

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: FSJ L.A.N.D. Transport Ltd. ("FSJ Land")
Fort St. John, B.C.
Represented by: Stephen H. Lockwood, Counsel

Mis en Cause: Andrew Chan
Safety Officer
Human Resources Development Canada

Before: Serge Cadieux
Regional Safety Officer
Human Resources Development Canada

On the request of the applicant, this case proceeded by way of written submissions. In the absence of a trade union at FSJ Land, several unsuccessful attempts were made by the Office of the Regional Safety Officer to ensure the participation of two employees of the company to represent the interests of the employees in general. The two employees contacted were actual witnesses of the incident referred to in this decision.

Background

An investigation was conducted by safety officer Andrew Chan into an accident which fatally injured an employee of FSJ Land. In his "Preliminary Investigation Report", the safety officer described the circumstances surrounding the accident in the following terms.

"Description of the Accident"

Mr. Terrance L. Krahn was fatally injured by the boom of a truck mounted crane. The crane was being operated by Mr. David Dettling to lift a catwalk, a component of an oil drilling rig. The boom of the crane broke at the turret mount. The tip of the boom landed on Mr. Krahn and he was reported to be killed immediately.

Events Leading to the Incident

FSJ L.A.N.D. Transport Ltd. was contracted by Sedco Drilling to move an oil drilling rig. The mobile crane was being used to load parts of the rig on its trailer and to be transported to a new location.

Conflicting information was obtained from the two groups of employees working on the site. The employees of Sedco interviewed provide that the catwalk with a weight of 22,946 pounds was initially resting at approximately 79 feet from the boom truck. The boom was fully extended and hooked onto the north corner of the catwalk. The catwalk was then winched to approximately 29 feet from the boom truck. This side load dragging practice is prohibited according to the manufacturer's operation and safety handbook and such warning statements were posted at the operator control platform. However, the employees of FSJ L.A.N.D. Transport explained that the catwalk was being pushed closer to the boom truck by a pole truck. The reason that the crane was slung to one corner of the catwalk was for operation expediency. The boom collapsed at the turret while the operator was taking up the sling's slack.

Sedco employee, Harold Osborne and FSJ L.A.N.D. employee, Terry Krahn were positioned under the boom at the time of collapse. Osborne escaped toward the north and Krahn ran toward the south. Krahn was struck by the tip of the boom and was killed immediately.

Causes of the Incident

Information obtained at this point suggests that the crane was being operated in an unsafe manner. The root causes could be traced back to the questionable training and supervision of the company..."

The safety officer explained that one engineer involved in the investigation reported that "the failure was due to a gross overload of 3.83 times of the crane capacity with respect to the given load radius."

The safety officer concluded that a number of factors were found to have contributed to the accident. Those factors were addressed through two directions given to FSJ Land and one direction given to the crane operator, Mr. David Dettling.

Mr. Dettling did not appeal the direction that was issued to him and therefore that direction is not an issue in this review. Specific items¹ of the two directions issued to FSJ Land are appealed by the company. Each item of the directions under appeal will be discussed separately, taking into consideration the submissions of FSJ Land as well as those of the safety officer. The safety officer was given the opportunity to reply to FSJ Land's submissions in the absence of representatives of the employees.

¹ Each item identified by number in a direction is in itself a direction. However, for the purpose of this review, I will consider a direction to be the document, issued under a specific provision of the Code, such as subsection 145(1), in which several contraventions are identified by number. For example, APPENDIX A is one direction that contains two alleged contraventions.

Decision

The first direction appealed (APPENDIX A) by FSJ Land is issued under subsection 145(1) of the Canada Labour Code, Part II ("Code") and contains two items. Only the second item of that direction is disputed by FSJ Land, the company having withdrawn its request to have the first item reviewed. The second direction appealed (APPENDIX B) is issued under paragraph 145(2)(a) of the Code and contains five items. The company withdrew its request to have item number four reviewed. The other four items are disputed by the company and must therefore be reviewed separately.

Note: The legislation cited in the following text can be found at APPENDIX C.

Direction under subsection 145(1) - item 2

2. Failure to keep minutes of safety and health committee meetings as required by the Canada Labour Code paragraph 125(e) and Safety and Health Committees and Representatives Regulations 9(4).

Before determining whether safety and health committee minutes must be kept by the employer, I must determine, as submitted by Mr. Lockwood, whether a safety and health committee is required at the workplace referred to by the safety officer. If I conclude that a safety and health committee is required and that, consequently, minutes are required, I will correct the reference made by the safety officer to paragraph 125(e) of the Code by replacing that reference with subsections 135(7) and (11) of the Code which are the provisions authorizing subsection 9(4) of the Safety and Health Committees and Representatives Regulations. If I conclude that no safety and health committee is required, then I will simply rescind that item of the direction as it would have no basis in law.

