Decision No.: 95-008

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:	Federal Marine Terminals Hamilton, Ontario Represented by: R.L. Lacroix, Vice-President Maritime Employers Association (MEA)
Respondents:	International Longshoremen's Association (ILA), Local 1654 Represented by: Robert Lincoln and John T. Kelly Health and Safety Representatives and Linze Hoekstra International Union of Operating Engineers Local 793
Mis en Cause:	Kojo B. Chintoh Safety officer Human Resources Development Canada
Before:	Serge Cadieux Regional Safety Officer Human Resources Development Canada

Although the parties convened on May 10, 1995 for a hearing into this case, an adjournment was granted to the MEA on the basis that the parties were not provided with a complete copy of the file respecting this case. Because of the difficulty to schedule another hearing within a reasonable time frame, it was agreed to proceed with this case by way of written submissions.

Background

On December 22, 1994 a fatal accident occurred at Pier 12 of the Hamilton Harbour. The investigating safety officer, Kojo Chintoh described in his narrative report the events that led to the accident in the following manner:

> Work was ongoing at the North end of Pier 12 whereby employees (several names were listed)... were all working this morning on Pier 12-14 as well as others. The group had finished rigging a load of two items each the size of 98"x 21"x 42"x 2.

> According to the Crane Operator[1], Manuel (Supervisor and full-time employee of FMT) and Norm (Dock foreman) gave him the signal to lift the load. He lifted the load up and went over two containers. The two containers were stacked one on top of the other about 16' (feet) off the ground. After clearing the containers he also cleared a bank of floor lights to the left. After he passed over the lights he saw Kevin Noble and Jim Travale (hook on-longshoremen) coming up from the hook up area dragging chains in the direction of the stern of the ship. They did not look up and when they were directly under the load, it fell apart. Pieces of the load hit Mr. Travale as he was running from the area but Mr. Noble took the whole weight of the load.

Respecting training of employees, the safety officer noted the following:

> At various times, during the course of the investigation, the employer was requested to provide records or verification of training for any of the employees who were present at the work site at the time of the fatal hazardous occurrence. The employer advised the Safety Officers that the I.L.A. members are not trained by the employer in safe work procedures related to the work performed at the time of the incident. Although requested, the employer could not provide any written work procedures for the work performed at the time of the occurrence.

Federal Marine Terminal was given, at the work site and on the day of the investigation, a hand written direction (see APPENDIX-A) under sub-paragraph 145(2)(a)(ii) of the Canada Labour Code, Part II (the Code) to protect any person working at that site.

Another direction (see APPENDIX-B) was given verbally under subsection 145(1) of the Code for several specific contraventions to the Code and the Canada Occupational Safety and Health Regulations (the Regulations). The employer has requested a review of both directions except for the first contravention listed in the direction given under subsection 145(1) of the Code.

Submission for the Employer

The detailed submission of Federal Marine Terminals is on record. Each separate submission will be considered in the decision of each direction and for each contravention. Since Mr. Lincoln has not entered a detailed submission in this case, I will accept the rationale of the safety officer as the basis for the directions.

Also, it should be pointed out that Federal Marine Terminals entered a preliminary objection in this case. The objection is to the effect that the Regional Safety Officer does not have jurisdiction to hear this case by virtue of the exclusion at paragraph 14.2(b) of Part XIV (Materials Handling) of the COSH Regulations. That paragraph provides:

> 14.2 This Part does not apply to or in respect of
>
> (b) the use and operation of tackle in the loading or unloading of ships;

[1] The safety officer noted in his report that, "with the exception of the crane operator, no one knows who signalled the load up".

Therefore, submitted Mr. Lacroix, "in view of the fact that the operation wherein the accident occurred was indeed the loading of a ship, we submit that it was excluded from the application of Regulation 14." In addition to the above, Mr. Lacroix further submitted that according to the definition of tackle, that is exactly what was used when the accident occurred.

