

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: Cape Breton Development Corporation
Represented by: K.S. Crocker
Legal Counsel and Secretary

Respondents: United Mine Workers of America
Represented by: Stephen Drake
President

Canadian Auto Workers, Local 4504
Represented by: Angus Grant
President

Canadian Union of Public Employees, Local 2046
Represented by: Gerard O'Neil
President

Mis en cause: Bill Gallant
Safety Officer
Human Resources Development Canada

Before: Serge Cadieux
Regional Safety Officer
Human Resources Development Canada

This case proceeded by way of written submissions. Although the respondents were invited to make comments respecting any aspects of this case, no comments were received by the Office of the Regional Safety Officer. This case therefore proceeded on the basis of the submissions entered by Mr. Crocker and the report submitted by the safety officer.

Background

In May of 1995, safety officer Bill Gallant conducted an investigation into the procedures for roadway dust sampling used by the Cape Breton Development Corporation (CBDC) and obtained a copy of a document entitled Standard Procedures for Stonedusting of Underground Roadways and Sampling of Stonedusted Roadways.

The safety officer had discussions with various CBDC officials relating to the said document as to whether a situation of non-compliance existed regarding the document. Mr. Gallant was of the view, contrary to officials of CBDC, that the document was in non-compliance with subsection 125.3(2) of the Code which provides:

125.3(2) No employer shall require or permit the use in a coal mine of any mining method, machinery or equipment in respect of which no prescribed safety standards are applicable unless the use thereof has been approved pursuant to paragraph 137.2(2)(a).

On the basis of a previous decision issued by this Regional Safety Officer, the safety officer formed the opinion that "sampling of stonedusted roadways was a mining method as defined in the Code since it is an activity carried out in a coal mine and the activity is integral to the safe mining of coal." The safety officer was of the view "that there were no prescribed safety standards that were applicable. Section 135 of the Coal Mine (CBDC) Occupational Safety and Health Regulation demands that samples of roadway dust be collected but, [in his opinion] it does not constitute a safety standard since it does not describe the necessary steps to conduct an effective sampling program to monitor the state of the stonedusted roadway." Finally the safety officer also formed the opinion "that the CBDC procedure was a safety standard being used by CBDC and it was not approved pursuant to paragraph 137.2(2)(a) of the Canada Labour Code, Part II." On the basis of those opinions, the safety officer concluded to a contravention of subsection 125.3(2) of the Canada Labour Code and gave a direction to the employer under subsection 145(1). The direction reads as follows:

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

DIRECTION TO THE EMPLOYER UNDER SUBSECTION 145(1)

On April 28, 1995, the undersigned safety officer conducted an inquiry regarding workplaces operated by the Cape Breton Development Corporation, being an employer subject to the Canada Labour Code, Part II, at New Waterford, N.S., and Point Aconi, N.S., the said workplace being sometimes known as Phalen Mine and Prince Mine respectively,

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

Subsection 125.3(2) - The use of the procedure for sampling of stonedusted roadways has no applicable prescribed safety standard and is not permitted without approval of the Coal Mining Safety Commission pursuant to paragraph 137.2(2)(a).

Therefore, you are HEREBY DIRECTED, pursuant to subsection 145(1) of the Canada Labour Code, Part II, to terminate the contravention no later than July 31, 1995.

Issued at Glace Bay, Nova Scotia, this 10th of May, 1995.

Submission for the employer

The employer submitted that the direction should be rescinded on the following two grounds:

(1) The use of the Corporation's written procedure is not prohibited by sub-section 125.3(2). The prescribed safety standards set forth in section 135 of the Coal Mines (CBDC) Occupational Safety and Health Regulations are applicable to and govern the use in question, and therefore sub-section 125.3(2) is inapplicable. The safety officer has significantly not alleged contravention of section 135 of the Regulations.

(2) Even if there were no prescribed safety standards applicable, which the Employer denies, sub-section 125.3(2) would be inapplicable because the use of a procedure for sampling of stonedusted roadways is not the use in a coal mine of any mining method, machinery or equipment.

In addition to the above the employer also submitted that it was necessary for the Regional Safety Officer to visit the workplace in question.

Decision

In my opinion, the issue to be decided in this case, and probably the only issue, is whether the use of the *procedure for sampling of stonedusted roadways* constitutes a mining method as alleged by the safety officer in his report as well as in the direction.

The safety officer explained in his investigation report that he had formed the opinion that sampling of stonedusted roadways was a mining method as defined in the Code since it is an activity carried out in a coal mine and the activity is integral to the safe mining of coal. Firstly, the Code does not define the expression "mining method" and any reference to its existence is erroneous and misleading. Secondly, the concept described above of what constitutes a mining method was essentially taken from a decision given by the Regional Safety Officer, unreported decision No. 94-012, in which it was indicated that the expression mining method would apply to almost any procedure used in a coal mine and for which no prior approval has been granted.

Obviously, there is a pressing need to clarify the expression "mining method". In order to do so, I must refer to the common meaning of the dictionary since the expression "mining method" is not defined in the Code. The word "mining" is defined in the **New Shorter Oxford English Dictionary**, 1993 edition, to mean: the art or industry of extracting metal, coal, etc, from a mine. The word method on the other hand is defined to mean: procedure for obtaining an object. In this particular case, the object is clearly the extraction of coal. Therefore, according to the above definitions, a mining method is the procedure used for the extraction of coal. In light of this definition, I must ask myself whether the use of the *procedure for sampling of stonedusted roadways* is a mining method. In my opinion, it is not a mining method simply because it is not concerned in any way with the extraction of coal.

No doubt there are several methods used throughout the industry to extract coal depending on the environmental circumstances. However, independently of the method used, sampling of stonedusted roadways must always be carried out as an essential safety measure. I need not dwell any longer on this issue. The safety officer was specific; he found a contravention of subsection 125.3(2) of the Code which specifically applies to mining methods. Since machinery and equipment are not a consideration in this case, that particular aspect will not be addressed. On the basis that the procedure used for stonedusting or sampling stonedusted roadways is not a mining method, I have little choice but to rescind the direction.

Other aspects considered by Mr. Crocker in his submission are no longer relevant and need not be addressed as well. Also, the issue of the presence of the Regional Safety Officer at the workplace for which the direction applies has been addressed outside the review of the direction.

Therefore, for all the above reasons, **I HEREBY RESCIND** the direction issued on the 10th of May 1995 by safety officer Bill Gallant to the Cape Breton Development Corporation.

Decision issued on July 13, 1995.

Serge Cadieux
Regional Safety Officer

SUMMARY OF REGIONAL SAFETY OFFICER DECISION

Applicant: Cape Breton Development Corporation

Respondents: United Mine Workers of America
Canadian Auto Workers
Canadian Union of Public Employees

KEYWORDS

Stonedust, roadways, sampling, coal mining safety commission, approval.

PROVISIONS

125.3(2), 137.2(2)(a), 145(1)

SUMMARY

A direction was given under subsection 145(1) of the Code to the Cape Breton Development Corporation for a contravention of subsection 125.3(2) of the Code. That provision requires the employer to obtain the approval of the Coal Mining Safety Commission to use a mining method for which there are no prescribed safety standards. In this case, the safety officer formed the opinion that the procedure for sampling of stonedusted roadways was a mining method for which there are no prescribed safety standards.

Upon review, the Regional Safety Officer came to the conclusion that the procedure for sampling stonedusted roadways was not a mining method because it was not concerned in any way with the extraction of coal. The RSO RESCINDED the direction.