As noted by Mr. Lockwood in his submission on this item, subsection 135(1) of the Code is the provision which requires safety and health committees to be established. Subsection 135(1) of the Code provides, in part, as follows:

135. (1) Subject to this section, every employer shall, for each work place controlled by the employer at which twenty or more employees are normally employed, establish a safety and health committee...

Therefore, in light of this provision, three conditions have to be met, in the instant case by FSJ Land, before a safety and health committee has to be established by that employer.

The first condition is whether FSJ Land is an employer subject to the Code. It has been determined and readily accepted that this company is an interprovincial trucking company which falls under federal jurisdiction. Consequently, FSJ Land is an employer covered under the Code. It should be noted that, in this case, jurisdiction is not and has not been an issue. Therefore, FSJ Land meets the first condition.

The second condition is whether the workplace referred to by the safety officer, namely the Fort St. John terminal, is under the control of FSJ Land. My reading of the employer's submissions is that, of their own admission, FSJ Land actually controls only one workplace i.e the Fort St. John terminal. This observation is particularly important because all the business of FSJ Land originates from this terminal. FSJ Land thus meets the second condition.

The third and final condition to be met is whether twenty or more employees of FSJ Land are normally employed at the Fort St. John terminal. Mr. Lockwood reports that ten (10) employees are normally employed at that workplace. Those employees are the permanent staff of FSJ Land which reports every day, at that location, for work. According to Mr. Lockwood, the supervisors, the truck drivers and the riggers, who can total up to forty employees, are not normally employed at the Fort St. John terminal.

Evidently, to settle this issue, a clarification of the term "normally" is necessary. In the absence of a definition of the term "normally" in the legislation, I must rely on the common definition of the dictionary to guide me. The New Shorter Oxford English Dictionary, 1993 Edition, defines "normally" to mean (1) In a regular manner; regularly. (2) Under normal or ordinary conditions; as a rule, ordinarily. The term "normally" does not mean continuously or permanently. It means there is a certain regularity, as in the instant case, in the number of persons carrying out business for an employer.

Mr. Lockwood states that the work crew does not report to the terminal when carrying out field operations in other areas of the province and that the employees are not necessarily the same each time.

The fact that the employees of the working crews do not spend most of their time at the terminal should not constitute a basis for discounting them from being employed at that workplace. It is sufficient, in my view, that, as a rule, they report to that location for a specific and common purpose related to the business of the employer and that the flow of employees at that workplace meets or exceeds, on a regular basis, the requirement of the legislation.

It should be remembered that the Code does not require that an employee be the same employee for the purpose of establishing a safety and health committee. Subsection 122(1) of the Code defines an employee as "a person employed by an employer;". This definition is all inclusive. Therefore, it is relatively unimportant that the drivers and the riggers i.e. FSJ Land's field personnel, are not the same employees throughout the year as long as they are regularly in sufficient number at the Fort St. John terminal to justify the establishment of a safety and health committee.

It is my understanding that supervisors would return to the terminal on a regular basis, that crews operating in proximity of the terminal would report to the terminal on a daily basis, that equipment would ordinarily be picked up from the terminal by the various crews working in proximity of the terminal and brought back for maintenance, that hiring and firing would be done from the office at the terminal, and that many, if not most, dismantling, hauling and rigging up operations are done on a regular basis in the Fort St. John area, all of which supports the safety officer's submission that the total number of employees exceed 20 at the Fort St. John terminal.

In addition to the above, a pre-job safety meeting takes place at the terminal before "every" job carried out in the Fort St. John area. These meetings are intended to focus on the particularities of the job to be carried out and to ensure that everyone is aware of his responsibilities at the site. Seminars are also held at the Fort St. John terminal where all employees are invited to attend. No doubt, other activities directly related to the business of the employer are conducted on a regular basis at the terminal.

Mr. Lockwood reports that FSJ Land was involved in 211 rig moves. I have calculated from the figures submitted that three quarters of the moves take place in the two areas north and south of the Fort St. John terminal. Each move requires a minimum of five to ten employees and as much as a maximum of approximately forty employees, FSJ Land's entire field personnel workforce, to carry out the job. Considering that there are often more than one job, or move, taking place at a given time, the numbers reported by the safety officer are quite realistic and credible in my view.

In my view, there is at least 20 employees that are normally employed at the Fort St. John terminal. Hence, FSJ Land meets the third and final condition. **Therefore a committee is required in accordance with subsection 135(1) of the Code.** I leave it up to the safety officer to ensure that a safety and health committee is established in accordance with the provisions of the Code.

Mr. Lockwood argued that alternatively, if a committee is required and therefore, that FSJ Land is required to keep minutes of the safety and health committee meetings, then such minutes were kept. I disagree.