Decision re: Preliminary Objection

I have little doubt that a crane meets the definition of tackle. When used in the context of the shipping industry, tackle is defined by the *Concise Oxford Dictionary, eight edition*, "as a mechanism, esp. of ropes, pulley-blocks, hooks, etc. , for lifting weights, managing sails, etc.." A rope is defined in the same dictionary as "a stout cord made by twisting together strands of hemp, sisal, flax, cotton, nylon, wire, or similar material." On the basis of that definition alone, it would be difficult not to consider a crane as tackle since a crane uses ropes, as defined above, pulley-blocks and hooks as well as other equipment to lift weights. I am therefore considering that a crane is tackle for the purposes of this case. Consequently, the remaining issue to be resolved in respect of the objection is whether the crane involved in the accident was loading or unloading a ship.

I have come to the realization that a port is a huge materials handling area. The various materials handling activities taking place in a port, and more so on a dock, involve various modes of transportation such as marine, rail and road transportation. The loading or unloading of a ship is just one of those activities, albeit a very important one. The equipment used to load or unload a ship is also used frequently in other areas of the port. Also, the loading and unloading of a ship occurs only when specific conditions are met.

In my view, the first condition in the loading or unloading of a ship is that a ship must be secured alongside a wharf. Therefore, in the absence of a ship, it can be said that all activities taking place on the dock or in the port are primarily materials handling activities[2]. The second condition to be met is that lifting equipment used to load or unload a ship, such as tackle, must be directly involved in the loading or unloading of the ship which, in my opinion, means that it must be taking materials from any location in the port, and particularly on the dock, and transferring it directly onto the ship. Therefore, in applying the above test, I would conclude that only the crane lifting materials from the dock and onto the ship was loading the ship.

It should be pointed out that the COSH Regulations do not specify a geographical delineation on the dock which would exclude its application to this situation. The COSH Regulations only excludes its Part XIV from"the use and operation of tackle in the loading or unloading of ships;" and makes no specific mention of the application of another legislation. Hence, the provisions of another legislation, such as the provisions of Tackle Regulations issued under the Shipping Act with respect to the extension of the boom or the mooring lines of a ship which define the zone of application of the Tackle Regulations, cannot be used to restrict the application of the Code. Therefore, the COSH Regulations apply to the use or operation of tackle within the zone delineated by the Tackle Regulations as long as the tackle is not involved in the loading or unloading of a ship notwithstanding that the Tackle Regulations may also capture that equipment. To that extent, it

[2] Obviously, a reference to materials handling activities is a reference to those activities directly associated to materials handling and would not include other activities such as administrative activities, health related activities, etc..

would appear that both sets of Regulations apply concurrently in this case with the exception that the COSH Regulations issued under the Code would prevail given that the Code applies notwithstanding any other Act of Parliament (ss.123(1)).

The crane involved in the accident, in this case, was not loading or unloading the ship; it was handling materials. That crane, which incidentally was a mobile crane that can be used and more than likely is used for many purposes at different locations on the dock or in the port in general, was lifting and displacing materials in order to bring them within the range of another crane that would load them on the ship. Only that latter crane could be said to be loading or unloading the ship. It follows that the exclusion at paragraph 14.2(b) of the COSH Regulations does not apply to the crane involved in the accident. Consequently, **THE OBJECTION IS DISMISSED.**

REVIEW OF DIRECTIONS

DIRECTION UNDER SUBPARAGRAPH 145(2)(a)(ii) OF THE CODE

According to the safety officer's report, this direction

> "was issued to ensure that the employer takes immediate measures to protect all employees, workers, and other persons granted access to this work site while this fatality investigation is going on. At the time of the accident, the employer was not able to produce any procedures or guidelines for material handling equipment for the Safety Officer to review.
>
> The employer appeared to be under pressure to continue the work as the Seaway was closing soon and the Port Captain was requesting that the loading of the vessel be completed. Due to the severity of the accident and the hazardous nature of the work, the Safety Officer believed that it was imperative that no further work be done until the Safety Officer could verify that the work continue safely."

