

Occupational Health
and Safety Tribunal Canada



Tribunal de santé et
sécurité au travail Canada

Ottawa, Canada K1A 0J2

Citation: Canada Post Corporation and Diana Baird and Canadian Union of Postal Workers,
2013 OHSTC 31

Date: 2013-10-31
Case No.: 2011-64
Rendered at: Ottawa

Between:

Canada Post Corporation, Appellant

and

Diana Baird, Respondent

and

Canadian Union of Postal Workers, Intervenor

Matter: Appeal under subsection 146(1) of the *Canada Labour Code* against a
direction issued by a Health and Safety Officer.

Decision: The direction is varied.

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. Baird neither appeared nor was represented at the hearing

For the Intervenor: Mr. David Bloom, counsel, Cavalluzzo Hayes Shilton McIntyre &
Cornish LLP

REASONS

[1] This is an appeal brought by Canada Post Corporation (CPC) pursuant to subsection 146(1) of the *Canada Labour Code* (the Code) against a direction issued by Health and Safety Officer (HSO) Michael O'Donnell pursuant to subsection 145(2) of the Code following the latter's investigation into the refusal to work made by Rural and Suburban Mail Carrier (RSMC) Diana Baird in the work place operated by the appellant CPC.

[2] Ms. Baird's refusal to work statement is reported by HSO O'Donnell in his investigation report as describing the danger that she was claiming to be exposed to as being twofold to wit, first the danger to her health in delivering mail alone caused by the repetitive strain of needing to hop from driver to passenger seat 200+ times per day to deliver the mail through the passenger side window of her delivery vehicle and second, the necessity, in doing so, of removing her seat belt with the vehicle stationary on roads with 70+kmh speed limits.

[3] The actual Refusal to Work registration form signed and filed by Ms. Baird however is worded somewhat differently as follows:

Delivery of mail/flyers/parcels too much repetitive strain on my back from delivering out passenger window, must undo seatbelt and hop to passenger seat over 200 times daily. Strain on back from continually twisting to retrieve parcels/mail from floor in order to put out passenger window. My previous RR Carp route had ERGO, RR#3 is the only one in question, yet replacement drivers are permitted ERGO.

[4] At the end of his investigation, HSO O'Donnell reached the conclusion that in the case of Ms. Baird, the performance of an activity while at work constituted a danger, and described it as follows:

This investigation has determined that the delivery of mail to 229 Rural Mail Boxes (RMB's) from the driver's seat through the passenger window is in excess of the delivery rate over and above the acceptable rate of 12.5 deliveries per hour and therefore constitutes the performance of such activity as being a danger. The measured delivery rate identified in this investigation is a rate of 46 per hour over an 8 hour shift, 5 days a week. As such, Canada Post RSMC Diana Baird or any other person granted access to perform this work activity is to cease to doing so immediately. 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.

[5] The direction issued by the HSO was to the effect that the appellant was required to immediately alter the activity that constituted the danger. The notice of appeal filed by the appellant makes it clear however that it is not challenging the whole of the above direction/statement of danger through the present appeal, but rather solely the last part which directs CPC to cease and alter the activity of having RSMC Baird and any other

person “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 travelling part of the road” (my underlining). Consequently, this appeal and the decision that will follow will bear solely on this element of the direction, thus excluding the issue of rate (hourly) of delivery through the passenger-side window found to be excessive by the HSO. The notice of appeal filed by the appellant formulates three specific reasons for the appeal:

- the rural mail boxes in issue have been assessed through the specialized TSAT tool and found to be safe based on detailed road safety criteria;
- TSAT contemplates that delivery will be effected while not wearing a seatbelt;
- the delivery of mail to rural mailboxes through the passenger-side window is a normal condition of employment.

[6] In the course of preparing for the hearing of this case, the Canadian Union of Postal Workers (CUPW) was initially identified as respondent, which I have taken as meaning that it would be acting on behalf of refusing employee Baird as respondent. However, in a letter dated March 22, 2012, CUPW informed the Occupational Health and Safety Tribunal Canada (Tribunal) that it would not be representing the employee Diana Baird in the present proceeding, opting instead to seek intervenor status on the basis that it substantially shared the appellant’s same interests in the present case or could be substantially affected by the decision to be rendered herein. In a separate previous decision by the undersigned, such intervenor status was granted. Finally, on July 13, 2012, Ms. Baird informed the undersigned by electronic mail that she would not be present and take part in the hearing of this appeal and that she no longer wished to be respondent in the matter. Consequently, this appeal is being determined solely on the evidence provided by the appellant and the latter’s submissions as well as those of the intervenor.

[7] At the outset of the hearing, both counsel offered opening statements. For counsel for the appellant, there are two aspects to the refusal by Ms. Baird, one being ergonomic and the other having to do with vehicular traffic since the rural mail boxes (RMB) to which she delivers are located on the side of the road. It is the appellant’s position that the tool developed by the employer to assess vehicular risk related to delivery to RMBs, commonly referred to as TSAT (Traffic Safety Assessment Tool), demonstrates the best scientific methodology, constitutes the best tool and thus is best used to ensure safe delivery to said RMBs. CPC uses that tool to assess some 845,000 such mail boxes, and under the TSAT, RMBs can be considered as delivery safe even in cases where not all four wheels of the delivery vehicle are off the road at the delivery station (RMB). This being said, counsel for the appellant noted that the sole reason for refusal invoked by Ms. Baird related to the ergonomic aspect associated with the repetitive nature of the delivery activity through the passenger-side window of her vehicle and the strain on her back, an aspect that has been addressed by the employer who has and is still providing an assistant

(ERGO) to Ms. Baird to effectuate delivery through the passenger side window without having the latter need to slide over herself to deliver the mail.

[8] As a consequence, CPC is only appealing the second part of the direction, an element not raised by the Baird refusal and seeking that it be deleted from the direction which should be further varied by my finding this second element a normal condition of employment. In the case of the intervenor, counsel first stated that I have the authority under subsection 146.1(1) of the Code to vary a direction and thus the authority to issue the direction that ought to have been issued. This being the case, counsel shared the opinion expressed by counsel for the appellant that the TSAT properly applies and is the proper manner of assessing RMBs. While there is still an issue between CPC and CUPW regarding the proper role of work place committees and safety representatives in the TSAT assessment process, this matter is not at issue in the present case. As regards the direction under appeal, counsel for the intervenor was of the same mind as the appellant, stating that the portion of the direction under appeal was not necessary to resolve the initial complaint formulated by the refusing employee (Baird) and was in fact inconsistent with the TSAT. Like the appellant, the intervenor was of the view that the portion of the direction being appealed should be deleted.