Firstly, the constitution of the committee does not comply with the requirements of subsection 135(1) of the Code in terms of the selection of the employee representative, neither does it comply with most other provisions of the Code such as payment of wages, posting of names and work locations, meetings of committee, powers of the committee and so on.

Secondly, the specific requirements of the Safety and Health Committees and Representatives Regulations are also not being met. For example, there must be two chairpersons for each safety and health committee and they must act alternately. The chairperson representing the employees must be selected by the employees, in the absence of a trade union, and this chairperson must sign, along with the chairperson representing management, the minutes as provided by subsection 9(1) of the Safety and Health Committees and Representatives Regulations. The pre-job safety reports referred to by Mr. Lockwood are not safety and health committee meetings minutes as envisaged by the Code. They are employer safety reports.

Since the direction referred to the wrong provision of the Code which authorizes the requirement, under subsection 9(4) of the Safety and Health Committees and Representatives Regulations, to keep minutes for examination by a safety officer, I will vary the direction in the following manner.

For all the above reasons, I HEREBY VARY the direction issued under subsection 145(1) of the Code by replacing the paragraph in the second item of that direction with the following paragraph:

2. Failure to keep minutes of safety and health committee meetings for examination by a safety officer as required by subsections 135(7) and (11) of the Canada Labour

Code, Part II, and subsection 9(4) of the Safety and Health Committees and Representatives Regulations.

Direction under paragraph 145(2)(a) - item 1

1. Failure to provide prescribed instruction and training to Mr. David G. Dettling in the operation of the JLG Boom Truck, Unit No. 787 as required by the Canada Labour Code, paragraph 125(q) and the Canada Occupational Safety and Health Regulation 14.23(1)(c);

In respect of this contravention, the safety officer submitted the following:

Inadequate training and instruction given to the crane operator was demonstrated from his unsafe work practices as outlined in the reports. Further he was unable to accurately estimate the weight of the load, explain the application of the load chart during the interview, and permitting other workers to be within the swing of the boom while attempting to lift a load. Although the employer has given the employee a copy of the written documents on operation safety procedures, the employer remains responsible to ensure that employee can demonstrate his skill and be able to carry out the job safely.

Paragraph 14.23(1)(c) of the Canada Occupational Safety and Health Regulations ("the Regulations") provides as follows:

- 14.23 Every operator of materials handling equipment shall be instructed and trained by the employer in the procedures to be followed for
- (a) the inspection of the materials handling equipment;
 - (b) the fuelling of the materials handling equipment, where applicable; and
 - (c) the safe and proper use of the equipment.

The question I must answer, in this instance, is whether Mr. Dettling, the operator of the crane mounted on the boom truck involved in the accident, was instructed and trained by the employer in the procedures to be followed for the safe and proper use of the equipment. The question to be answered is not whether Mr. Dettling operated the crane in an unsafe manner or whether he can show that he can answer any question put to him at any point in time. The direction of the safety officer is much more specific and restrictive.

In my opinion, when considering instruction and training as prescribed above, the emphasis should be directed towards the qualifications of the crane operator in terms of his knowledge, training and experience. In my view, one must establish whether the crane operator was instructed and trained in the procedures that he is required to follow to operate the crane in a safe and proper manner.

In terms of the employer giving the instruction and training described above, it would not be reasonable, in my view, to expect the employer to substitute himself/herself to a certification institution and actually deliver a training program for crane operators. The employer is to ensure

that the qualifications of the crane operator satisfy the requirements of the legislation. It is also the responsibility of the employer to ensure that the employee receives any additional instruction and training required to operate a particular piece of equipment.

Mr. Lockwood submits that Mr. Dettling

- a) held a "Journeyman" certification from the Government of Alberta as a "Crane and Hoisting Equipment Operator" (Boom Truck Operator). As a pre-requisite to pass the written exam, Mr. Dettling had to provide documentary evidence showing that he had 500 hours of acceptable work experience as a boom truck operator;
- b) had seven years experience in the use and operation of equipment similar to the Boom Truck;
- c) was provided with specific instructions which are documented such as FSJ Land's Safety Manual and the manufacturer's Boom Truck "Operation and Safety Handbook"; and
- d) received, on September 16, 1993, from the boom truck supplier specific instruction and training in the safe and proper use of the boom truck.

Note: The training or the "1.5 hours of orientation on the unit by the distributor prior to putting the unit to work", as noted in one of the WCB Accident Report, was received by Mr. Dettling less than two months prior to the accident.

I need not dwell any longer on this issue. I am satisfied that FSJ Land meets the requirements of paragraph 125(q) of the Code and paragraph 14.23(1)(c) of the Regulations. Mr. Dettling was provided, in my opinion, with the prescribed instruction and training in the procedures to be followed for the safe and proper use of the crane mounted on the boom truck. Evidently, Mr. Dettling was qualified to operate the crane in a safe manner. As to whether he followed the prescribed procedures or acted carelessly is not an issue before me at this time.