The employer, on the other hand, submitted that employees are

> "familiar with the nature of the surroundings, the type of work being carried there and the need to be alert to avoid accidents. They have been instructed to not position themselves under suspended/moving loads and are aware of the hazards related thereto.
>
> Although they are being allowed to work in the area, they are most certainly not being allowed to violate safe-working procedures. This implies employer-sanctioned unsafe work practices which is most definitely not the case."

The direction that is given in this case is given under the authority of subsection 145(2) of the Code. Directions are given under that provision for situations of danger. Danger is defined at subsection 122(1) of 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.

The safety officer arrived at the site and because of the seriousness of the accident and the likelihood that the loading of the ship continue under the same conditions, he felt that he had to secure the accident site where he would be carrying out his investigation. He gave an order to ensure that no further work be done until he could verify that work could be done safely.

The safety officer issued the direction to ensure the protection of any person during the investigation. He requested in several instances procedures or guidelines for material handling which he did not obtain. Since an employee had already been killed and another one injured, the safety officer had reasonable cause, in my opinion, to take statutory action to ascertain that the safety of other workers in that area would not be put in jeopardy at any time during his investigation. By issuing the direction under paragraph 145(2)(a) rather than under paragraph 141(1)(e) of the Code, the safety officer took the appropriate steps to compel the employer's representatives at the site of the accident to recognize the seriousness of the situation. I am convinced that the direction was needed in this case and that it was justified.

The only weakness with the direction is that it is incomplete. In situations where the safety officer wishes to secure the area because of the impossibility to protect the employees from the danger, he should direct the employer to comply with paragraph 145(2)(b) of the Code as well. That latter paragraph provides:

> (b) the safety officer may, if the officer considers that the danger cannot otherwise be guarded or protected against immediately, issue a direction in writing to the employer directing that the place, machine or thing in respect of which the direction is made shall not be used or operated until the officer`s directions are complied with, but nothing in this paragraph prevents the doing of anything necessary for the proper compliance with the direction.

Thus, the direction of the safety officer would have been issued under the authority of paragraphs 145(2)(a) and (b) of the Code. As a result of such a direction, a notice of danger, as provided by subsection 145(3) of the Code, would have been affixed at the place in question and the employer would be required to cease using the place in question in accordance with subsection 145(4) of the Code.

By failing to identify the proper provisions, the employer was confused as to the intentions of the safety officer. Nonetheless, this does not, by itself, invalidate the direction given. Also, I do not believe it is appropriate at this time to vary the direction issued to include a reference to paragraph 145(2)(b) of the Code on the basis that a notice of danger was necessary in those circumstances. The time has passed, the investigation is over and the direction evidently achieved the goal that it had set out to achieve. In my opinion, the direction was justified and it should stand unmodified.

For all the above reasons, **I HEREBY CONFIRM** the direction given under subparagraph 145(2)(a)(ii) of the Code on December 23, 1994 by safety officer Kojo B. Chintoh to Federal Marine Terminals.

DIRECTION[3] UNDER SUBSECTION 145(1) OF THE CODE

CONTRAVENTIONS #2 and #3

I have grouped the two contraventions identified above under the same heading as both contraventions have their origin in the same provision i.e. section 14.23 of the COSH Regulations which deals specifically with operator training. The contraventions are worded as follows:

#2. Subsection 125(q) Canada Labour Code - Part II
Canada Occupational Safety and Health Regulations 14.23(1)

The employer has failed to instruct and train crane operators in the safe and proper use of the equipment.

#3. Subsection 125(e) Canada Labour Code - Part II
Canada Occupational Safety and Health Regulations 14.23(2)

The employer has failed to keep records of any instruction on training given to crane operators.

Section 14.23 of the COSH Regulations provides, in regards to the above noted contraventions, as follows:

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

(c) the safe and proper use of the equipment.

(2) Every employer shall keep a record of any instruction and training given to an operator of materials handling equipment for as long as the operator remains in his employ.

The safety officer reported that he cited the employer for the two contraventions listed above because "The employer was unable to demonstrate that the crane operator had received instruction and training in the safe and proper use of the crane." The safety officer further confirmed with the Operating Engineers Training Institute of Ontario that Mr. Karo, the operator of the crane involved in the accident, had never attended a course at that Institute.