Background

[9] As stated previously, the direction issued by HSO O'Donnell is really twofold and while it would appear to bear first on an ergonomic issue related to the repetitiveness of movement by the single RSMC in delivering mail through the passenger side window from the driver seat of her delivery vehicle and second, a vehicular traffic issue relating to the delivery of mail to rural mail boxes with the delivery vehicle remaining at least partly on the travelled part of the road and the need for the RSMC to unbuckle her seat belt to slide over to the passenger side, at the hearing, the testifying HSO stated that he considered the two issues to be interrelated in that, in his opinion, one could really consider the repetitiveness of buckling and unbuckling her seat belt at the rate of 46 times per hour, which represented the hourly rate of delivery to RMBs on Ms. Baird's delivery route, as entailing an ergonomic aspect in addition to the vehicular safety aspect of being unsecured inside the vehicle more often than the contrary given the delivery rate of 46 RMB's per hour with the vehicle not entirely off the travelled part of the road in the case of 159 RMBs. This being said, while the appeal solely concerns the second part of the direction, a better comprehension of the factual circumstances or background to this matter requires that particulars relating to both aspects of the direction be drawn from the report prepared by the HSO as well as from the latter's brief testimony at the hearing.

[10] Ms. Baird succeeded in her bid to obtain RR # 3 in Carp, Ontario as her delivery route. The previous RSMC on that route had had what is referred to as an ergonomic assistant (ERGO) for six years to assuage the health risks associated with a single RSMC delivering through the passenger side window from the driver side of the delivery vehicle. The characteristics of the route had not changed between the time it had become vacant and the time it was assigned to Ms. Baird. No ergonomic assistant was initially assigned to Ms. Baird's new route, and a new ergonomic assessment was requested to

determine the need for one. It appears to be standard practice to proceed with a new assessment of a rural route every time a new RSMC is assigned, regardless of whether an ergonomic assistant had been previously provided or not to the former RSMC. An assistant was however provided to Ms. Baird in the interim, pending the results of the approval process, and this was prolonged by the employer pending the result of Ms. Baird's refusal action. I was informed at the hearing that this had become permanent.

[11] At the time of her refusal, RSMC Baird's route required that she deliver and pick up mail to or from a total of 587 points of call (POC), 229 of those being RMBs, with the remaining POCs being commercial businesses, community mail boxes (CMB) and group mail boxes where the issue of delivery through the passenger side window and of the delivery vehicle remaining partially on the road would not arise. The entire route of Ms. Baird is 92 km in length with a calculated service time of 7.48 hours. Of all those POCs, 229 are RMBs to which Ms. Baird delivers over a period of 4.99 hours, thus creating a rate of delivery of 46 RMBs per hour, with 159 of those RMBs on RR #3 in Carp being wheels "on the road", according to the HSO report, meaning that delivery or pick up would be effectuated without the delivery vehicle having all four wheels off the travelled part of the road. The two ergonomic assessments that were conducted relative to Ms. Baird's route resulted in her request for an ergonomic assistant being rejected apparently because the delivery rate on that route was below 50 RMBs per hour. It would appear that the rate of delivery to acquire an ergonomic assistant must be equal to or greater than 180 RMBs and at a rate of 50 RMBs per hour. This is what brought about her refusal to work.

[12] Canada Post Safe Work Procedures for RSMCs require them to wear a seat belt at all times when the vehicle is in motion. In the absence of an ergonomic assistant, servicing a RMB through the passenger side window of the vehicle requires the RSMC to take off their seat belt, grasp a manageable amount of mail, place oneself in a position that allows easily accessing the RMB without overstretching, lower the window if required, open the RMB and retrieve any outgoing mail and deposit the mail being delivered. Once this is completed, the RMB is to be closed and the flag raised, the window raised if required with the RSMC then returning to the driving position, buckling up the seat belt, releasing the parking brake and checking for traffic. When it is safe to enter the traffic stream, the RSMC is to turn on the turn signal, put the vehicle transmission into drive and enter the roadway.

[13] HSO O'Donnell noted in his report that at a rate of delivery of 46 RMBs per hour, even compensating for some RMBs being clustered together within several meters, this would mean that the RSMC could be removing and replacing her seat belt up to 40 or more times per hour, a potential routine that struck the HSO as impractical and engendering ergonomic risk. Apart from the ergonomic aspect of this routine, the HSO also noted that removing and replacing the seat belt at that frequency would mean that the RSMC would often be in her vehicle unsecured, in fact about two-thirds of the time that she would be delivering to the RMBs. While noting that Ontario legislation (Highway Traffic Act) may exempt certain persons from wearing seat belts, including employees and agents of CPC engaged in rural mail delivery, and provides that a vehicle may park, stand or stop while still partially on the roadway only when there is a clear view of the

vehicles and of the roadway for at least 125 meters from the vehicle in each direction of the highway, the HSO noted that the employer had not conducted a hazard assessment to address the risk associated with performing the duties of an RSMC while unsecured and moving around in the vehicle without a seat belt on. He calculated the risk of serious injury or death for an RSMC from a collision with another car in situations where the RSMC would not be wearing a seat belt and concluded that the risk of serious injury or death from a collision is not negligible and that the employer had failed to conduct a related hazard assessment examining the use of seat belts as part of the RSMC ergonomic hazard assessment for delivery out passenger door (DOP).

[14] The HSO thus concluded that the employer's Safe Work Procedures and rate of delivery for RMBs do not "work in concert" with the purpose clause of the Code (section 122.1) which calls for the prevention of accidents and injury to health arising out of, linked with or occurring in the course of employment. He further found that the TSAT's central concern with traffic hazards and apparent lack of consideration with seat belt safety as contrary to subsection 19.5(3) of the *Canada Occupational Health and Safety Regulations* (Regulations) that requires an employer to ensure that any preventive measure not create in itself a hazard and to take into account the effects on the work place. The HSO thus found that a danger existed that warranted the issuance of the direction under appeal.