Therefore, for all the above reasons, I HEREBY RESCIND item number one of the direction issued under paragraph 145(2)(a) of the Code to FSJ Land.

Direction under paragraph 145(2)(a) - item 2

- 2. Failure to provide employees with prescribed training and instruction on a code of signals as required by the Canada Labour Code paragraph 125(q) and the Canada Occupational Safety and Health Regulation 14.26(1)(a);

In respect of this contravention, the safety officer submitted the following:

There is no documentation of training on a code of signals for both the rigger, Mr. Kerry Brown and the other employees involved in the operation such as the crane operator and the deceased supervisor T. Krahn. The employer claims that a copy of the company's

safety manual which includes a code of signal has been given to each employee. However, there is no evidence of any evaluation to ensure that the employees are familiar with the use of the code of signals. In addition Mr. Kerry Brown was unable to demonstrate his signalling techniques during his interview on November 5, 1993.

Paragraph 14.26(1)(a) of the Regulations provides as follows:

- 14.26(1) Every employer shall establish a code of signals for the purpose of paragraph 14.25(1)(b) and shall
- (a) instruct every signaller and operator of materials handling employed by him in the use of the code;

In my opinion, this provision can be divided up into two parts. The first part requires that the employer establish a code of signals whereas the second part requires the employer to instruct designated employees in the use of the code of signals. There is no doubt in anyone's mind that a code of signals exists at FSJ Land, as demonstrated by Mr. Lockwood. The question I must answer is whether the employer has instructed his employees in the use of the code of signals.

It is interesting to note that the legislator does not require the employer, under paragraph 14.26(1)(a) of the Regulations, to provide training to his employees in the use of the code of signals, a most regrettable omission in my view. Given that the word "training" is used in the legislation, I can only conclude that it is because the legislator intended it to mean something different from the word "instruction".

Since the word "instruct" is not defined in the Regulations, I must look at the common definition of the dictionary to determine the extent of the responsibilities of the employer in this area.

"Instruct" is defined in "The New Shorter Oxford English Dictionary, 1993 Edition, to mean 1. To provide with knowledge or information; teach, educate. 2. Give information to (a person) about a particular fact etc.; inform that. 3. Provide with authoritative directions as to action; direct, command, (a person to do). In this same dictionary, the word "training" is defined to mean "the act or process of providing or receiving instruction in or for a particular skill, profession, occupation, etc.."

In light of the above definitions, the word "instruct" implies that knowledge or information is provided or given to a person whereas the word "training" implies that an action takes place in respect of a particular skill or occupation. Taking into consideration those subtle differences, the word "instruct" is to be read, in my opinion, in its most restrictive sense in this instance.

Consequently, I believe that the employer would satisfy the requirement to "instruct" by providing detailed written or verbal instructions to each employee on the use of the code of signals.

Mr. Lockwood has submitted sufficient evidence that such written and verbal instructions were provided to each employee. Each employee was provided with a copy of FSJ Land's Safety Manual. The manual provides instruction respecting the code of signals used throughout the industry and its use.

Before each job is undertaken, a pre-job safety meeting usually takes place and a pre-job safety report is filled out and signed by each employee in attendance. On each pre-job safety report, the code of signals in use at FSJ Land is reproduced in its entirety and, in addition, specific instructions are given on the report for each hand signal for boom equipment. The signatures of the employees appear next to the code of signals. The employees have an opportunity to discuss at that moment, with the site supervisor, any problems or difficulties they may experience with the code of signals. In my view, FSJ Land complies with the requirement of the Canada Labour Code paragraph 125(q) and the Canada Occupational Safety and Health Regulation 14.26(1)(a) respecting a code of signals.

For all the above reasons, I HEREBY RESCIND item number two of the direction issued under paragraph 145(2)(a) of the Code to FSJ Land.

Direction under paragraph 145(2)(a) - item 3

3. Failure to provide necessary supervision to Mr. David Dettling in operating the JLG Boom Truck Unit No. 787 as required by the Canada Labour Code paragraph 125(q) and the Canada Occupational Safety and Health Regulation 14.24(a);

In respect of this contravention, the safety officer submitted the following:

The lack of supervision to the crane operator was demonstrated by the actions of the site supervisor,

Mr. T. Krahn. Under the supervision of Mr. Krahn the crane operator was permitted to operate the crane in an unsafe manner contravening the crane operation safety procedures, such as side load dragging and permitting workers to position within the swing of the boom while lifting. Further there is no documentation of supervisory training on safety given to Mr. Terrance Krahn in order for him to competently carry out his job as a supervisor. In this particular operation there was no pre-job safety meeting and no pre-job safety report completed.

