

Occupational Health
and Safety Tribunal Canada



Tribunal de santé et
sécurité au travail Canada

Ottawa, Canada K1A 0J2

Citation: Winnipeg Airports Authority Inc. v. Public Service Alliance of Canada ,
2013 OHSTC 28

Date: 2013-10-08
Case No.: 2013-35
Rendered at: Ottawa

Between:

Winnipeg Airports Authority Inc., Applicant

and

Public Service Alliance of Canada, Respondent

Matter: An application under subsection 146(2) of the *Canada Labour Code* for
a stay of a direction issued by a health and safety officer

Decision: The stay of the direction is denied

Decision rendered by: Mr. Jean Arteau, Appeals Officer

Language of decision: English

For the Applicant: Mr. Kevin Smith, Safety Officer, Winnipeg Airports Authority Inc.

For the Respondent: Mr. Jean-Rodrigue Yoboua, Representation Officer, Legal Services –
Public Service Alliance of Canada

REASONS

[1] On June 28, 2013, the Winnipeg Airports Authority Inc. filed an appeal under subsection 146(1) of the *Canada Labour Code* (the Code) of a direction issued by Mr. David Mandziuk, Health and Safety Officer (HSO), on June 21, 2013. Joined to the appeal was an application for a stay of the direction until the matter is decided on its merits.

Background

[2] During the course of March, April, May and June 2013, HSO Mandziuk conducted several inspections at the work place operated by Winnipeg Airports Authority Inc., at 249-2000 Wellington Avenue, Winnipeg, Manitoba. A direction was issued to the employer dated June 28, 2013 under Paragraph 125.(1)(a) of the Code, pursuant to these inspections. The direction 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 March 28, 2013, the undersigned health and safety officer conducted an inspection in the work place of James Armstrong Richardson International Airport operated by Winnipeg Airports Authority Inc., being an employer subject to the *Canada Labour Code*, Part II, at 249-2000 Wellington Avenue, Winnipeg, Manitoba, R3H 1C2, the said work place being sometimes known as Winnipeg Airports Authority 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

125.(1)(a) – Canada Labour Code Part II, 2.2(1) – Canada Occupational Health & Safety Regulations, National Building Code (1995) 3.4.6.15.

It was observed that within the building known as James Armstrong Richardson International Airport there are a number of electromagnetic locks installed on egress doors from rooms as well as egress doors in corridors. These doors do not meet the requirements set out in the National Building Code (1995).

WINNIPEG AIRPORTS AUTHORITY INC. shall ensure that all egress doors from rooms and egress doors in corridors meet the requirements of the National Building Code (1995).

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 July 5th, 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 Winnipeg, this 21st day of June, 2013.

David Mandziuk
Health and Safety Officer
[...]

[3] On June 28, 2013, an appeal of the direction was filed with the Occupational Health and Safety Tribunal Canada. The appeal was accompanied by an application to stay the direction issued by HSO Mandziuk.

[4] On September 9, 2013, I held a teleconference to hear the stay application. Present at the teleconference were Mr. Kevin Smith, Safety Officer, for the applicant Winnipeg Airports Authority Inc., Jean-Rodrigue Yoboua, Representation Officer, Public Service Alliance of Canada, legal services representative for the respondent, Mr. David Mandziuk HSO and Mr. Michael Wagemakers, Professional Engineer from Fire Protection Engineering Services, Labour Program Central Region. Both Mr. Mandziuk and Mr. Wagemakers participated in the hearing at my request.

[5] My decision not to grant the stay was rendered on September 12th, 2013. The following are the reasons in support of my decision.

[6] 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

[7] In deciding this stay application, I applied the following three criteria which were sent to the applicant prior to the hearing:

- 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 it would suffer significant harm if the direction is not stayed; and
- 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?

[8] Both parties agreed upon the fact that the question to be tried is a serious one.

[9] The applicant referred to the arguments put forward in the appeal documents. He argued that the seriousness of the question derives from the fact that the Winnipeg Airports Authority Inc. installed electromagnetic locks on egress doors based on the 1998 Manitoba Building Code. He further argued that the 1998 Manitoba Building Code, as amended, is an alternative method of electromagnetic lock release in order to meet the requirements of the 1995 National Building Code referred in the Canada Occupational Health and Safety Regulations, to provide a safe means of egress to occupants.

[10] The respondent did not contest the submissions of the applicant on the seriousness of the question to be tried.

[11] After reading the appeals documents and hearing the parties, and considering the consequences that the replacement of the egress doors would have on the operations of the airport as well as the safety of passengers and all people working at the airport, I conclude that this question is serious and therefore, this first criterion has been met.

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

[12] In his response to this question, the applicant raised the vagueness of the direction, submitting that the HSO did not inspect all doors and does not specify which ones are covered by the direction. He further submits that the Winnipeg Airports Authority Inc. would therefore have to conduct a thorough review of all the doors. However the applicant was not able to quantify the number of doors impacted by the direction, even approximately.

[13] In response to my questions relating to the cost of complying with the direction, the applicant submitted that it would cost roughly 100 000 dollars. However, he did not provide any specific information on the nature of the work to be done or on the impact of implementing the direction on the operations of the airport.

[14] The respondent did not submit any arguments on this point.

[15] The applicant's main argument is an economic one that in my opinion has not been substantiated to demonstrate that a significant harm would occur in the event that the stay was not granted. He has not been able to provide me even with the approximate number of doors that would be impacted by the compliance, which lead me to the conclusion the amount he put forward was based on a subjective consideration. The applicant had the onus to demonstrate how the implementation of the direction would cause him significant harm; I am of the opinion that he failed to do so. As a result, I do not possess any objective reason that would justify that a stay be granted and conclude that this second criterion has not been met.

[16] Having concluded that the second criterion has not been met, I do not need to consider the third one.

Decision

[17] For all the above mentioned reasons, the request for a stay is denied.

Jean Arteau
Appeals Officer