

CANADA LABOUR CODE
PART II
OCCUPATIONAL SAFETY AND HEALTH

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

Applicant: Mowat Express
Dorval, Quebec
Represented by: Pierre TrJpanier, Lawyer, and
Pierre Mercure, Vice-President

Interested Party: Safety and Health Committee
Represented by: Sylvain Leblanc,
Joseph Gargiso, and Robert Caron,
Communications, Energy and Paper Workers
Union of Canada (QFL-CLC)

Mis-en-cause: Richard Robert
Safety Officer
Human Resources Development

Before: Serge Cadieux
Regional Safety Officer
Human Resources Development

Oral evidence was heard in Montreal on April 26, 1994.

Summary of facts

Following an inspection of the Mowat Express work place and an examination of accidents that had occurred on this employer's premises during 1993, safety officer Richard Robert issued a direction (see Appendix A) to the employer pursuant to subsection 145(1) of the Canada Labour Code, Part II.

It should be noted that the direction contained two items. However, only the first item in the direction is the subject of the application for review since the employer did not challenge the second item.

The first item in the direction concerns the wearing of safety footwear "on the loading/unloading docks and at the goods sorting centre where injuries occurred in 1993." It was in the examination of five accidents that occurred during the current year that the safety officer concluded that the

wearing of safety footwear was necessary to protect the employees and, consequently, that they were required. To justify his decision, the safety officer submitted the following (Numbering added):

I have explained that the decision was based on the accidents involving Pierre Mercile, Mark Delvast, Simon Pinet and Stephane Beaudoin.

1. The accident involving Pierre Mercile could have been avoided if he had worn safety footwear. A section of the conveyor fell on his left toe.
2. Mark Delvast was wearing a running shoe that twisted and became caught in the rail on the floor of the truck. Protective footwear with hard soles would have prevented this accident.
3. Simon Pinet slipped twice on the running board of his truck and on the other occasion at the rear of his truck. Non-slip safety footwear would have avoided this.
4. The mechanic was wearing boots that were worn and on which the steel cap could be seen through the damaged leather. He worked on the fork-lift. I told him to obtain new boots.
5. StIphane Beaudoin caught his left foot under the JIEGER or hand cart. His injuries could have been reduced or avoided with safety boots.
6. The employees operate flat docks and there is a risk that feet could be crushed.
7. Steel rollers from the conveyers fell on employees on two occasions. Their shoulders and heads were injured but their feet could also have been injured, depending on their position and the timing.

Mr Mercure agreed that they should be required to wear safety footwear but did not wish to pay for it. I explained that the law did not force him to do so but it did require him to protect his employees and thus to ask them to use such footwear.

8. Since MichPle Beauchamp's decision of 1988, working conditions have changed; there is now a fork-lift.

The five accidents in the last year involving injuries to the feet prove beyond any doubt that this work place is dangerous.

Other employers' goods handling areas are all areas where the practice is to wear safety footwear. This practice is based on the need to protect employees. The Mowat Express work place is no different from these goods handling areas as far as the hazard level is concerned.

Employer's submission

Mr TrJpanier made the following submission:

The question of safety boots has been discussed and considered by the company's Safety and Health Committee several times over the last few years.

After a thorough examination of the work place, the Committee stated that it was satisfied that all protective measures were in place to control the risks to health and safety involved at the work place, depending on the safety requirements.

This same conclusion was also reached by a labour affairs officer from Labour Canada in 1988 who concluded, following an investigation of the same work place, "that there is no danger in your work place resulting from the fact that the wearing of protective footwear is not mandatory".

Therefore, we respectfully submit that the direction of safety officer Robert should be revised so as to comply with the intention of Parliament, which specifically prescribed by regulation the particular situations in which protective footwear must be worn.

The direction of safety officer Robert has the effect of infringing our rights in that it goes beyond the limits prescribed by subsections 12.5(1) and (2) of the Canada Occupational Safety and Health Regulations (COSHR) and, moreover, it fails to comply with the findings of our Health and Safety Committee concerning the fact that there is no hazard that would require protective footwear to be worn."

Mr TrJpanier stated that in this case there was res judicata. This res judicata was the decision that there was no hazard rendered by another safety officer when an employee of Mowat Express refused to work in 1988. Since the conditions were essentially the same, the decision should not be changed.