Paragraph 125(q) of the Code provides as follows:

125. Without restricting the generality of section 124, every employer shall, in respect of every work place controlled by the employer

(q) provide, in the prescribed manner, each of his employees with the information, instruction, training and supervision necessary to ensure the safety and health at work of that employee;

The expression, "in the prescribed manner" limits the extent of the responsibility of the employer to provide, in this case "supervision", to the manner described by the Regulations. In the event that the Regulations do not specify the manner in which supervision is to be provided, then I believe that it cannot be argued that the employer contravened a specific provision of those Regulations.

I concur with Mr. Lockwood that paragraph 14.24(a) of the Regulations does not address supervision. It addresses the capability of an employee to operate equipment safely. Therefore the reference to a specific contravention of the Code and the Regulations, for that item of the direction, must be removed since supervision is not prescribed.

The direction of the safety officer is given under paragraph 145(2)(a) of the Code. That provision authorizes the safety officer to give directions in all situations which he considers to constitute a danger. Danger is defined in the Code as follows:

"danger" means any hazard or condition that could reasonably be expected to cause injury or illness to a person exposed thereto before the hazard or condition can be corrected;

For a situation to constitute a danger, it must, in my view, exist in the present time and as a consequence, it cannot exist under the Code retrospectively nor prospectively. For this reason, the danger must be real and present when the safety officer investigates. Only then could the safety officer correct the situation by giving a direction under subsection 145(2) of the Code.

In this case, the danger was the condition created by the alleged actions of one supervisor, Mr Krahn. Unfortunately, in this instance, the supervisor is deceased and no directions could be given at this stage to protect him or other employees that were under his supervision. For all practical purposes, the alleged danger no longer exists. Furthermore, the direction orders the employer to "terminate" the contravention "immediately", an incongruous statement in the instant case.

I believe that other compliance mechanisms may have to be considered by the investigating safety officer, respecting this contravention, to resolve the situation. In defense, the employer may have to show that he has taken all the necessary measures to protect the safety and health of his employees at work. The issue of supervision is likely to be raised at that moment.

Also, I cannot extent the application of this item of the direction to other supervisors of FSJ Land as I have no information concerning their conduct. I also have no information respecting the policy of the company in this matter other than its paper policy incorporated into FSJ Land's Safety Manual and entitled "Safe Operating Procedures, Oilfield Transportation". In that document, the responsibilities of the supervisors are clearly outlined. While it could be argued that the employer is responsible to ensure the safety and health of his employees at work, I am unaware of the extent of enforcement of this policy by the employer. A direction in the instant case would be unjustified unless it could be shown that the alleged unsafe behaviour of Mr. Krahn is a practice condoned by the company, an issue which should be decided by the courts in my view.

For all the above reasons, I HEREBY RESCIND item number three of the direction issued under paragraph 145(2)(a) of the Code to FSJ Land.

Direction under paragraph 145(2)(a) - item 5

5. Failure to maintain the functioning of the Rayco Load Indicator of JLG Boom Truck Unit No. 787 as required by the Canada Labour Code paragraph 125(i) and Canada Occupational Safety and Health Regulation 14.22(1)(2)(3) and (4).

In respect of this contravention, the safety officer submitted the following:

The failure (sic) the employer to maintain the proper functioning of the load indicator as an important piece of safety equipment was evidenced during the site examination and from the analysis of the J. Seale engineering report. This load indicator could compensate the lack of information given to the crane operator of the weight of the catwalk, or his inability to make an accurate weight assessment.

Mr. Lockwood submitted that paragraph 125(i) of the Code and subsections 14.22(1), (2), (3) and (4) of the Regulations do not require the employer to maintain the functioning of the Rayco Load Indicator on the boom truck. Mr. Lockwood states that the Rayco Load Indicator is an optional piece of equipment that can facilitate the work of the crane operator but which is not normally found on other similar equipment. Also, Mr. Lockwood asserts that the crane operator is qualified to assess the weight of the load to be lifted.

I agree with the safety officer that the Rayco Load Indicator would "compensate the lack of information given to the crane operator of the weight of the catwalk, or his inability to make an accurate weight assessment." The safety officer established that "In this particular operation there was no pre-job safety meeting and no pre-job safety report completed." I find this statement most disturbing as pre-jobs safety meetings and reports are essential from the perspective of providing the crew, and particularly Mr. Dettling, the operator of the crane mounted on the boom truck, with the necessary information to carry out his job safely.

