

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: Keyser Farms Ltd
Cupar, Saskatchewan
Represented by: Mr. Robert S. Keyser
Owner, Manager

Mis en Cause: Mr. Les Lye
Safety Officer
Labour Canada

Before: Mr. Serge Cadieux
Regional Safety Officer
Labour Canada

A visit of Mr. Keyser's seed cleaning plant took place on October 21, 1992. The visit was deemed necessary primarily because no-one was representing the employees in this case. There are normally four employees working in Mr. Keyser's plant.

Background

On September 29, 1991, Mr. Les Lye, a safety officer with Labour Canada carried out an inquiry at Mr. Keyser's seed cleaning plant. A number of violations of the Canada Labour Code, Part II and the pursuant Canada Occupational Safety and Health Regulations (hereafter Regulations) were detected. Over a period of one year, the safety officer attempted to ensure compliance with the legislation on a number of items. On September 30, 1992, the safety officer directed Mr. Keyser, under subsection 145(1) of the Code, to stop contravening the Code and the Regulations on five specific points. Mr. Keyser subsequently corrected four of the five items identified in the direction but requested a review of one specific item, namely item number 2 respecting the provision of emergency lighting under section 6.10 of Part VI (Lighting) of the Regulations.

Mr. Keyser clearly expressed his reasons for requesting a review of this item of the direction in the following written statement submitted to the Regional Safety Officer:

"This plant is a small privately run business. The floor layout and the area's size is such that anyone could find his way out in the dark. The expense of emergency lighting is beyond my means and I appeal to the fact that primary grain elevators which are much larger than my establishment are exempt from this regulation."

Decision

I must decide in this case whether section 6.10 of the Regulations, respecting the provision of emergency lighting, applies to Mr. Keyser's seed cleaning plant. In my view, it does apply for the following reasons.

The applicable provisions in the instant case are subsections 6.10(1) and (2) of the Regulations. They stipulate:

- 6.10 (1) Emergency lighting shall be provided to illuminate the following areas within buildings:
 - (a) exits and corridors;
 - (b) principal routes providing access to exits in open floor areas; and
 - (c) floor areas where employees normally congregate.

- (2) Except in the case of a primary grain elevator in which hand-held lamps are used for emergency lighting, all emergency lighting provided in accordance with subsection (1) shall:
 - (a) operate automatically in the event that the regular power supply to the building is interrupted;
 - (b) provide an average level of lighting of not less than 10 lx; and
 - (c) be independent of the regular power source.

Clearly then, subsection 6.10(1) of the Regulations imposes upon the employer a mandatory requirement to provide emergency lighting, at specific locations in buildings, except in primary grain elevators as stipulated under subsection 6.10(2). There is no discretion under this section to provide additional exemption from this comprehensive requirement. Had the legislator intended to allow cost, for example, to be a factor to be considered when requiring emergency lighting, words such as "where it is reasonably practicable" could have been used. Such is not the case.

Mr. Keyser's plea to be exempted in the same manner as are the primary grain elevators cannot be a consideration in the instant case. Mr. Keyser's contention that he is being unfairly treated in relation to the primary grain elevators should be addressed to officials of the Department of Labour. Cost or the proximity to the outdoors are arguments that can be submitted by affected parties during the development of the legislation. As an independent tribunal, the Regional Safety Officer is removed from this ongoing process as well as from the daily administration of the Code.

The safety officer noted during my inquiry that article 9.9.11.3 of the National Building Code of Canada 1985 appears to provide an exemption in specific circumstances. Mr. Lye is of the view, which I also share, that it is unlikely that this article would supersede the requirement found in the Regulations. The article states:

"9.9.11.3 Emergency lighting shall be provided in exits, corridors used by the public and principal routes providing access to exit in an open floor area where such exits, corridors and access routes are below grade, are windowless or are required in buildings in subsection 9.10.17 to have a fire alarm system." (my underlining)

Evidently, this article is more restrictive than the comprehensive requirement found in the Regulations. It is in contradiction with subsection 6.10(1) of the Regulations which imposes a mandatory requirement to provide emergency lighting in all buildings except in the case of a primary grain elevator. Where such an inconsistency exists between the Regulations and a standard incorporated by reference, section 1.6 of the Regulations applies. It stipulates:

"1.6 In the event of an inconsistency between any standard incorporated by reference in these Regulations and any other provision of the Regulations, the other provision shall prevail to the extent of the inconsistency."

Hence, subsection 6.10(1) of the Regulations applies to Mr. Keyser's seed cleaning plant.

Since it has been agreed between the parties that more time would be necessary to comply with this item of the direction, I hereby vary the direction by extending the time limit to comply with item number two of the direction, respecting emergency lighting, from the 30th day of September 1992 to the 27th day of November 1992.

Decision issued on November 10, 1992

Serge Cadieux
Regional Safety Officer