Submission of the Health and Safety Committee

The representatives of the Health and Safety Committee stated that they had considered these questions in the past and that they had reached the same conclusions as now applied. According to them, the most common injuries in the manual handling work were injuries to the hands rather than to the feet. The Committee concluded that the wearing of safety footwear was not necessary or mandatory. The safety officer should not therefore have imposed such a requirement on the employees contrary to the committee's recommendation.

Decision

In my judgment, the question to be decided in this case is the following: Is the wearing of safety footwear required in the Mowat Express work place, as specified in the direction of the safety officer?

To answer this question, I feel that a clarification concerning safety shoes is necessary. In fact, the subject of safety shoes has been a topic of very lively discussion among employers, employees, members of safety and health committees and safety officers. I feel, however, that the subject is very poorly understood.

Subsections 12.5(1) and (2) of Part XII (Safety Materials, Equipment, Devices and Clothing) of the Canada Occupational Safety and Health Regulations (the Regulations) provide:

12.5(1) Where there is a hazard of a foot injury or electric shock through footwear in a work place, protective footwear that meets the standards set out in CSA Standard Z195-M1984, Protective Footwear, dated March 1984 and the French version of which is dated December, 1984 shall be used.

(2) Where there is a hazard of slipping in a work place, non-slip footwear shall be used.

Before proceeding with this case I feel that a number of points should be clarified. The first of these, in light of the above provisions, is that the Regulations refer to safety footwear and not merely to safety boots. This reference includes safety boots as described in the standards and consequently I shall not make any distinction between the two expressions. The second point to note is that I shall not deal with the question of "electric shock" since this subject is not relevant in the circumstances. The third major point is the reference in subsection (2) above to non-slip footwear. This reference is not directly associated with any standard and consequently any shoe or boot with an appropriate non-slip sole is acceptable to the extent that it is designed for the conditions prevailing in the work place.

Finally, the preceding provisions apply to the work place. Moreover, "work place" is defined in subsection 122(1) of the Code as being "Any place where an employee is engaged in work for the employee's employer". Consequently, this definition is exhaustive and includes all places where an employee works, whether or not they are under the employer's control.

It is important to understand that the wearing of protective equipment should be required only in the circumstances provided for in section 12.1 of the Regulations, which reads:

12.1 Where

(a) it is not reasonably practicable to eliminate or control a safety or health hazard in a work place within safe limits, and

(b) the use of protective equipment may prevent or reduce injury from that hazard, every person granted access to the work place who is exposed to that hazard shall use the protective equipment prescribed by this Part.

The Act provides that protection equipment should be contemplated only as a last resort. First, the Act is designed to eliminate or control hazards at the source. When it is impossible for all intents and purposes to eliminate or control the hazard, the wearing of protection equipment is a solution that should be considered. However, this solution should never be permanent since an attempt should always be made to improve the situation. Clearly, it is more difficult to eliminate or control the hazard when that hazard is likely to cause injury to any person who is exposed thereto before intervention is possible. At this point "the use of protection equipment may prevent an injury or reduce the seriousness of one".

I make these comments because the employer and the Safety and Health Committee inform me that they have studied the hazards in their work places and their analysis shows that there is no reason to require employees to wear protective footwear. This was the recommendation of the Mowat Express Safety and Health Committee in 1988 and this recommendation has not changed over time.

I must accordingly take into account the provisions of section 12.1 of the Regulations in rendering the decision that follows. I must also ensure that the wearing of safety footwear is the required solution to the extent that prescribed safety footwear is designed to protect the feet in the situations described by the safety officer.

CSA Standard Z195-M1984, described above, concerning protective footwear, is designed to protect the feet as follows:

1. with a protective tip to protect the toes from being crushed;
2. with a protective sole to prevent perforation of the underside of the foot;
3. with a metatarsal protector to protect the metatarsus; and
4. with an electric shock-resistant sole to protect against electrocution through the feet.

Consequently, in light of the foregoing information and the regulatory requirements, I draw the following conclusions with respect to each of the incidents described by the safety officer.

Incident No 1: The hazard of injury resulting from a conveyor part falling is, to all intents and purposes, eliminated by adequate maintenance. In fact, it is inconceivable and unacceptable for such an accident to occur since it is easy if not mandatory to control this hazard. Such an accident occurs only because of negligence in equipment maintenance and it is at this level that corrective action must be taken.

Incident No 2: Although safety footwear would "probably" prevent a foot from twisting, it must be admitted that any footwear with a rigid sole would also be effective in such circumstances. Moreover, the CSA standard referred to above does not cover this situation. Consequently, this hazard can be eliminated or controlled by the wearing of any footwear with a rigid sole or if appropriate procedures are applied. This subject should be discussed by the Safety and Health Committee.

