

CANADA LABOUR CODE
PART II
OCCUPATIONAL SAFETY AND HEALTH

Review under section 146
of the Canada Labour Code, Part II
of a direction issued by a safety officer

Applicant: Cabano Transportation Group Inc
St-Laurent, Quebec
Contrecoeur Terminal, Port of Montreal
Represented by:
Jean M Gagné

Interested Party: Occupational safety and health committee
Cabano Transportation Inc Terminal
Represented by:
Serge Cyr
Committee member

Mis-en-cause: Guy Lauzon
Safety Officer
Labour Canada

Before: Serge Cadieux
Regional Safety Officer

Oral evidence was heard April 23, 1992 at Montreal, Quebec.

Context

The summary of events prepared by safety officer Guy Lauzon, concerning the direction issued to Cabano Transport Inc on November 22, 1991, reveals the following facts. The safety officer intervened following a request by Serge Cyr, a member of the Cabano Transport Inc Terminal's safety and health committee. The reason for Mr Cyr's request was the existence of certain disagreements on the interpretation of the regulations. The safety officer visited the work place of the employees of Cabano Transport Inc and discussed with the parties the various topics noted in the most recent minutes of the safety and health committee.

Following discussions and various checks, the safety officer concluded that the regulations had in fact been contravened. He then issued a direction to the employer listing four contraventions. The employer took steps to comply with the first three items of the direction. However, the employer contests the validity of the fourth item of the direction and appeals to the regional safety officer on this point only.

The fourth item of the instruction is worded as follows:

[TRANSLATION]

4. When lift trucks are used on flatbed platforms to load or unload materials, side rails and rolled edges should be installed on each side not used for loading or unloading in order to prevent mobile equipment from running over the edge.
Ref: section 2.9(1)(c) of the Canada Occupational Safety and Health Regulations, Part II, and paragraphs 125(a), (d), (p), (q) and (t) of the Canada Labour Code, Part II.

This direction was issued pursuant to paragraph 145(1) of the Canada Labour Code, Part II.

Decision

In this case, I must determine whether, under the circumstances, the fourth item of the direction (hereinafter "direction") given to the employer is justified. If not, I must rescind it in accordance with subsection 146(3) of the Code. If it is justified, I must confirm it or, if necessary, vary it. In my opinion, the direction is in fact justified. However, the wording and the reference are in error and must be corrected, for the following reasons.

Mr Gagné argues that the reference to paragraph 2.9(1)(c) of Part II (Building Safety) of the Canada Occupational Safety and Health Regulations (hereinafter "Regulations") is incorrect and consequently does not apply in the case at hand. In fact, Mr Gagné has correctly shown that the English and French versions of paragraph 2.9(1)(c) of the Regulations are contradictory. Furthermore, I agree with Mr Gagné that the platform of a flatbed truck is not a "dock" as stipulated in section 2.9 of these Regulations, but rather a "deck" as illustrated in Jean-Claude Corbeil's French-English Visual Dictionary, 1987, Éditions Québec/Amérique Inc.

The safety officer suggested in these proceedings that the regional safety officer might instead vary the direction by referencing section 3.8 of Part III (Temporary Structures and Excavations) of the Regulations. On careful consideration, I have concluded that the platform of a flatbed is not a temporary structure as the term is used in this part of the Regulations. The platform in question is part of a tractor-trailer and is governed by specific legislation in the field of transportation. The act of placing this platform in a loading and unloading position at a dock plate does not suffice to make this platform a temporary structure within the meaning of the Regulations.

The situation under consideration should, in my opinion, be dealt with in Part XIV (Materials Handling) of the Regulations. However, a careful reading of Part XIV leads me to believe that none of its provisions are sufficiently explicit to deal with this issue.

It is apparent that lawmakers did not provide for this situation when the occupational safety and health standards were being formulated. I also believe there are several other situations that were not given specific consideration when the various regulations were being discussed and formulated. It is unrealistic to think that regulations are capable of dealing with all possible situations. This is why section 124 of the Canada Labour Code, Part II, imposes a general obligation on the employer in occupational safety and health matters. It provides:

124. Every employer shall ensure that the safety and health at work of every person employed by the employer is protected.

Section 125 of the Code lists the employer's specific obligations in respect of every work place controlled by the employer. This section makes reference to prescribed methods and standards. However, in my opinion, the expression "Dans le cadre de l'obligation générale définie à l'article 124," found in the preamble of the French version of section 125, means, in light of the English version, that the employer's general obligation is the fundamental principle applicable in all situations. The specific obligations merely detail the employer's responsibility in specific situations. However, these specific obligations cannot restrict the scope of the employer's general obligation to employees.

I have concluded that there has been a serious breach of the employer's responsibility to ensure the protection of employees in the case at hand. The employer in this case is not listening to the occupational safety and health committee or the employees, who have submitted to me, through the committee, a petition bearing the names of 13 employees supporting the committee's claim.

I accept the evidence of Mr Cyr and Mr Gaucher, who described, with supporting photographs, the unsafe method of loading and unloading, using a front-end loader to move around only a few centimetres from the unprotected edges of the semitrailer platform. I have been told of cases in which the load being lifted falls or swings freely, causing the front-end loader to become unsteady, most likely because the loader is equipped with a long mast which can be moved sideways. It is clear that if the centre of gravity of a front-end loader is shifted, the load to be lifted must be adjusted according to very specific criteria.

A semitrailer platform is usually loaded and unloaded by a front-end loader from its sides or, depending on the load or the work place, from the top using a crane. A front-end loader might be able to move in a straight line on a semitrailer platform without too much risk to a skilled operator. However, in my opinion, moving it to the unprotected edges to pick up the load using a long mast creates a risk of almost certain injury. Such action requires constant attention and not a single false move by the operator. I am surprised that a serious accident has not already occurred.

I strongly recommend that the employer not load or unload a semitrailer platform using a front-end loader which moves around on the platform. When it is necessary to do so, any sideways movements near the unprotected edges of the platform are to be avoided. Moreover, steps to protect the safety of employees should be taken whenever a front-end loader travels on a

semitrailer platform for loading or unloading. It is not necessary to specify the nature of these steps at this stage. Appropriate and satisfactory measures can be formulated in discussions with the occupational safety and health committee.

For all the reasons mentioned above, I hereby vary the direction issued by safety officer Guy Lauzon to Cabano Transportation Inc on November 22, 1991, by replacing the direction (the fourth item of the original direction) with the following paragraph:

4. When lift trucks are used on flatbed platforms to load or unload materials, the employer must institute safety measures to ensure that the safety and health at work of every person employed by the employer is protected.

Ref: section 124, Canada Labour Code, Part II.

Decision issued at Ottawa, May 19, 1992.

Serge Cadieux
Regional Safety Officer