[15] As stated earlier, HSO O'Donnell testified briefly at the hearing and the latter's testimony provided a few additional background elements to the latter's decision to issue the direction under appeal. He reiterated his opinion that the two parts of the direction were interrelated and that the rate or number of times that Ms. Baird would have had to buckle and unbuckle her seat belt presented a new ergonomic issue over and beyond the fact that for 159 RMBs, where her vehicle would have remained partially on the travelled part of the roadway, she would have been unsecured in her vehicle. In answer to counsel for the appellant, the HSO recognized that in the course of his investigation into this matter, he had not found it necessary to visit any of the points of delivery on Ms. Baird's delivery route. While he was familiar with the TSAT tool, HSO O'Donnell failed to point out any of the TSAT criteria that might have been used to arrive at his second danger conclusion, nor did he consult with any expert regarding the validity of the TSAT model.

[16] While he did recognize that the 12.5/hour rate of delivery to RMBs by a lone RSMC in DOP fashion that he had used to base the first part of his direction had been taken from Appeal Officer Lafrance's decision in D. Morrison et al, C. McDonnell et al. and Canada Post Corporation, Decision no. OHSTC-09-032, he also recognized that such rate would not be relevant to TSAT since the said tool does not deal with ergonomics but rather serves to determine and measure, on the basis of specific criteria, whether individual RMB locations meet vehicular circulation safety criteria. Also, HSO O'Donnell was apparently unaware that Ms. Baird's delivery route (RR#3 Carp) had been TSAT assessed in May 2009 and that of the 159 RMBs that had been identified as requiring delivery with the delivery vehicle having to be partially on the travelled part of the road, recommendations through the TSAT assessment had resulted in a large number being moved to CMBs or having undergone other corrective measures by October 2009,

therefore prior to Ms. Baird's refusal, with the remainder's locations being assessed as safe from the TSAT traffic safety perspective.

[17] Furthermore, when questioned by counsel for the intervenor at the outset of the hearing, HSO O'Donnell did not question the traffic assessment criteria or guidelines found in TSAT and recognized that for the 159 RMBs in question, an individual assessment would have been conducted involving an individual vehicular traffic survey over a period of 15 minutes in each case on a specific day and time. He did not claim that any count conducted in this manner would be invalid or incorrect from a traffic safety perspective and he did not himself conduct another count that would invalidate that which was conducted through TSAT. He restricted however his position on this to the specific day and time that the TSAT survey had been conducted and formulated the opinion that circumstances are not permanent and may change from day to day. Finally, HSO O'Donnell recognized that under TSAT, delivery to RMBs with wheels on the roadway is permissible, where certain criteria are adhered to, criteria that the HSO does not challenge except insofar as seat belts may be unsecured, although TSAT does not deal with seat belts.

Issue(s)

[18] I stated above that the direction that was issued is a two part direction with the first part, one that I would identify as dealing with the ergonomic aspect of delivery to RMBs at a rate found by the HSO to be excessive when conducted by a lone RSMC doing so through the passenger-side window of the delivery vehicle, not being challenged at appeal, and the second part, dealing sensibly with vehicular traffic safety due to delivery being effectuated with the vehicle remaining partially on the roadway at some of the delivery points being the subject of the present appeal. The HSO incorporated into this second part of the direction the element of this type of delivery needing to be done with the seat belt unsecured and at the hearing, essentially appeared to seek to incorporate into the coverage to be given to the second part of the direction an ergonomic aspect associated with the repetitive buckling and unbuckling of said seat belts that would reinforce the conclusion of danger associated with delivery to RMBs with wheels partially on the roadway.

[19] As stated in their opening remarks, both counsel insisted on the fact that assessment of delivery safety to RMBs through TSAT generally, and for this case in particular, that which is effectuated with wheels remaining on the roadway, does not concern ergonomics and constitutes solely a traffic safety issue. The Refusal to Work registration form filled and signed by Ms. Baird, which is part of HSO O'Donnell's investigation report, makes no mention of delivery with wheels on the roadway, and while it mentions the unbuckling of the seat belt, it does so solely as part of the movements associated with delivery through the passenger-side window of the delivery vehicle "200 times daily" in needing to hop from one side of the vehicle to the other and the strain on her back from continually twisting to retrieve parcels/mail from the floor in order to put out the passenger window, thereby not associating in any manner the

ergonomic difficulties associated with this repetitive delivery to a wheels on the roadway RMB delivery, but to all points of delivery.

[20] Furthermore, the various specific steps or movements involved in such passenger-side delivery are described in detail by the HSO in his investigation report and make it clear that the seat belt buckling/unbuckling represents but one of a series of movements that make up the whole sequence of the delivery through the passenger-side window and is common to the delivery at all RMBs, when done with a single RSMC, through the passenger-side window of the vehicle and thus the ergonomics aspect of this is part and parcel to the total operation and applies generally to delivery to all RMBs, not only those effectuated with wheels remaining on the roadway, thus reinforcing the conclusion that it is ergonomic in nature. This being said, the issue to be determined in the present appeal is thus whether delivery to RMBs with wheels still on the roadway, albeit with the seat belt being buckled and unbuckled as would be the case for all deliveries to RMBs by a lone RSMC, constitutes a danger justifying the second part of the direction issued by the HSO.

Submissions of the parties

[21] Apart from the HSO report and the latter's brief testimony, only one other witness testified at the hearing. That witness (Terry Kelly) was brought by the appellant and was not cross-examined by the intervenor. In addition to a number of documents filed as evidence (E-2) by the appellant, all having to do with the application of the TSAT tool, either generally or specifically to Ms. Baird's route, both parties jointly sought to file an Expert Opinion Report prepared by Navigats Inc. (Geni Brafman Bahar, P. Eng., P.E.) for the appellant, without the author of the report having to testify, and for the purpose of establishing the author's expertise in traffic and road safety engineering, human factors and safety management, filed a lengthy résumé of the latter's education, qualifications, professional work and writings. In May 2008, G. Bahar was one of the four panel members who authored the report "Rationale behind the Rural Mailbox (RMB) Traffic Safety Assessment Tool Version 3.0", in other words relating to TSAT. Upon consideration of said résumé and the position of both parties, I accepted that the document be filed on consent.