For example, crane operators must know, at the work site, the weights of the various pieces of equipment they are to lift and load. This information should normally be available for analysis at pre-job meetings from documents that must be provided by the owner of the oil drilling rig to be dismantled, or from any other reliable source. I infer, from the absence of a pre-job safety meeting in this case, that this information was not available to the crane operator. I am led to believe that the crane operator could assess the weights of the various loads to be lifted from charts designed for this purpose. However, this method is certainly not a reliable substitute to the specific information necessary to do his job safely, particularly when the crane operator has to lift unknown load weights or load weights that often vary from one rig to another, from one workplace to another.

The crane operator received instruction and training by the employer in the safe operation of the crane mounted on the boom truck and its safety device, the Rayco Load Indicator. Under ideal conditions, this safety device would not be required because the precise load weights would be known. However, ideal conditions rarely exist in the real world. In this case, the crane operator was lifting weights without that information. Only the Rayco Load Indicator could have provided

him with that information in the prevailing circumstances. As to whether he should have lifted the weights, given his experience as a crane operator, is not the issue to be decided in the instant case. His share of responsibility for the accident may have to be decided in another forum.

It could certainly be successfully argued, in light of the circumstances of this case that, this safety device, or any comparable safety device, is essential on this type of equipment because it provides the crane operator with vital information necessary to do his job safely, particularly in those cases where the load weights are not provided or cannot be ascertained. It informs the crane operator of the weight of the load being lifted, taking into consideration the numerous factors that affect lifting with a telescopic boom, and whether it exceeds the capacity of the crane.

When the employer installs the Rayco Load Indicator, or any other type of safety device on the crane mounted on the boom truck, he/she is required, in my opinion, to maintain it in good working condition at all times, particularly once his employees have been trained in using it as a safety device. Notwithstanding that the employer claims that the Rayco Load Indicator is an optional piece of equipment, it certainly ceased to be an optional piece of equipment from the moment it was purchased and that training was given on its use. In circumstances similar to the case before me, I would venture that a safety device of this kind is not optional; it is essential.

The direction is given under paragraph 145(2)(a) of the Code. It is given under that provision for those situations that the safety officer considers to be dangerous. That provision does not require any reference to the Regulations. I suspect the safety officer felt he had to identify a specific provision of the Regulations to substantiate his finding of danger. There is no such requirement under subsection 145(2) of the Code. Since I agree with Mr. Lockwood that the reference to section 14.22 of the Regulations is not relevant to this situation, I will simply remove that reference altogether and replace it with a reference to the general duty of the employer under section 124 of the Code in the following manner.

For all the above reasons, I HEREBY VARY item number five of the direction issued under paragraph 145(2)(a) of the Code to FSJ Land by replacing the paragraph in item number 5 of the direction with the following paragraph:

5. Failure to maintain the functioning of the Rayco Load Indicator of JLG Boom Truck Unit No. 787. Section 124 of the Canada Labour Code, Part II.

Decision rendered on June 17, 1994.

Serge Cadieux
Regional Safety Officer

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

DIRECTION TO THE EMPLOYER UNDER PARAGRAPH 145(1)

On November 4 and 5, 1993, the undersigned safety officer conducted an investigation into the fatality of Terrance L. Krahn in the work place operated by FSJ L.A.N.D. Transport Ltd., being an employer subject to the Canada Labour Code, Part II, at (1) Texaco Canada Petroleum Inc., leased site, approximately 2 miles east and 3 miles north of Doig Reserve and north of Fort St. John, B.C. and (2) 8140 Alaska Highway, Fort St. John, B.C., the said work place being sometimes known as Texaco/Sedco 74 leased site, office and shop of FSJ L.A.N.D. Transport Ltd. respectively.

The said safety officer is of the opinion that the following provisions of the Canada Labour Code, Part II are being contravened:

1. Failure to maintain a record of any prescribed instruction or training given to an operator of materials handling equipment as required by the Canada Labour Code paragraph 125(e) and Canada Occupational Safety and Health Regulation 14.23(2); and
2. Failure to keep minutes of safety and health committee meetings as required by the Canada Labour Code paragraph 125(e) and Safety and Health Committees and Representatives Regulations 9(4).

Therefore, you are HEREBY DIRECTED, pursuant to paragraph 145(1) of the Canada Labour Code, Part II, to terminate the contraventions no later than December 30, 1993.

Issued at Vancouver, B.C., this 22nd day of November, 1993.

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

DIRECTION TO THE EMPLOYER UNDER PARAGRAPH 145(2)(a)

On November 4 and 5, 1993, the undersigned safety officer conducted an investigation into the fatality of Terrance L. Krahn in the work place operated by FSJ L.A.N.D. Transport Ltd., being an employer subject to the Canada Labour Code, Part II, at (1) Texaco Canada Petroleum Inc., leased site, approximately 2 miles east and 3 miles north of Doig Reserve and north of Fort St. John, B.C. and (2) 8140 Alaska Highway, Fort St. John, B.C., the said work place being sometimes known as Texaco/Sedco 74 leased site, office and shop of FSJ L.A.N.D. Transport Ltd. respectively.