The issue to be resolved here, in view of the provision allegedly contravened, is not whether the safety officer was or was not provided with the documents that he requested and which would demonstrate whether the crane operator had been instructed and trained in the safe and proper use of the crane. The issue is whether the crane operator has been instructed and trained by the employer in the safe and proper use of the crane and whether the employer has the records to prove it. The nuance, although subtle, is an important one.

[3] A reference to the direction in the following text is a reference to the direction given under subsection 145(1) of the Canada Labour Code, Part II. Each item listed in that direction is referred to as a contravention.

Mr. Lacroix has submitted a number of valid certificates of qualification as well as copies of provincial licences of crane operators working for Federal Marine Terminals, including those of Mr.Karo. The certificates are issued under the authority of *The Apprenticeship and Tradesmen's Qualification Act* of Ontario. Each document certifies that the crane operator to whom it is issued "having complied with The Apprenticeship and Tradesmen's Qualification Act, and regulations is issued this certificate of qualification HOISTING ENGINEER-MOBILE CRANE OPERATOR." Mr. Karo's certificate expires only in 1996 whereas the other crane operators all have certificates that were valid at the time of the safety officer's investigation.

Evidently, the crane operators referred to by the safety officer are qualified crane operators, notwithstanding that the Operating Engineers Training Institute of Ontario reports that it has no record of Mr. Karo's training. Mr. Lacroix of the MEA has submitted on behalf of the employer the records to prove that the crane operators have been instructed and trained in the safe and proper use of cranes. I have no reason to doubt the integrity of the MEA and the employer in this instance. Consequently, I have little choice in this case but to find that the safety officer erred in reaching his conclusion.

However, there exists a problem here since the safety officer requested on several occasions that the employer provide him with the records of training of employees at the site of the accident. No such records, such as the ones before me, were given to the safety officer. Whether intentionally or not, the safety officer was misled in this case. I will not dwell any longer on this issue as the safety officer has several compliance instruments at his disposal to ensure full cooperation in the future. At this point in the revision of the direction, I can only conclude that the employer is in compliance with section 14.23 of the COSH Regulations and will leave it at that.

For all the above reasons, **I HEREBY RESCIND** contravention number two (#2) and contravention number three (#3) from the direction, which correspond respectively to contraventions to subsection 14.23(1) of the COSH Regulations and to subsection 14.23(2) of the COSH Regulations.

CONTRAVENTIONS #4, #5, #6 and #7

I have grouped these four contraventions together because they are interdependent in this case in that all four contraventions deal with signallers. Contraventions #4, #5, #6 and #7 read as follow:

4. Subsection 125(v) Canada Labour Code - Part II
Canada Occupational Safety and Health Regulations 14.25(1)(b)

The employer has failed to ensure that the crane operator was being assisted and directed by a signaller.

5. Subsection 125(q) Canada Labour Code - Part II
Canada Occupational Safety and Health Regulations 14.26(1)(a)(b)

The employer has failed to establish a code of signals, instruct signaller and operators of material handling equipment and keep a copy of that code readily available.

6. Subsection 125(q) the Canada Labour Code - Part II
Canada Occupational Safety and Health Regulations 14.26(2)
The employer has failed to ensure a signaller was in place who performed no other duties other than signalling while material handling equipment under his direction was in motion.

7. Subsection 125(u) of the Canada Labour Code - Part II
Canada Occupational Safety and Health Regulations 14.27(1)

The employer failed to provide a radio or other signalling device where it is not practicable for signaller (sic) to use visual signals.

The safety officer reported that he observed a blind spot in the crane which is caused by a horizontal support cross bar. While the safety officer was uncertain as to whether the bar had an effect on the accident, he is adamant that the operator does not have a clear and unobstructed view of the area and of the course to be travelled by the crane. The safety officer also explained that the employer acknowledged that there was not a designated signaller for the dock crane operation. The workers that did signal the crane operator at various times on that day all went on to carry out other duties.