A) Appellant's submissions

[22] As stated above, Mr. Terry Kelly was the sole witness called by the appellant and was clearly brought to testify as to the workings of the TSAT assessment process in general and the actual assessment on the delivery route of the refusing employee. Mr. Kelly has been an employee of CPC for 10 years and prior to this, was a contractor for the appellant for five years and tasked with rural route mail delivery. He is presently a delivery service officer charged with rural mail safety review. In the 2006/2007 period, as a delivery planner, he performed assessments on individual mail boxes and thus performed the TSAT assessment. For the last three years as a delivery service officer, he has supervised the teams that do the TSAT assessments, performed quality checks on TSAT assessments and ensured that the assessors follow the process established under TSAT. Like all assessors under TSAT, he holds a TSAT certification and in his present

capacity provides training to assessors. He is therefore cognizant of the TSAT document titled “RMB Traffic Safety Assessment Tool-TSAT Guidance Document”, and draws attention to the fact that under TSAT, there are flow charts governing the assessment of traffic safety.

[23] The guidance document includes a 2 lane traffic flow chart and a 4 lane traffic flow chart as well as a low speed-low volume rural subdivision flow chart which states that “an area is classified as a low speed, low volume rural subdivision when all three following conditions apply”, those being:

- posted speed is less than or equal to 40km/hour;
- total vehicles are less than or equal to 12 vehicles in 15 minute count;
- RMB is located in a rural subdivision or cottage-like setting with features such as: two-lane roads, suburban type housing densities, cul-de-sac road designs, parked vehicles and pedestrian routinely walking the roadway.

Finally, the guidance document offers a traffic safety assessment form that needs to be completed for each individual mail box that is assessed and allows for the recording of all characteristics relative to each mail box under three categories: initial data collection, main data collection and results.

[24] The witness is aware that the RR#3 Carp route was assessed on April 27, 2009, thus prior to the Baird refusal, since the two assessors were reporting to Mr. Kelly at the time, and notes that the route is made-up of private residences and that there had been no complaints previously registered regarding any of those mail boxes. The witness addressed all the criteria listed on the traffic safety assessment worksheet that serves to collect the information for each individual mailbox and its subsequent assessment. As such:

- the posted speed limit will affect the assessment,
- “RMB at point of call” serves to indicate whether the mailbox is in front of the house or not,
- “road type” serves to indicate whether the road is of the unmarked gravel/dirt, unmarked paved or marked paved type,
- number of traffic lanes establishes if the road travelled by the RSMC is a two or four lane highway. In the present case, the worksheet shows that the entire route is a two lane highway,
- starting time of count demonstrates that the traffic count was conducted at that specific mailbox at the time that delivery is normally effectuated at the said mailbox,

-total vehicles count represents the total number of vehicles that pass the RMB location in 15 minutes. The witness explained that some traffic volume counts will hold only for some segment of the same road and may need to be redone for another segment where traffic conditions may be different, for instance proximity to intersection. There are also threshold volumes depending on where the delivery vehicle may be situated (on or off travelled part of roadway),

-distance to intersection relates to certain restrictions that may result in displacement of a mail box, such as stopping being prohibited within 20m of intersection on a road with a right of way or a railroad crossing or within 70m of intersection on road without right of way,

-restrictions may also have an impact, such as a posted “no stopping” sign on that road, a prohibition to stop on a roadway where the posted speed is 70kmh or more, or RMB located on a laneway, etc.,

-the off the road data serves to indicate if the delivery vehicle used would be entirely or not off the road at each delivery location, meaning the whole vehicle, including mirrors noted off the white lane on marked road and off traffic lane on unmarked road,

-hill or curve or obstruction, which indicates the cases where “sight lines” in front or rear of vehicle and merging time evaluation needs to be conducted. Under TSAT, the time-gap between vehicles to allow safe merging with traffic will vary. Under TSAT, for a 2 lane highway such as RR#3 Carp, for a vehicle entirely off the road, the time gap behind would be 9 seconds with no time gap ahead for a threshold traffic volume of 130 vehicles per 15 minutes. Where the delivery vehicle would not be entirely off the road, the time gap behind would be 11 seconds, the time gap ahead 14 seconds for a threshold traffic volume of 40 vehicles per 15 minutes period.

[25] The data collected in light of all those criteria may allow the classification of individual mailboxes as being in a LSLVRS (Low Speed-Low Volume-Rural Suburban) area. Mr. Kelly testified that where the rate of traffic exceeds a certain volume and the time gaps between vehicles (for merging purposes) cannot be satisfied, individual mailboxes may need to be relocated, including to CMBs whether the customer is in agreement or not. He also noted that TSAT assessments are not conducted during winter because under winter conditions, it is sometime difficult to properly determine the position of individual boxes. Yet, should a RSMC feel that there is a risk associated to a particular RMB during that time, the RSMC does not have to deliver to that box pending resolution of the situation.

[26] Mr. Kelly audited and found satisfactory the assessment that was conducted on RR#3 Carp in 2009. The results indicated that out of 262 RMBs, 73 had to be modified, either through relocation or through centralization to CMBs, thereby leaving 89 RMBs

where delivery would need to be done with the vehicle partially on the roadway, a number which is considerably lower than what was claimed by the HSO (159). Those results were passed on to the RSMCs of the time who indicated being satisfied with the assessment. According to the witness, the changes required following the April 2009 assessment were completed in October 2009, therefore before Ms. Baird's refusal to work. He also indicated that Ms. Baird filed 2 complaints concerning two RMBs on June 15, 2012, and that the problem was resolved through relocation of the RMBs on July 12, 2012. Mr. Kelly completed his testimony by indicating that based on the TSAT assessment and the relocation of a number of RMBs on RR#3 Carp, there remained only 84 RMBs where delivery would still need to be made with the vehicle being partially on the roadway, with all boxes having failed the assessment being removed.

[27] In formulating her verbal submissions at the hearing and also in her written submissions, counsel for the appellant pointed the undersigned to conclusions arrived at by G. Bahar in the Expert Opinion Report. The first relates to time gaps and reads as follows:

The TSAT takes into account the fact that the RSMC vehicle may be parked on the travelled part of the road, obstructing partially or fully the travel lane. [...]

