer. I therefore conclude that the applicant has failed to establish that the employer will suffer significant harm if the directions are not stayed.

[14] Given my finding that the employer has not established that it would suffer significant harm if the stay is not granted, I do not need to consider the third criterion.

Decision

[15] For the reasons set out above, the applications for a stay of the three directions issued by HSO Bobbi Anderson on March 8, 2013, is denied.

Michael Wiwchar
Appeals Officer