Incident No 3: In this case, subsection 12.5(2) of the Regulations applies. The nature of Mr Pinet's work is such that the risk of slipping will occur on several occasions. A non-slip sole is, in my view, necessary in his case. However, if the hazard of slipping occurs only in winter because of an accumulation of snow or ice on the running board, winter boots would be sufficient to reduce the risk of slipping. However, if these employees go to other work places where the same hazard exists in other forms, appropriate soles are necessary.

Incident No 4: Any protection equipment provided by the employer or required by regulation may be the subject of a direction of this kind. However, the safety officer's direction deals only with the wearing of safety footwear, not its general condition. Consequently, this direction does not apply in the circumstances.

Incident No 5: It is possible in this case that a safety boot might have protected Mr Beaudoin in the circumstances. However, the same reasoning as applies to Incident No 2 also applies here.

Incident No 6: I agree in this situation. Employees who operate the dock plates risk injuring their feet and must wear safety boots.

Incident No 7: This situation is intolerable. However, the reasoning applied to Incident No 1 also applies here.

Incident No 8: The presence of a fork-lift in the work area of the Mowat Express employees is certainly an important factor for consideration in any decision concerning the wearing of safety footwear. In this case I note with approval the submission of the representatives of the Safety and Health Committee that the Committee had considered the question of safety boots and felt that they were not necessary. I assume that protective measures are in place to protect the other employees from the hazard of injuries to the feet caused by the movement of the fork-lift. However, this decision is rendered only because there is a lack of information on this subject and I should look with favour on any justified intervention by the safety officer on this point in future.

It should be noted that the safety officer who had intervened in this case in the past had to make a ruling concerning a danger. The officer had concluded that there was no danger for the employee who had refused to

work because he was not wearing safety boots. It is clear that this decision applied only to the immediate risk of injury to the feet and not to the daily risks to which employees are exposed. This decision accordingly has no effect on the issue of long-term prevention, which is the purpose of a direction made pursuant to subsection 145(1) of the Code, as in the instant case.

Consequently, I feel that only incidents No 3 (risk that truck drivers may slip) and No 6 (risk of injury to the feet of employees handling dock plates) justify the safety officer's direction.

Consequently, I would VARY the directive issued on December 3, 1993 by safety officer Richard Robert to Mowat Express by eliminating the two paragraphs in item No 1 in the direction and replacing them with the following:

1. Paragraph 125(v) of Part II of the Canada Labour Code and subsections 12.5(1) and (2) of the Canada Occupational Safety and Health Regulations

The employees who handle the dock plates must wear safety boots and the truck drivers must wear non-slip footwear.

Decision rendered on the first day of June 1993

(signed)
Serge Cadieux
Regional Safety Officer

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

DIRECTIVE TO EMPLOYER UNDER SUBSECTION 145(1)

On December 3, 1993 the undersigned safety officer conducted an inspection in the work place operated by Mowat Express, an employer subject to Part II of the Canada Labour Code, located at 2215, chemin St-FranHois, Dorval.

The said safety officer feels that the following provisions of Part II of the Canada Labour Code have been infringed:

1. Paragraphs 125(v) of Part II of the Canada Labour Code and subsections 12.5(1) and (2) of the Canada Occupational Safety and Health Regulations (COSHR).

The employees do not all wear their safety footwear on the loading/unloading docks and in the goods sorting area where the injuries occurred in 1993.

2. Subsection 135.8 of Part II of the Canada Labour Code

The employer does not hold monthly meetings of the Safety and Health Committee.

Consequently, you are HEREBY ORDERED, pursuant to subsection 145(1) of Part II of the Canada Labour Code to cease all such infringements not later than December 6, 1993.

Done at LaSalle, this third day of December 1993

Richard Robert
Safety Officer
#1535

Applicant: Mowat Express

Interested Party: Occupational Health and Safety Committee

A safety officer issued a direction to the employer under subsection 145(1) of the Code concerning the wearing of safety footwear. Following several accidents at the premises of this employer during the current year, the officer ordered that certain employees wear safety footwear.

After examining each accident in light of section 12.1 of the Canada Occupational Safety and Health Regulations and subsection 12.5(1), which concerns safety footwear, the RSO concluded that in most of the accidents reported it was possible to eliminate or control the risk without requiring safety footwear to be worn. In two situations the RSO was of the same opinion as the safety officer and varied the direction accordingly.