Thus the TSAT assesses the availability of gap times (i.e., the time gap behind for a RSMC in the vehicle stopped at a RMB to merge into the travel lane (9 sec.), the time gap behind related to the decision sight distance for a vehicle approaching a stopped RSMC vehicle, blocking partially or totally the travel lane, from behind to stop or commence overtaking manoeuvre (11 sec.) and the time gap in front of a stopped RSMC vehicle, blocking partially or fully the travel lane, required for safe overtaking of the stopped RSMC vehicle (14 sec.) at given traffic volumes (i.e. vehicles passing the assessor at the RMB for a period of 15 minutes). The threshold exposure values (vehicles/15 minutes) are based on the provision of required time gaps and acceptable delay or wait times (i.e. maximum of 25 seconds) before RSMCs may become impatient and start accepting shorter gaps. The threshold traffic volumes are 130 vehicles/15 minutes for two-way 2-lane roads when RSMC vehicle at RMB is off the road; 40 vehicle/15 minutes for two-way 2-lane roads when the RSMC at RMB is on the road; 130 vehicles/15 minutes for one-way 4-lane roads when RSMC vehicle at RMB is off the road; 80 vehicles/15 minutes for one-way 4-lane roads when RSMC vehicle at RMB is on the road. If the time gaps and the threshold traffic volumes are not met, the RMB does not pass the TSAT and needs to be relocated to a position that meets the TSAT requirements.

In conclusion, when a RSMC vehicle is on the road (i.e. blocking partially or fully the travel lane) the time gap required behind the RSMC at an RMB is 11 seconds (based on the decision sight distance, as per standards for road design, for a driver not expecting a stopped vehicle on the lane) and 14 seconds in front for overtaking the stopped RSMC and return to the lane; and the traffic volumes are 40 vehicles/15 minutes and 80 vehicles/15 minutes for 2-lane and 4-lane conditions respectively. The "on the road" condition was met with greater time gap behind and a

defined time gap in front, and much lower traffic volumes than adequate when the RSMC is off the road.

[28] The second conclusion to which I was specifically referred has to do with the seat belt issue raised by the HSO. G. Bahar notes in this regard that “there is no relationship between the use of seat belt and the risk of a collision. Seat belts are secondary safety device; they do not prevent a collision from happening.” That conclusion goes on to say:

The validity of the TSAT results is not impacted by the fact that a RSMC is not wearing a seatbelt while stopped at an RMB. The TSAT was developed based on driver requirements with specific consideration of the RSMCs delivering mail to RMBs as described in the Rationale Report. While a RSMC is delivering mail at an RMB (based on HFN measurements, time spent at a RMB varies between 12.7 to 20 seconds/RMB when considering 3.5 seconds/movement of buckling and unbuckling the seat belt; and adding the time to move seat to passenger and back to driver’s seat and deliver the mail), that meets the TSAT requirements, time gaps and traffic volumes provide decision sight distances (11 seconds time gaps behind), overtaking sight distances (14 seconds time gaps in front of the stopped RSMC vehicle), and delay of 25 seconds or less to get a gap of sufficient time.

[29] Counsel for the appellant went on to underline that the HSO did not dispute the validity of the TSAT criteria or the TSAT results from 2009. However he believed that Ms. Baird’s safety was at risk because she delivered mail to RMBs without wearing her seat belt, particularly where the RSMC was not parked four wheels off the road. Counsel for the appellant however is of the opinion that the HSO confused issues of ergonomic safety and traffic safety by focusing on whether or not Ms. Baird wore a seat belt when parked at an RMB. Ms. Richard argued that such confusion was particularly apparent when the HSO used the ergonomic research criteria of 12.5 RMBs per hour to justify his decision in respect of the traffic issue, where the correct criteria to determine whether or not an RMB is safe from a traffic safety perspective are TSAT, not the rate of delivery, which is associated with ergonomic risk. Furthermore, counsel noted that the Tribunal has ruled in the recent past on situations akin to the present one and that in two of those decisions (*D. Morrison et al*, *C. McDonnell et al.*(cited previously), and *Pamela Townsend and Grant Leblanc v. Canada Post Corporation*, 2010 OHSTC 7), it found that where an RMB passes an assessment under CPC’s TSAT, conditions of delivery to such RMB constitute a “normal condition of employment” within the meaning of the Code, a conclusion that the appellant is seeking in this case.

[30] On the TSAT, counsel noted that when ITrans Consulting Inc. was retained by CPC in June 2006 to conduct a traffic safety assessment of the delivery of mail to RMBs that would eventually result in TSAT, G. Bahar whose Expert Opinion Report was accepted into evidence by the undersigned led the panel of experts. She was also accepted as an expert on the same subject matter in at least one other appeal before this Tribunal. Counsel notes that the methodology recommended for the development of TSAT was the driver behaviour approach and “the panel considered the driving task requirements that arise due to an RSMC decelerating to stopping at a rural mail box and merging back into

traffic.” The panel considered that “these actions can result in collision risk for the RSMC, as well as for the other drivers who encounter stopped or merging RSMCs.” The panel based its methodology on consideration of two very specific requirements.

[31] First, where the RSMCs are concerned, the time required to merge back into traffic from a stopped position, whether on or off the roadway. Second, for other drivers encountering a stopped RSMC vehicle, the times required to detect the stopped RSMC vehicle on the roadway and for other drivers to respond appropriately by stopping, or changing lanes and overtaking the stopped vehicle, potentially in the face of oncoming traffic. According to counsel, this methodology was chosen as it ensures an adequate level of safety.

[32] In the case of the panel led by G. Bahar, counsel notes that it unanimously agreed that the TSAT was adequate and recommended it to CPC for the assessment of individual RMBs, with the method used in the development of the TSAT being based on scientific research and principles that are widely accepted in practice. Where the parties (CPC and CUPW) are concerned, extensive discussion, modification and testing of the TSAT occurred at the National Policy Committee with the result of said parties being in full agreement that the TSAT tool represents the best scientific methodology for determining the relative risk of injury while effecting delivery to RMBs, and of CUPW giving its endorsement before a Standing Committee of the House of Commons. The result is that the TSAT is presently in use by CPC to conduct an assessment of all 845,000 RMBs across Canada.

[33] Counsel pointed out also that this Tribunal has demonstrated acceptance of the TSAT tool as appropriate to assess traffic safety risks. Ms. Richard noted that in the *D. Morrison et al. C. McDonnell et al.* case, Appeals Officer Lafrance stated at paragraph 319 that:

the time gaps established by ITrans as well as the other criteria used to assess a location are reasonable, in my opinion, to assess the locations of RMBs and make sure that the risk of collision is mitigated to a minimum. When a location passes the assessment, the risk of collision under the above described circumstances is consequently reduced to an acceptable level.

