

Applicant: C.P. Rail Limited

Respondent: United Transportation Union

A direction was given under subsection 145(1) of the Canada Labour Code, Part II to C.P. Rail for contravention of paragraph 125(j) of the Code and paragraph 8.10(c) of the On Board Trains Occupational Safety and Health Regulations (the Regulations). The direction was given to ensure C.P. Rail would provide specific employees with hand protection in the form of gloves.

C.P. Rail argued that while it recognized that employees have to wear such protection, it should not be required to provide the said protection. It argued that past practice demonstrated that the employees came to work with the gloves and that the Regulations never intended for the employer to have to assume the cost of providing the said gloves.

The Regional Safety Officer disagreed with C.P. Rail. The Regional Safety Officer concluded that once it is established that injury to the hands can occur, the onus was on the employer to provide appropriate protection as stipulated by paragraph 8.10(c) of the Regulations. The Regional Safety Officer was also of the view that the duty to provide the gloves applied notwithstanding any past practice. For this reason, the Regional Safety Officer confirmed the direction.

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: C.P. Rail Limited
Ste-Thérèse Yard, Boisbriand, Québec
Represented by: Robert M. Smith, counsel

Respondent: United Transportation Union
Represented by: Robert Michaud, President
Québec legislative committee

Mis en Cause: Nathalie Béliveau
Safety Officer
Transport Canada, Surface

Before: Serge Cadieux
Regional Safety Officer
Human Resources Development Canada

This case proceeded by way of written submissions.

Background

A complaint was registered with Labour Canada (now Human Resources Development Canada) on January 8, 1994 by CP Rail's safety and health committee, Ste-Thérèse Yard, Boisbriand respecting hand protection. Ms. Nathalie Béliveau was assigned the responsibility to investigate into the matter.

The safety officer consulted with various authorities respecting those conditions which are likely to cause hand injuries in the rail sector to the employees identified in the direction. She studied CP Rail's accident reports dealing with hand injuries and also carried out a mini in-house investigation respecting skin protection.

In order to ensure that she interpreted correctly section 8.10 of Part VIII (Safety Materials, Equipment, Devices and Clothing) of the On Board Trains Occupational Safety and Health Regulations (the "Regulations"), she obtained and applied a policy interpretation of this provision by Human Resources Development Canada. That provision deals specifically with skin

protection. The interpretation obtained states that the employer can decide under the Canada Labour Code, Part II, the manner in which he will comply with his duties as long as he takes appropriate means to protect the safety and health of his employees exposed to extreme cold.

On the basis of the information in her possession, the safety officer concluded that the employer was in contravention of the law and issued a direction (APPENDIX A) under subsection 145(1) of the Code to ensure compliance.

Submission of the Employer

The employer's detailed submission is on record. Specifically, Mr. Smith has identified seven areas with which CP Rail is in disagreement with the safety officer. They are:

- A. An established practice has been put aside by the safety officer - it has always been the employees' responsibility to suitably clothe themselves so as to perform their job safely.
- B. Ms. Béliveau has issued a direction to the employer when there was no evidence of a risk of injury.
- C. Ms. Béliveau has given to the Regulations an unreasonable interpretation.
- D. The regulatory impact analysis statement. Under this item, Mr. Smith asserts that the Regulations were not intended to impose new obligations on the rail industry.
- E. The documentation filed by Ms. Béliveau. In this particular item, Mr. Smith makes reference to one document where exposure to extreme cold is taken as an issue in that injury is not likely to occur because employees already wear gloves.
- F. The demands of the employees are very contradictory.
- G. This matter is of a monetary nature and not a safety issue; it should therefore, as in the past, be dealt with at the table of negotiation.

Mr. Smith has clearly stated in his final submission that "CP Rail does not dispute that trainmen/yardmen must wear gloves while performing their jobs. This is clearly a job requirement, and employees are so advised. Trainmen/yardmen perform manual work, and the manual work requires the use of the hands. The manual work of trainmen/yardmen requires the use of gloves as in other forms of manual work."

Submission of the Employees

The detailed submission of Mr. Michaud, as well as the abundant pertinent documentation provided, is also on record. Essentially, Mr. Michaud replies to each submission of Mr. Smith and attempts to show that the direction of the safety officer is well-founded in law and on the facts.

