

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: Ron Jackson
Safety coordinator
Local 508
International Longshoremen's & Warehousemen's Union

Mis en cause: F. M. Bullen
Safety Officer
Canadian Coast Guard, Nanaimo District

Before: Bertrand SouthiPre
Regional Safety Officer
Human Resources Development Canada

A review of the documents which have been submitted indicated that there was a misunderstanding of the requirements of the Canada Labour Code. Accordingly, this preliminary decision is being issued to rectify the situation and to allow a proper appeal to be made.

Background

On April 10, 1995, there was a refusal to work on the M/V "Saga Spray" at Nanaimo "C" Berth. Safety officer G. Vale of the Canadian Coast Guard investigated and upheld the refusal to work. At 2030 hours, he issued, on Form S.I.7 (a Canadian Coast Guard, Steamship Inspection Office form), under No. 78, a direction which reads as follows:

M/V "SAGA SPRAY"

THE MASTER/OWNERS AT NANAIMO "C" BERTH IT WAS NOTED THAT THE EMERGENCY STOP (COWCATCHER) ON NOS 1 & 2 GANTRY CRANES, WHEN OPERATED, ONLY STOPS THE CRANE WHILST THE EMERGENCY STOP IS ACTUATED. THIS HAS TO BE CHANGED SO THAT WHEN THE EMERGENCY STOP IS ACTUATED THE CRANE REMAINS STOPPED & CAN ONLY BE RESTARTED FROM THE CRANE CAB. BEFORE THE PROCESSES CAN CONTINUE THE CONTROL MUST BE CHANGED. REFUSAL TO WORK UPHELD.

(signed) G. VALE
Tackle inspector

NOTE: ALL SAGA V/LS SHOULD BE ADVISED OF THE ABOVE.

The following day, at the employer's request, F. M. Bullen, Senior Surveyor, Nanaimo District, Canadian Coast Guard, reviewed this direction and rescinded it in favour of the employer by way of direction No. 23-505. This direction, dated April 13, 1995, reads as follows:

M. V. SAGA SPRAY

Direction issued on April 10/95 (SI.7 No. 78) is hereby rescinded.

The "cowcatcher" is an early warning system to interrupt the travel of the gantry crane if there is an obstruction on the track. It is not required to act as an EMERGENCY stop and should only be considered an enhanced early touch warning system.

(signed)
F. M. Bullen
Senior Surveyor
Nanaimo District

On April 21, 1995, Mr. Bullen sent a FAX to the office of the Regional Safety Officer notifying him that local 508 of the International Longshoremen's Union was asking for a review of his (Mr. Bullen's) direction of April 13. On April 25, Graham Constable, A/Senior Surveyor, Nanaimo, sent a FAX which included a written demand from Ron Jackson, Safety Coordinator Local 508, for a review of Mr. Bullen's direction.

Discussion

Mr. G. Vale issued the direction on a S.I.7 form, which is a form used by the Steamship Inspection Office of the Canadian Coast Guard. It is not the form normally used to issue directions; however, there is no legally prescribed form for issuing directions, there is only a recommendation. He also signed the form as "Tackle Inspector", not as "Safety Officer", however, Mr. Vale is a Safety Officer (#2638) under the terms of the Canada Labour Code. Finally, Mr. Vale did not make any reference to the Canada Labour Code in his direction. It is important to note however that the direction ends with the expression "Refusal to work upheld", which means that the direction therein was issued as the result of a refusal to work. The refusal to work is a provision unique to the Canada Labour Code and accordingly, the direction must be considered as a direction under the terms of subsection 145.(2) of the Canada Labour Code.

I understand that Mr. Bullen is Mr. Vale's supervisor and in this capacity, he rescinded the direction issued by Mr. Vale. Mr. Bullen is also a Safety Officer (#2665) under the terms of the law. However, because Mr. Vale's order is a direction under the Canada Labour Code, only a duly appointed Regional Safety Officer has the authority to review it and he may either vary, rescind or confirm it, as outlined in section 146 of the Canada Labour Code. Mr. Bullen's direction which rescinds the direction issued by Mr. Vale is beyond the scope of his function as a Safety Officer and is therefore invalid. As a result, the request for review presented by Ron Jackson, Safety Coordinator Local 508, I.L.W.U., has no object, because he is appealing a document which has no legal value.

There is also the fact that the employer did present a request for review of the direction issued by Mr. Vale. From the correspondence received by the Office of the Regional Safety Officer, the request was presented to Mr. Bullen the day following the direction, that is, on April the eleventh. The request was not directed to the proper office, but this error is understandable given the fact that the direction issued by Mr. Vale was presented on a Canadian Coast Guard form. The request for review was presented within the time limit allowed by the Code (within 14 days of the date of the direction).

Decision

1. The request presented by Ron Jackson, Local 508 of I.L.W.U., asking for a review of direction No. 23-505 issued by Safety Officer F. M. Bullen is dismissed because direction No. 23-505 has no basis in law; a Safety Officer cannot review a direction, whether his own or someone else's: only the Regional Safety Officer has this authority.

2. The direction issued by Safety Officer G. Vale stands. It must be noted that even if it is appealed to the Regional Safety Officer, a direction remains in force unless and until the Regional Safety Officer rescinds or varies it. The provisions of section 145 of the Code apply including the requirement to post a copy of the direction and the requirement to supply a copy to the safety and health committee.

3. The employer has appealed the direction issued by Safety Officer G. Vale. This appeal is still pending. Accordingly, Mr. Vale must submit to the office of the Regional Safety Officer a report of his investigation as well as the reasons in support of his direction. If he still wishes to appeal the direction issued by Safety Officer G. Vale, the employer is requested to submit his appeal in writing to the office of the Regional Safety Officer as well as his reasons for doing so. The union, as interested party, is invited to present its arguments regarding this question.

N. B. Any and all documents sent to this office shall be shared with all parties involved.

Decisions given on May 23, 1995

Bertrand Southière
Regional Safety Officer

SUMMARY OF REGIONAL SAFETY OFFICER DECISION

Note: To be read in conjunction with Decision # 95-016

Applicant: International Longshoremen's & Warehousemen's Union
Local 508 - (Ron Jackson)

KEYWORDS

S.I.7 form; tackle inspector; senior surveyor; Canadian Coast Guard;

PROVISIONS

Code: 145(2)(a)
146

SUMMARY

There was a refusal to work on the M/V Saga Spray in Nanaimo harbour. As a result, a safety officer, who is also a tackle inspector in the Canadian Coast Guard, issued a direction regarding the emergency stop on the gantry cranes. On the following day, the employer appealed the direction to the safety officer's supervisor, a senior surveyor in the Canadian Coast Guard, who is also a safety officer. The senior surveyor rescinded the other safety officer's direction. About 10 days later, the Union asked for a review of the senior surveyor's direction.

The regional safety officer dismissed the appeal of the Union based on the fact that the senior surveyor did not have the power to rescind the direction issued by the safety officer, that only a regional safety officer can do so; the direction which was being appealed was invalid and the appeal had no object. The original direction was reinstated as well as the appeal of this direction by the employer.