

CANADA LABOUR CODE{PRIVATE }
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: Oak Point Service
Winnipeg, Manitoba
Represented by: Mr. Allan F. Foran, Counsel

Interested Party: Mr. B. Stewner
Employee

Mis-en-Cause: Mr. Pierre St-Arnauld
Safety Officer
Labour Canada

Before: Mr. Serge Cadieux
Regional Safety Officer
Labour Canada

On January 7, 1993, Mr. Bruce Stewner filed a complaint with Labour Canada. Mr. Stewner stated that he had been terminated because he had invoked his right to refuse to enter a tank trailer. He considered the work to be dangerous given the conditions under which he had to enter. For the purposes of this decision, it should be noted that Labour Canada never investigated Mr. Stewner's refusal to work although a safety officer responded to the complaint.

Mr. Stewner also filed a complaint with the Canada Labour Relations Board (CLRB) alleging that Oak Point Service violated paragraph 147(a) of the Canada Labour Code, Part II.

Safety officer Pierre St-Arnauld followed-up on the complaint by inspecting the work site. The safety officer describes the work site as "a five bay garage used for tire repairs, washing truck and trailer tanks and other minor preventive maintenance...". Upon completing his investigation, the safety officer concluded that a situation existed which constituted a danger for the employees. The basis for that decision is that tank trailers are considered to be confined spaces under the Canada Occupational Safety and Health Regulations, Part XI (Confined Spaces). The safety officer was of the view that the requirements of the above Regulations were not being met.

On January 15, 1993, the safety officer issued a written direction under paragraphs 145(2)(a) and (b) of the Code, to Oak Point Service, respecting entry of employees into confined spaces. As a preliminary objection, Oak Point Service challenged the jurisdiction of the Regional Safety Officer and of the CLRB in this matter, alleging that it came under provincial jurisdiction.

The CLRB subsequently heard the complaint of Mr. Stewner and decided the issue of jurisdiction. It concluded that Oak Point Service is a provincial undertaking and, accordingly, outside of the jurisdiction of the CLRB. Since the CLRB and the Regional Safety Officer are both acting under the Code, I am of the view that the determination made by the CLRB, respecting jurisdiction, satisfies the requirements of the review process under the Code. I agree with the Canada Labour Relations Board that Oak Point Service is a provincial undertaking. Consequently, Oak Point Service is outside the jurisdiction of the Canada Labour Code, Part II and therefore, the direction of the safety officer is null and without effect.

For all the above reasons, I hereby rescind the direction issued on January 15, 1993, by safety officer Pierre St-Arnauld to Oak Point Service.

Decision issued on October 4, 1993

Serge Cadieux
Regional Safety Officer