The employer strongly disagreed with the safety officer, stating that "There was a Company Superintendent present throughout the morning (and at the time of the accident) who was supervising the operation (including the signalling, as required)." In a written statement, Mr. Karo declared the following:

> "I confirm that during the course of the morning of December 22, 1994, longshore employees were indeed providing me with appropriate signals in a manner that we are accustomed to when working in conjunction with longshoremen."

The first and main issue to be decided in respect of the above noted contraventions is whether a signaller, as defined in the COSH Regulations, was required to carry out the operation of lifting and transporting the designated load on the day of the accident. That determination will affect the revision of the other contraventions of this group.

Manifestly, there exists widespread confusion with regards to signallers throughout the longshoring industry probably because the term "signaller" (or signalman) is used indiscriminately in that industry by workers, management and safety officers alike. It follows that every time that someone gives a hand or auditory signal to another person in the course of his/her work in this industry, he/she is viewed as a signaller as provided by the COSH Regulations. In my opinion, that assumption is a mistake. There exists a marked difference between a prescribed[4] signaller and a signaller in the general sense of the term and the distinction between both must be clarified.

A signaller is defined at section 14.1 of the COSH Regulations in the following manner:

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[4] The use in the text of the expr ession "prescribed signaller" is to be interpreted to mean "the signaller that is required by the COSH Regulations".

> "signaller" means a person instructed by an employer to direct, by means of visual or auditory signals, the safe movement and operation of materials handling equipment.

To understand what a signaller in the general sense of the term means, we need to refer to the common meaning of the dictionary. According to *The New Shorter Oxford English Dictionary*, 1993 Edition, a signaller is

> "(a) a person who signals[5] esp. a signalman;".

The essential difference between the two types of signallers defined above lies in the fact that a prescribed signaller not only directs the movement of any type of equipment by using visual or auditory signals, but also directs the safe movement and operation of materials handling equipment. Hence, the emphasis is on safety and not simply on giving signals in the normal course of the work.

Obviously, in the longshoring industry, a signaller in the general sense or meaning of the term is used routinely in the course of many operations. That person, who would normally be the supervisor of the operation, the rigger foreman or the lead hand of the trade group involved or any other employee authorized by the employer, is often communicating with the crane operator through signals, particularly when overseeing the various operations involving a crane, such as determining whether the load is properly rigged, whether it is properly positioned or positioned at a specific location or any other similar task. The signaller, in the general sense of the term, is needed primarily for operational purposes but is not specifically required by law.

A prescribed signaller on the other hand is required in very specific circumstances. Those circumstances are specified at paragraph 14.25(1)(a) of the COSH Regulations, which provides

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.

Therefore, a prescribed signaller is required when safety is an issue or, to paraphrase the above provision within context, when the crane operator does not have visual control of the load to be safely lifted and transported. In my research into this subject, I have noted that the Mobile Crane Manual published by the Construction Safety Association of Ontario provides that a signaller must be used whenever:

> "*The operator cannot see the load.*
> *The operator cannot see the load's landing area.*
> *The operator cannot see the path of travel of the load or of the crane.*

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[5] "Signal" is defined in the same dictionary to mean, among other things, "a sound or gesture intended as a sign to convey warning, direction or information.

The operator is far enough from the load to make judgment of distance difficult.
The crane is working within a boom's length of the limit of approach to powerlines or electrical equipment.

Whenever loads are picked up at one point and lowered at another, two signaller may be required-one to direct the lift and one to direct the descent."

I fully endorse the above listed conditions where a prescribed signaller is required. However, no evidence has been submitted before me that would demonstrate that any of the conditions listed above existed on the day of the accident. On that morning, the crane operator clearly saw the load and ensured through visual signals with the Company Superintendent that it was well rigged. Had the load's supporting wooden frame not broken, the load would have reached its destination in a safe manner under the control of the crane operator as any other load has on that same day. The crane operator would have deposited the load at a specific location under the guidance of the signals given by authorized individuals.