Appeals Officer McDermott, in *Canada Post Corporation v. Canadian Union of Postal Workers*, 2012 OHSTC 16, reiterated said acceptance in stating at paragraph 17 of that decision:

At the outset I want to make clear that I accept the validity of the TSAT as an appropriate and accepted mechanism for determining the safety of RMB delivery with respect to criteria such as traffic volumes and speeds, road configuration and characteristics, and appropriate sight lines. [...]

[34] As to the facts that relate to the actual direction under appeal, central to the appellant’s position is the fact that even before Ms. Baird’s refusal to work, RR#3 in Carp had already been assessed with the changes to the route recommended by the

assessors also made prior to the refusal. The testimony of Mr. Kelly demonstrated that as a result, a much lower number of wheels on the road RMBs remain in service than what was noted in the HSO's investigation report, and that the only RMBs remaining in service are those which passed TSAT. As to the concerns raised by HSO O'Donnell regarding seat belts and the RSMC vehicle not being parked four wheels off the road at an RMB, counsel maintained that those issues are not supported by the expert evidence presented to the undersigned.

[35] In the case of the "four wheels off the road" matter, counsel argued that TSAT specifically assesses traffic safety criteria to determine whether there are traffic safety risks when the RSMC vehicle does not have four wheels off the road at an RMB. She pointed out that G. Bahar specifically confirmed this, as cited previously, when she stated directly that "the TSAT takes into account the fact that the RSMC vehicle may be parked on the travelled part of the road, obstructing partially or fully the travel lane", and then proceeded in her report to specify the various time gaps that would be required in those circumstances. Counsel also pointed out that this same rationale was also accepted by the Tribunal in *Canada Post Corporation v. Canadian Union of Postal Workers* (previously cited) where the Appeals Officer expressed approval with the conclusion reached by Appeals Officer Lafrance in *Pamela Townsend and Grant Leblanc* (previously cited), to wit:

On the issue of not having all four wheels off the road, I found in TSAT that under certain conditions, TSAT accepts this and allows for the vehicle to be stopped in the travel portion of the road. (...) Therefore I find that it is not always necessary to have four wheels off the road to be in a situation where, along with other circumstances discussed above, the "danger" is a normal condition of employment.

[36] On the issue of the RSMC not wearing a seat belt when delivering to an RMB, counsel argued that this does not invalidate the TSAT results. On this, she pointed to the statement by G. Bahar to the effect that "there is no relationship between the use of seatbelt and the risk of collision" since a seat belt would not prevent the occurrence of a collision. In short, the position is that whether the RSMC wears a seat belt or not when parked at an RMB, the TSAT ensures that the RMB is located in such a way to reduce the risk of a collision to a minimal, with said minimal risk thereby being a normal condition of employment.

B) Intervenor's Submissions

[37] As could be expected in light of the position taken by the intervenor CUPW both vis-à-vis representation of Ms. Baird in the present case and generally relative to the position adopted by the appellant as regards specifically the part of the direction issued by HSO O'Donnell concerning Ms. Baird and more generally the purpose, rationale and application of the TSAT, the submissions of the intervenor mirror in great part those of the appellant, to the extent that it will not be necessary here to engage into a repetitive exercise, save to state anew that at the outset, intervenor CUPW stated that it shared substantially the interests of the appellant in the present matter, that TSAT properly

applies and is the proper manner of assessing RMBs to ensure safe delivery, that at the time of Ms. Baird's refusal, the RMBs on her route had previously passed the TSAT assessment, and finally that the portion of the direction under appeal should be deleted as that part of the direction was not necessary to resolve the initial complaint by Ms. Baird and was inconsistent with the TSAT.

[38] More specifically, Mr. Bloom emphasized first that CPC had agreed to provide an ergonomic assistant to Ms. Baird from the time she made her refusal complaint, continued to provide such through the process and has now agreed that the result of this appeal would not affect the continuation of an ergonomic assistant on Ms. Baird's route, unless an ergonomically sound alternate method of delivery could be adopted in the future, which has led counsel to point out that it must be recognized that the circumstances have changed since HSO O'Donnell conducted his investigation, and that given continued ergonomic assistance on Ms. Baird's route, the RSMC is no longer required to remove her seat belt to effect delivery out the passenger side window since the actual delivery out the said passenger side window is done by the ergonomic assistant, thereby rendering the second part of the direction no longer appropriate. Counsel also reiterated that the TSAT is an appropriate tool to assess the safety of RMB delivery, that its process is scientifically based and accepted as a reliable and appropriate process for such assessment. Like his counterpart, Mr. Bloom pointed out that the Tribunal has also recognized and accepted the TSAT as an appropriate method for the assessment of the safety of RMB delivery.

[39] On the matter of removal of the seat belt, counsel submitted that the uncontradicted expert evidence of G. Bahar in this case is to the effect that the removal of an RSMC's seat belt in the course of delivery does not pose a danger when the RMB has passed a TSAT assessment and that in accordance with the TSAT, "four wheels off the road" is not necessary where volumes of traffic and other conditions do not pose a danger.

[40] Finally, on the position by HSO O'Donnell that the part of the direction under appeal was required due to the number of RMBs and the amount of time that the RSMC would be "unbelted" while the vehicle was stopped and not completely off the road, counsel expressed the view that this part of the HSO decision and direction is based on a confusion between the ergonomic and the traffic safety issues. According to counsel, RMBs are assessed individually and where an RMB does not present a danger, delivery to a number of RMBs that do not individually present a danger would no more constitute a danger than delivery to a single RMB assessed as safe. Counsel also noted, as had done counsel for the appellant, that HSO O'Donnell had not contested the TSAT assessments for any of the RMBs on Ms. Baird's route, nor did he provide a scientific basis for rejecting the TSAT tool, thus bringing counsel to the conclusion that in these circumstances, the appealed part of the direction had been issued in error and that the undersigned should vary the direction.

Analysis

[41] My authority as an Appeals Officer under the Code allows me to vary, confirm or rescind any direction under my review and also to issue any direction that I may consider appropriate, given the particular circumstances of a given case. This being said, in conducting such a review, I can proceed *de novo*, meaning that I am not restricted to the information collected by the health and safety officer whose direction is being reviewed at appeal, nor am I bound by the interpretations made or the conclusions formulated by the latter. The present case however is somewhat unorthodox in that there is no opposition to the appeal, no opposing party or parties and a single position being jointly presented as not only the favoured but also the appropriate position to retain vis-à-vis the direction or, more accurately, the part of the direction being the subject of this appeal, with the remainder of said direction not being challenged and therefore not coming within the purview of my review. Having said this, deciding an appeal where all parties stand for the same position, formulate the same arguments supported by the same evidence, presents a problem in that one may find it difficult to stray from that common position unless one can identify a defect in the approach or rationale put forth by said parties that would make it possible to go in a direction different than the one professed and defended commonly by all.