The said safety officer considers that the use or operation of a machine or thing constitutes a danger to an employee while at work:

1. Failure to provide prescribed instruction and training to Mr. David G. Dettling in the operation of the JLG Boom Truck, Unit No. 787 as required by the Canada Labour Code, paragraph 125(q) and the Canada Occupational Safety and Health Regulation 14.23(1)(c);
2. Failure to provide employees with prescribed training and instruction on a code of signals as required by the Canada Labour Code paragraph 125(q) and the Canada Occupational Safety and Health Regulation 14.26(1)(a);
3. Failure to provide necessary supervision to Mr. David Dettling in operating the JLG Boom Truck Unit No. 787 as required by the Canada Labour Code paragraph 125(q) and the Canada Occupational Safety and Health Regulation 14.24(a);
4. Failure to provide safety clips on sling hooks used in lifting as required by the Canada Labour Code paragraph 125(u) and the Canada Occupational Safety and Health Regulation 14.41; and
5. Failure to maintain the functioning of the Rayco Load Indicator of JLG Boom Truck Unit No. 787 as required by the Canada Labour Code paragraph 125(i) and Canada Occupational Safety and Health Regulation 14.22(1)(2)(3) and (4).

Therefore, you are HEREBY DIRECTED, pursuant to paragraph 145(2)(a) of the Canada Labour Code, Part II, to terminate the contraventions immediately.

Issued at Vancouver, B.C., this 22nd day of November, 1993.

Legislation cited

CANADA LABOUR CODE, Part II

122. (1) "work place" means any place where an employee is engaged in work for the employee's employer.

"prescribe" means prescribe by regulation of the Governor in Council;

"danger" means any hazard or condition that could reasonably be expected to cause injury or illness to a person exposed thereto before the hazard or condition can be corrected;

"employee" means a person employed by an employer;

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

125. Without restricting the generality of section 124, every employer shall, in respect of every work place controlled by the employer

(e) keep and maintain in prescribed form and manner prescribed safety and health records;

(i) ensure that the vehicles and mobile equipment used by his employees in the course of their employment meet prescribed safety standards;

(q) provide, in the prescribed manner, each employee with the information, instruction, training and supervision necessary to ensure the safety and health at work of that employee;

135. (1) Subject to this section, every employer shall, for each work place controlled by the employer at which twenty or more employees are normally employed, establish a safety and health committee consisting of at least two persons one of whom is an employee or, where the committee consists of more than two persons, at least half of whom are employees who

135. (7) A safety and health committee shall keep accurate records of all matters that come before it pursuant to subsection (6) and shall keep minutes of its meetings and shall make those minutes and records available to a safety officer on the officer's request.

137. Notwithstanding sections 135 and 136, where an employer controls more than one work place referred to in section 135 or 136 or the size or nature of the operations of the employer or the work place precludes the effective functioning of a single safety and health committee or safety and health representative, as the case may be, for those work places, the employer shall, subject to the approval of or in accordance with the direction of a safety officer, establish or appoint in

accordance with section 135 or 136, as the case may require, a safety and health committee or safety and health representative for such of those work places as are specified in the approval or direction.

CANADA OCCUPATIONAL SAFETY AND HEALTH REGULATIONS

14.22 (1) Before materials handling equipment is operated for the first time in a work place, the employer shall set out in writing instructions for the inspection, testing and maintenance of that materials handling equipment.

(2) The instructions referred to in subsection (1) shall specify the nature and frequency of inspections, tests and maintenance.

(3) A qualified person shall

- (a) comply with the instructions referred to in subsection (1); and
- (b) make and sign a report of each inspection, test or maintenance work performed by him.

(4) The report referred to in paragraph (3)(b) shall

- (a) include the date of the inspection, test or maintenance performed by the qualified person;
- (b) identify the materials handling equipment that was inspected, tested or maintained; and
- (c) set out the safety observations of the qualified person inspecting, testing or maintaining the materials handling equipment.

14.23 (1) Every operator of materials handling equipment shall be instructed and trained by the employer in the procedures to be followed for

- (a) the inspection of the materials handling equipment;
- (b) the fuelling of the materials handling equipment, where applicable; and
- (c) the safe and proper use of the equipment.

14.24 No employer shall require an employee to operate materials handling equipment unless the employee

- (a) is capable of operating the equipment safely;

14.25 (1) No person shall operate materials handling equipment unless

- (a) he has a clear and unobstructed view of the area in which the equipment is being operated and, in the case of mobile equipment, of the course to be travelled by the mobile equipment; or
- (b) where the person is an employee, the person is authorized by the employer to do so and is directed by a signaller.