I disagree with the safety officer's conclusion that the crane operator did not have a clear and unobstructed view of the area and the course to be travelled by the crane. The horizontal bar referred to by the safety officer did not, in my opinion, impair to any significant degree the view of the crane operator to the extent that he did not have visual control over the load in question. The crane operator had visual contact with the load from the moment it was rigged to the moment it was lifted and transported to its designated destination. In this case, the horizontal bar did not prevent the crane operator from seeing the load because he could easily look above or below the bar for the short period of time where the load would come in line with the bar.

Consequently, in my opinion, a designated signaller is not required as directed by the safety officer. For all the above reasons, **I HEREBY RESCIND** contraventions number four (#4) and number six (#6) from the direction.

Nonetheless, due to the nature of their work, crane operators do require from time to time prescribed signallers. To argue otherwise is unrealistic. As such, the employer is required to establish a code of signals, to keep it readily available for examination by signallers and operators, and ensure the signallers perform no other duties when signalling.

The employer was unable to demonstrate that he/she had established a code of signals. The safety officer observed that no such codes were available at the work site for examination by signallers and operators, which in the latter case would include crane operators. That observation by the safety officer and the subsequent confirmation by company representatives at a meeting of December 23, 1994 that Federal Marine Terminals does not have a code of signals is sufficient to justify the direction of the safety officer.

Mr. Lacroix asserted that employees knew the method of signalling. In my opinion, such a statement is insufficient to satisfy the requirements of the law. The law imposes a mandatory requirement on the employer to establish a code of signals and have copies of the code readily available for examination by signallers and operators. To that extent, I find that the employer is in contravention of paragraphs 14.26(1)(a) and (b) of the COSH Regulations.

For all the above reasons, **I HEREBY CONFIRM** contravention number five (#5) of the direction.

As for the last contravention of this group, which is contravention #7, I would rescind this contravention as well since I have already ruled that on the morning of the accident, a prescribed signaller was not required since the crane operator had visual control over the load. It was certainly not demonstrated to my satisfaction that a backup system was needed on the morning of the accident. This does not mean that such a system is not required from time to time. I would venture that there are probably many situations were an alternate signalling system is necessary. The safety officer could certainly verify whether such situations occur and react accordingly. However, in respect of this case, I am merely observing that on the day of the accident which gave rise to this direction, there existed no situation that would justify the requirement for a telephone, radio or other signalling device. For this reason, **I HEREBY RESCIND** contravention number seven (#7) from the direction.

CONTRAVENTION #8

That contravention, which is also the last contravention to be reviewed in this direction, reads as follows:

8. Subsection 125(p)(s) of the Canada Labour Code - Part II
Canada Occupational Safety and Health Regulations 14.37(2)

The employer failed to ensure that the main approaches to any material handling area were posted with warning signs or under the control of a signaller while operations were in progress.

The safety officer reported that the employer was cited for this contravention in order "to ensure that employees and outsiders are aware of the material handling area or to ensure that the signaller has control of the main approaches to the material handling area while operations are in progress. The safety officer explained that prior to the accident, other employees were seen walking in the direction of the accident site. They had not been advised of the work being carried on in that area and the area itself was not under the control of a signaller.

In defense, the employer explained that the work area is "far removed from public access. Everyone present at the work site was working, experienced and knowledgeable as to the area and the materials handling work being carried out. There was hence no meaningful need for signs. Furthermore, there was in fact supervision present to oversee and direct the work."

Subsection 14.37(2) of the COSH Regulations provides

(2) The main approaches to any materials handling area shall be posted with warning signs or shall be under the control of a signaller while operations are in progress.

The use of the word "shall" in the above provision indicates that there is a mandatory requirement to either post warning signs or have a signaller in place. There is no discretion allowed; the employer must comply with that provision as specified.

Since it was indicated that the work sites of Federal Marine Terminals are far removed from the entrance of the Port of Hamilton, the above provision applies. It would also apply notwithstanding the above because the definition of a "materials handling area" at subsection 14.37(1) of the COSH Regulations captures mobile equipment that may create a hazard to any person. A crane certainly meets the definition of mobile equipment and there is no doubt in my mind that circulating in its proximity can create a hazard to any person. Therefore, to comply with the law, the employer is required either to post warning signs or to have the area under the control of a signaller while operations are in progress. Neither of the above was in place during the investigation of the accident and therefore, the employer is in non-compliance with that provision. For all the above reasons, **I HEREBY CONFIRM** contravention number eight (#8) of the direction.