[42] In the present case, given the actual wording used by HSO O'Donnell in the part of the direction that is being appealed, it is the TSAT that is central to the issue, the interpretation or rationale that governs its application as well as its actual application to RR#3 Carp from where originated the work refusal by Ms. Baird. In this respect, one must note that RR#3 had undergone a satisfactory TSAT assessment prior to Ms. Baird's work refusal, that the HSO did not conduct a visit to the route or conduct a separate assessment of that route, nor did the latter profess in his report or before the undersigned at the hearing to disagree with the underlying rationale governing TSAT.

[43] That all parties agree that the TSAT and the rationale and methodology underlying it make it the best tool, or at least the most appropriate tool, when applied, to ensure safety of RMB delivery, which is effectuated by motor vehicle using public roads, while somewhat compelling, does not in and of itself bind the undersigned to the same conclusion, be it generally or relative to a particular rural delivery route as in the present case. However, to disagree, I would need supporting evidence to arrive at such differing conclusion, particularly in the face of precedents from this Tribunal where the TSAT has been recognized as ensuring the level of safety required by the Code, with remaining conditions after a completed and satisfactory TSAT assessment being seen or accepted as normal conditions of employment.

[44] I must say that in the present case, I have no such evidence and that which may be retrieved from the HSO investigation report is certainly insufficient to bring the undersigned to such a differing conclusion. In this instance, I have examined the rationale offered by HSO O'Donnell as well as the common position taken by the appellant and the intervenor and noted the agreement between the appellant CPC and the intervenor CUPW that the TSAT represents the proper tool to ensure safe mail delivery to RMBs. I have

also examined at length the TSAT, the rationale for such as well as the Navigats/Bahar report. The position I have arrived at in the present case does not differ from that of the parties, and in this respect, while I do not find it necessary to repeat here the entirety of their respective arguments, there are a few comments that I want to formulate.

[45] The direction issued by HSO O'Donnell was made up of two components, one, ergonomic, which addressed the repetitiveness of movements in the delivery of mail to RMBs by a lone RSMC having to deliver from the passenger side window of the vehicle at an hourly rate that the HSO considered excessive, and one relating to traffic safety wherein the delivery vehicle would not be entirely off the travelled part of the road during delivery with the lone RSMC needing to unbuckle and buckle the seat belt during the process. The first part of the direction has not been appealed and therefore has not been examined by the undersigned. However, in reviewing the HSO report, all of the needed movements by a RSMC in delivering the mail through the passenger side window of the vehicle, what I would refer to as the mechanics of the delivery operation, were fully described, thereby showing that the said "buckling/unbuckling" of the seat belt in those circumstances, as part of the said mechanics of the delivery, needs to be repeated at every delivery stop, regardless of whether the vehicle has or has not all wheels off the travelled part of the road, or of vehicular traffic or road conditions.

[46] In my opinion, in considering the ergonomic aspect of mail delivery through passenger side window by a lone RSMC, one must consider the entire sequence of movements as a whole in ascertaining the potential ergonomic impact on the RSMC, not only some segments and certainly not only when the delivery vehicle is in a certain position relative to the roadway. As such, I am of the view that the seat belt aspect cannot and should not be isolated and linked to what is clearly a vehicular safety situation, that of the delivery vehicle being partially on the travelled part of the road. In his report, the HSO effectively appeared to draw his conclusion on the basis of elements that relate to the hourly rate of delivery imposed on Ms. Baird and the consequent length or number of times that, to use his words, she was "unsecured" due to the seat belt being unbuckled when stationary at RMBs, thereby also creating the impression that an ergonomic aspect would govern the resolution of a road or vehicular traffic safety issue.

[47] In this respect, I agree with the position formulated by both counsel to the effect, if I quote from the submissions from counsel for the appellant, that "the HSO confused issues of ergonomic safety and traffic safety by focusing on whether or not Ms. Baird wore a seat belt when parked at an RMB. This confusion was particularly apparent when the HSO used the ergonomic research criteria of 12.5 RMBs per hour to justify his decision in respect of the traffic issue. The correct criteria to determine whether or not an RMB is safe from a traffic safety perspective are TSAT". Counsel for the intervenor was of the same mind in his submissions, although expressing it differently in saying "that this part of the Decision and Direction is based on a confusion between the ergonomic and the traffic safety issues. The number of RMBs (which do not constitute a danger) is not a basis for the Direction issued. If delivery to one RMB does not constitute a danger, delivery to a number of RMBs which do not individually constitute a danger, would not also constitute a danger". I am in agreement with the position formulated by both counsel

on this particular issue. I must add also that while this would not be determinative of this seat belt matter as I must primarily look at the factual circumstances as they existed at the time of the refusal by Ms. Baird, the fact that she has been provided with an assistant (ERGO) by the employer renders this matter somewhat moot as she would no longer need to unbuckle her seat belt to reach RMBs through the passenger side window.

[48] The question of whether the TSAT takes into account the wheels on or off the roadway situation and the question of whether the wearing, or rather the non-wearing of the seat belt affects the validity of a TSAT assessment are central to the determination of this case. The position taken by both parties is clearly expressed above, and both have based it on the evidence obtained through the expert opinion report that they jointly presented to the undersigned as determinative as well as the ITrans report titled “Rationale behind the Rural Mailbox (RMB) Traffic Safety Assessment Tool Version 3.0”. I have reviewed both documents.

[49] In the case of the seat belt issue, the ITrans document makes no mention of the use of a seat belt which gives credence, in my opinion, and given the scientific base of the TSAT, to the conclusion expressed by expert G. Bahar to the effect that the validity of the TSAT results is not affected by the fact that a RSMC is not wearing a seat belt while stopped at an RMB given that there is no relationship between the use of seat belt and the risk of collision, seat belts being a secondary device that does not prevent the occurrence of a collision.