Mr. Michaud brings forward the numerous situations in which employees at CP Rail are expected to wear hand protection to protect themselves from exposure to extreme cold and from exposure to mechanical and chemical hazards. Mr. Michaud discards any reference to existing practices, insisting that those practices should be dealt with at the table of negotiation.

Decision

The issue to be decided in the instant case is not whether hand protection, in the form of gloves or mitts, is required for those employees identified in the direction. The issue to be decided is, in my view, who must pay for the hand protection?

I do not believe that anyone in his right mind would seriously question the necessity for CP Rail employees who are required to perform duties such as handling switches, uncoupling or riding rolling stock and any other similar tasks under various weather and working conditions, to wear skin protection in the form of gloves or mitts. The hazards to which those employees are exposed to are as numerous and diversified as the various tasks they are required to accomplish with their hands.

In any event, there should be no confusion. I have come to the conclusion, as the safety officer has before me, that the employees identified in the direction must wear hand protection.

In respect of skin protection, section 8.10 of the Regulations provides as follows:

8.10 Where there is hazard of injury to or disease through the skin in a work place, the employer shall provide to every person granted access to the work place

- (a) a shield or screen;
- (b) a cream to protect the skin; or
- (c) an appropriate body covering.

(emphasis added)

That provision establishes, that:

1. once it is established that a hazard of injury or disease exist, the onus is on the employer to provide skin protection; and
2. the employer can choose which type of protection is most appropriate. In the instant case, everybody seems to agree, including myself, that the appropriate type of protection is a body covering for the hands which translates in the summer time in working gloves and in the winter time, in insulated working gloves.

In my opinion, the statutory obligation, which is devolved on the employer, to provide the hand protection described above applies notwithstanding any past practice. Hence the cost of providing working gloves must be assumed by CP Rail, not by the employees. Also, any agreement to the contrary would not relieve the employer from the other regulatory responsibilities arising out of this specific duty found at paragraph 125(j) of the Code.

This ruling does not impose new obligations on the employer since this duty existed when the Regulations were made applicable to the transportation industry. In terms of the existing practice, I can only bow to the wisdom of CP Rail's employees who readily recognized the hazards to which they were exposed and assumed the responsibility of protecting themselves, although that responsibility had been devolved upon the employer by the legislator. In my view, it is for this reason that, in terms of hand injuries in this industry, CP Rail can show a relatively good record of safety. The employees are effectively assuming the employer's, as well as their own, responsibility.

As to whether this issue is a monetary issue is, in my view, an evidence in itself. However, because the employees have recognized very early that, in this work environment, there is a hazard of injury to the hands and as a result, bought their own gloves, then I suspect that providing hand protection now becomes a monetary issue primarily for the employer. It is time for the employer not only to reap the benefits of hand protection but also to assume his responsibilities. Providing appropriate skin protection must be seen as a necessary price to pay for doing business in this industry.

I believe that it is not my role, at this stage, to determine, from the evidence submitted, which specific occupations require hand protection and what type of hand protection would be appropriate in each occupation. In my view, the safety and health committee would be the most appropriate forum to discuss that issue. The safety officer could also assist the parties in this endeavour. The committee should also be consulted in the development of a maintenance program. However, this determination does not affect the scope of application of the direction given by the safety officer.

For all the above reasons, I hereby confirm the direction issued on January 21, 1994 by safety officer Nathalie Béliveau to C.P. Rail Limited.

Decision rendered on July 7, 1994

Serge Cadieux
Regional Safety Officer

TRANSPORT CANADA

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

DIRECTION TO THE EMPLOYER UNDER SUBSECTION 145(1)

On January 17th 1994, the undersigned safety officer conducted an inquiry following a complaint received by the safety and health committee, in the work place operated by CP Rail Limited, being an employer subject to the Canada Labour Code, Part II, at 3700 Grande-Allée Boulevard, Boisbriand, Province of Quebec, the said work place being sometimes known as Ste-Thérèse Yard.

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

paragraph 125 (j) of the Canada Labour Code, Part II and Paragraph 8.10 (c) of the On Board Trains Occupational Safety and Health Regulations.

Transportation employees that are required to perform duties such as handling switches, uncoupling or riding rolling stock and any other similar tasks which may result in a hazard of injury to the hands must be provided with adequate body covering.

Therefore, you are HEREBY DIRECTED, pursuant to subsection 145(1) of the Canada Labour Code, part II, to terminate the contravention no later than February 18th 1994.

Issued at Montreal, this 21st day of January 1994.