For clarity purposes, I am providing the parties with the following summary of the decision for both directions:

Preliminary Objection - **DISMISSED**

Direction under subparagraph 145(2)(a)(ii) of the Code - **CONFIRMED**

Direction under subsection 145(1) of the Code

CONTRAVENTION #2 - **RESCINDED**
CONTRAVENTION #3 - **RESCINDED**
CONTRAVENTION #4 - **RESCINDED**
CONTRAVENTION #5 - **CONFIRMED**
CONTRAVENTION #6 - **RESCINDED**
CONTRAVENTION #7 - **RESCINDED**
CONTRAVENTION #8 - **CONFIRMED**

Decision rendered on September 11, 1995

Serge Cadieux
Regional Safety Officer

APPENDIX A

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

DIRECTION TO EMPLOYER UNDER SUBSECTION 145(2)(a)(ii)

The undersigned Safety Officer, did, on the 23rd day of December 1994, attend at the workplace operated by Federal Marine Terminals, A Division of Fednav Limited, being an employer subject to the Canada Labour Code, Part II, at 12-14 Pier, Hamilton Harbour, Hamilton, Ontario and having conducted an investigation into a fatal accident at the said workplace; consider that conditions exist in the said workplace which constitutes a danger to an employee while at work:

> **Employees, workers and other persons granted access are being allowed to work in a materials handling area, around and under moving loads being carried by materials handling equipment, and there is a danger to persons from moving or falling loads and materials.**

You are **HEREBY DIRECTED** to take immediate measures to protect persons from the danger.

Issued at Hamilton, Ontario, this 23rd day of December 1994.

KOJO B. CHINTOH
SAFETY OFFICER
Certification #1711

To: Mike Kirkpatrick
General Manager
Federal Marine Terminals
A Division of Fednav Limited

APPENDIX B

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

DIRECTION TO EMPLOYER UNDER SUBSECTION 145(1)

On December 23, 1994 the undersigned Safety Officer conducted an investigation in the workplace operated by Federal Marine Terminals, A Division of Fednav Limited, being an employer subject tot he Canada Labour Code, Part II, at 12-14 Pier, Hamilton Harbour, Hamilton, Ontario. The said Safety Officer is of the opinion that the following provisions of the Canada Labour Code, Part II are being contravened:

1. **Paragraph 125(d)(i) of the Canada Labour Code - Part II**

   Part II of the Canada Labour Code is not posted in the workplace as required.

2. **Subsection 125(q) Canada Labour Code - Part II**
   Canada Occupational Safety and Health Regulations 14.23(1)

   The employer has failed to instruct and train crane operators in the safe and proper use of the equipment.

3. **Subsection 125(e) Canada Labour Code - Part II**
   Canada Occupational Safety and Health Regulations 14.23(2)

   The employer has failed to keep records of any instruction on training given to crane operators.

4. **Subsection 125(v) Canada Labour Code - Part II**
   Canada Occupational Safety and Health Regulations 14.25(1)(b)

   The employer has failed to ensure that the crane operator was being assisted and directed by a signaller.

5. **Subsection 125(q) Canada Labour Code - Part II**
   Canada Occupational Safety and Health Regulations 14.26(1)(a)(b)

   The employer has failed to establish a code of signals, instruct signallers and operators of material handling equipment and keep a copy of that code readily available.

6. **Subsection 125(q) the Canada Labour Code - Part II**
Canada Occupational Safety and Health Regulations 14.26(2)

The employer has failed to ensure a signaller was in place who performed no other duties other than signalling while material handling equipment under his direction was in motion.

7. **Subsection 125(u) of the Canada Labour Code - Part II**
Canada Occupational Safety and Health Regulations 14.27(1)

The employer failed to provide a radio or other signalling device where it is not practicable for signaller to use visual signals.