[50] On the matter of wheels on or off the roadway, the question arose in relation to the seat belt use issue as to whether the TSAT considered or rather took into account the situation where the RSMC might not be able to park his or her vehicle entirely off the travelled part of the roadway while delivering mail at a given RMB. Both counsel have argued that indeed, in setting varying time gaps, sight lines and threshold traffic volumes, the TSAT did take into account whether a vehicle would be parked on or off the road. The Bahar Expert Opinion also confirmed that the “TSAT takes into account the fact that the RSMC vehicle may be parked on the travelled part of the road, obstructing partially or fully the travel lane”. Confirmation of this can also be repeatedly found in the ITrans document previously mentioned. For example, under title “Establishing Driving Task Requirements for Drivers at a RMB”, the document states that the specific requirements considered were:

- For the RSMC, the time required to merge back into traffic from a stopped position, whether on or off the roadway. (...) For other drivers encountering a stopped RSMC vehicle, the times required to detect the stopped RSMC vehicle on the roadway (...).

- If the RSMC is stopped off the road, and the 9-second gap with no more than a 25 second wait is met, then there is no further issue to consider for the approaching driver from behind. On the other hand, if the RSMC vehicle is stopped so that it is partially or fully obstructing the lane, the safety of the situation depends in part on the sight distance and time the approaching driver from behind has before reaching

the stopped RSMC vehicle. (...) In order to increase the safety of stopped RSMCs who are partially blocking a traffic lane as well as the safety of the approaching drivers from behind, an 11-second time gap requirement was concluded to be a reasonable time gap.

There is therefore no doubt that the assessments conducted under TSAT can and do take into account that it is allowable for RSMC vehicles to be stopped on the travelled part of the roadway without invalidating the results of the assessments.

[51] Having considered all of the above, and as I have stated previously, being in agreement with the joint position of both the appellant and the intervenor, I find that there was no foundation for the part of the direction that is the subject of this appeal since on the basis of a properly applied TSAT assessment, said assessment having been conducted prior to the actual refusal to work from which originated the direction under review, I am led to a conclusion that there existed no danger justifying a refusal to work. As corrective action, the appellant has asked that I first vary the O'Donnell direction as originally issued by deleting the part of that direction, which has been referred to throughout this decision as the second part and which reads:

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.

[52] By way of further corrective action, the appellant also requests a further variance of the original direction where it would be declared that delivery to an RMB which has passed a properly administered TSAT assessment, regardless of whether the RSMC can park with four wheels off the road or whether the RSMC is wearing a seat belt, does not constitute a "danger" pursuant to the Code, and does in fact constitute a "normal condition of employment" pursuant to section 128(2)(b) of the Code. For its part, the intervenor is simply seeking that the direction be varied by the deletion of that portion of the direction that is the subject of the appeal.

[53] The concept of "normal condition of employment" is closely associated, I would even say derives from the hierarchy of preventive measures found in the Code at section 122.2 which establishes that "preventive measures should consist first of the elimination of hazards, then the reduction of hazards and finally, the provision of personal protective equipment, clothing, devices or materials, all with the goal of ensuring the health and safety of employees" and is usually referred to as the hierarchy of controls. Taking this into consideration, this concept of "normal condition of employment" thus stands for the principle that "danger" may not be capable of being totally eradicated relative to individual cases and circumstances and that once all possible preventive measures have been taken towards ensuring the health and safety of an employee or employees, what remains has to be considered a normal condition of employment relative to which an employee would not have the right to refuse to work.

[54] In the case at hand, the appellant is seeking such a general declaration on the basis of a properly administered TSAT assessment, not one properly administered relative to a given RMB or RSMC route or relating to a specific work refusal situation, and would have the undersigned make such a general blanket declaration noting that this would be regardless of whether the RSMC is wearing a seat belt or not, a matter that I have found above as not relating to the TSAT. I am aware that in other Tribunal decisions of late, it has been declared that once all TSAT criteria are met, the residual danger may be considered a normal condition of employment. From a theoretical or principle point of view, I agree that such a declaration is possible. However, I am prevented from making such a declaration in this case for three reasons. First, where such declarations may have been made in other cases, I am of the opinion that they were made relative to the specific facts and circumstances of a case, not as the formulation of a general principle or even necessary conclusion and that such a general declaration as that which is sought by the appellant, were it issued, would lack evidentiary foundation. Second, in the case at hand, while the evidence may be that RR#3 Carp has undergone and passed a properly administered TSAT assessment, the fact is that it dates back almost five years and that I have been adduced no evidence whatsoever as to what the conditions may be at the present time. Third, in my opinion, such a declaration is not necessary to resolve completely the issue raised by the appeal.

Decision

[55] For all the above reasons, the appeal is granted and the direction issued on November 25, 2011, by HSO Michael O'Donnell is varied by deleting the last sentence of the direction. The direction will now read as appears at Appendix I to this decision.

Jean-Pierre Aubre
Appeals Officer

APPENDIX I

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

DIRECTION TO THE EMPLOYER UNDER PARAGRAPH 145. (2)(a)(i) AS VARIED BY APPEALS OFFICER JEAN-PIERRE AUBRE

On 15 November 2011, health and safety officer Michael O'Donnell conducted an investigation following a refusal to work made by Diana Baird, RSMC in the work place operated by CANADA POST CORPORATION, being an employer subject to the *Canada Labour Code*, Part II, at 200 Iber Road, Stittsville, Ontario, K2S 0L5, the said work place being sometimes known as Canada Post Corporation.

The said health and safety officer considers that the performance of an activity constitutes a danger to an employee while at work:

This investigation has determined that the delivery of mail to 229 Rural Mail Boxes (RMB's) from the driver's seat through the passenger window is in excess of the delivery rate over and above the acceptable rate of 12.5 deliveries per hour* and therefore constitutes the performance of such activity as being a danger. The measured delivery rate identified in this investigation is a rate of 46 per hour over an 8 hour shift, 5 days a week. As such, Canada Post RSMC Diana Baird or any other person granted access to perform this work activity is to cease to doing so immediately.

***Ref: 2010 OHSTC 7 para. 82**

Therefore, you are HEREBY DIRECTED, pursuant to paragraph 145. (2)(a)(i) of the *Canada Labour Code*, Part II, to alter the activity that constitutes the danger immediately.

Varied at Ottawa, Ontario, this 31st day of October, 2013.

Jean-Pierre Aubre
Appeals Officer

To: Canada Post Corporation
200 Iber Road
Stittsville, Ontario
K2S 0L5