14.26 (1) Every employer shall establish a code of signals for the purposes of paragraph 14.25(1)(b) and shall

- (a) instruct every signaller and operator of materials handling equipment employed by him in the use of the code;

SAFETY AND HEALTH COMMITTEES AND REPRESENTATIVES REGULATIONS

- 9. (1) The minutes of each safety and health committee meeting shall be signed by the two chairmen referred to in subsection 5(1).

(2) The chairman selected by the representatives of the employer shall provide, as soon as possible after each safety and health committee meeting, a copy of the minutes referred to in subsection (1) to the employer and to each member of the safety and health committee.

(3) The employer shall, as soon as possible after receiving a copy of the minutes referred to in subsection (2), post a copy of the minutes in the conspicuous place or places in which the employer has posted the information referred to in subsection 135(5) of the Act and keep the copy posted there for one month.

(4) A copy of the minutes referred to in subsection (1) shall be kept by the employer at the work place to which it applies or at the head office of the employer for a period of two years from the day on which the safety and health committee meeting is held in such a manner that it is readily available for examination by a safety officer.

Applicant: F.S.J. L.A.N.D. Transport Ltd. ("FSJ LAND")

An employee of FSJ LAND was fatally injured by the boom of a truck mounted crane. The operator of the crane was lifting a catwalk, a component of an oil drilling rig. The boom of the crane, which landed on the employee and killed him, broke at the turret mount.

The causes of accident were traced back to the questionable training and supervision of the company and were addressed in two directions by the safety officer. The directions contained several items, however only specific items were appealed. They are as follow:

Direction under subsection 145(1) - item 2

2. Failure to keep minutes of safety and health committee meetings as required by the Canada Labour Code paragraph 125(e) and Safety and Health Committees and Representatives Regulations 9(4).

RSO decision: The RSO found that although 10 employees are reported to be normally employed at the workplace under the control of FSJ LAND i.e. the Fort St. John terminal, other employees such as supervisors, drivers and riggers would, on a regular basis, come through the terminal for reasons related to the business of the employer. The RSO was of the view that more than 20 employees were normally employed at the Fort St. John terminal. The RSO also determined that the employer's safety reports that were completed prior to carrying out a job were not safety and health committee minutes as required by the law. The RSO varied the direction to incorporate the proper provisions authorizing committee minutes to be available for examination by a safety officer.

Direction under paragraph 145(2)(a) - item 1

1. Failure to provide prescribed instruction and training to Mr. David G. Dettling in the operation of the JLG Boom Truck, Unit No. 787 as required by the Canada Labour Code, paragraph 125(q) and the Canada Occupational Safety and Health Regulation 14.23(1)(c);

RSO Decision: The RSO rescinded this item because it was shown that the crane operator was qualified to operate the crane safely. As to whether the crane operator operated the crane in an unsafe manner was found to be outside the purview of the direction.

Direction under paragraph 145(2)(a) - item 2

2. Failure to provide employees with prescribed training and instruction on a code of signals as required by the Canada Labour Code paragraph 125(q) and the Canada Occupational Safety and Health Regulation 14.26(1)(a);

RSO Decision: The RSO rescinded this item because it was shown that the law only requires the employer to instruct his employees in a code of signals. It was demonstrated that employees were well aware of the code of signals and that they could discuss any problems they had with it during every pre-job meeting at which they attended. The RSO was satisfied that the employer provided detailed written and verbal instructions to each employee on the use of the code of signals.

Direction under paragraph 145(2)(a) - item 3

3. Failure to provide necessary supervision to Mr. David Dettling in operating the JLG Boom Truck Unit No. 787 as required by the Canada Labour Code paragraph 125(q) and the Canada Occupational Safety and Health Regulation 14.24(a);

RSO Decision: The RSO rescinded this item of the direction. The RSO noted that the Code does not prescribe supervision therefore, it could not be argued that the employer was in contravention of the law for providing inadequate supervision. However, because the direction is given for a situation of danger, the RSO ruled that for danger to exist, it must be real and present when the safety officer investigates. In this case, the danger, which was the condition created by the alleged unsafe actions of the supervisor, no longer existed because the supervisor was the employee who was killed in the accident.

Direction under paragraph 145(2)(a) - item 5

5. Failure to maintain the functioning of the Rayco Load Indicator of JLG Boom Truck Unit No. 787 as required by the Canada Labour Code paragraph 125(i) and Canada Occupational Safety and Health Regulation 14.22(1)(2)(3) and (4).

RSO Decision: The RSO varied this direction. He found that the Rayco Load Indicator was an essential piece of safety equipment in this type of work. He also found that once the device is installed on the crane and that training is given on its use as a safety device the employer is required to maintain it in good working condition at all times.