8. **Subsection 125(p)(s) of the Canada Labour Code - Part II**
Canada Occupational Safety and Health Regulations 14.37(2)

The employer failed to ensure that the main approaches to any material handling area were posted with warning signs or under the control of a signaller while operations were in progress.

Therefore, you are **HEREBY DIRECTED**, pursuant to subsection 145(1) of the Canada Labour Code, Part II, to terminate the contraventions immediately.

Issued at Hamilton, Ontario this December 23, 1994.

KOJO B. CHINTOH
SAFETY OFFICER
Certification #1711

To: Mike Kirkpatrick
General Manager
Federal Marine Terminals
A Division of Fednav Limited

Decision No.: 95-008

SUMMARY OF REGIONAL SAFETY OFFICER DECISION

Applicant: Federal Marine Terminals (FMT), Hamilton, Ontario

Respondent: International Longshoremen's Association, Local 1654 and International Union of Operating Engineers, Local 793

KEYWORDS

Signaller, training, crane operators, warning signs.

PROVISIONS

Canada Labour Code, Part II: 145(1), 145(2)(a), 125(q), 125(e) 125(v), 125(u), 125(p)(s)
COSH Regs: 14.23(1), 14.23(2), 14.25(1)(b), 14.26(1)(a)(b), 14.26(2), 14.27(1), 14.37(2)

An accident occurred on a FMT dock where one employee walking under a moving load was killed and another one injured when the load collapsed and fell upon the two employees. The safety officer gave two directions.

The first direction was given under paragraph 145(2)(a) of the Code in order to bring to a halt all the operations of loading a ship at the accident site to ensure no other employees were injured until the safety officer ensured it was safe to work. The RSO **CONFIRMED** that direction as he felt that the safety officer had reasonable cause to take statutory action to ensure the safety of all employees during his investigation.

The second direction was given under subsection 145(1) of the Code. The employer was cited for eight (8) specific contraventions. The employer appealed seven (7) of these contraventions all of which concerned violation to Part XIV (Materials Handling) of the COSH Regulations. The following is the rationale for each alleged contravention.

2: Contravention to 14.23(1) COSH Regs - RESCINDED

3: Contravention to 14.23(2) COSH Regs - RESCINDED

The safety officer cited the employer for these two contraventions because he was not given the records of training of crane operators although he requested them on several occasions. Upon review, the RSO found that it was not whether the S.O. received the documents that he must rule on but whether the crane operators were instructed and trained in the safe and proper use of the equipment. The employer submitted valid certificates of certification of crane operators. The RSO had little choice but to rescind the direction. The RSO noted however that the S.O. had been misled in this case and that he had the necessary instruments to ensure full cooperation in the future.

4: Contravention to 14.25(1)(b) COSH Regs - RESCINDED

5: Contravention to 14.26(1)(a)(b) COSH Regs - CONFIRMED
6: Contravention to 14.26(2) COSH Regs - RESCINDED
7: Contravention to 14.27(1) COSH Regs - RESCINDED

Those four contraventions dealt with signallers. The S.O. argued that the crane operator did not have a clear and unobstructed view of the load to be lifted and transported because of an horizontal bar in the cabin of the crane operator which affected his vision. Upon review, the RSO made the distinction between a signaller in the general sense of the term and a signaller required by the COSH Regs. The RSO found that a prescribed signaller is only required when the operator of the crane does not have a clear and unobstructed view of the load to be lifted and its path of travel. The horizontal bar referred to by the S.O. did not meet the test of "clear and unobstructed view". Therefore the RSO found that on the morning of the accident the crane operator had visual control of the load and its path of travel and rescinded contravention # 4, 6 and 7 using that rationale. The RSO found that a code of signals is required because a prescribed signaller is required from time to time and operators must have it readily available.

8: Contravention to 14.37(2) COSH Regs - CONFIRMED

The RSO agreed with the S.O. that a materials handling area must be posted with warning signs or be under the control of a signaller. Since none of those measures were in place, the RSO found that there is no discretion in that provision. The employer must comply as directed.