

SUMMARY OF THE REGIONAL SAFETY OFFICER'S DECISION

Applicant: CN North America

KEYWORDS

Skin protection; gloves; injury to the hands; trainman; yardman.

PROVISIONS

Code: 145(1); 125(j)

On Board Trains Occupational Safety and Health Regulations: 8.10

SUMMARY

In decision number 94-006 dated July 7, 1994, Regional Safety Officer Serge Cadieux confirmed a direction issued against CP Rail Limited that it provide gloves at its own expense to its employees who could injure their hands in performing their work.

On the basis of that decision, a member of the safety and health committee at the Taschereau yard, CN North America, Laurentian District, asked his employer to provide hand protection to employees who could injure their hands in performing their work. After the employer refused to do so, the safety officer issued a direction requesting the employer to comply with section 8.10 of the On Board Trains Occupational Safety and Health Regulations. The employer asked the regional safety officer to review that direction. 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: CN North America
Laurentian District
Montreal, Quebec
represented by: L. Michel Huart

Respondent: United Transportation Union
Brossard, Quebec
represented by: Robert Michaud

Mis en cause: Nathalie Belliveau,
Safety Officer No. 2979
Transport Canada, Surface
Montreal, Quebec

Before: Bertrand Southière
Regional Safety Officer
Human Resources Development Canada

A hearing was held in Montreal on July 7, 1995. The following persons were present:

- Michel Huart, general counsel, Canadian National, Montreal;
- John Hughes, director of safety and damage control, Canadian National;
- Kenneth R. Peel, General Counsel - Ontario, CN, Toronto, Ontario;
- Robert Michaud, chairman, Quebec legislative committee, United Transportation Union, Brossard, Quebec;
- Roger Doiron, CN North America employee, member of the safety and health committee;
- Marie-Hélène Foucault, union representative, CP (observer);
- Stéphane Pommet, union representative (observer);
- Nathalie Belliveau, safety officer, Transport Canada - Surface, Montreal.

Background

On July 7, 1994, Regional Safety Officer Serge Cadieux rendered a decision (No. 94-006) that confirmed a direction issued some time earlier by Safety Officer Nathalie Belliveau to CP Rail Limited, Ste-Thérèse station. The direction was to the effect that, pursuant to paragraph 125(j) of the Canada Labour Code, Part II, and section 8.10 of Part VIII (Safety Materials, Equipment,

Devices and Clothing) of the On Board Trains Occupational Safety and Health Regulations ("the Regulations"), the employer had to provide adequate body covering, gloves in the case in question, to any transportation employee whose duties might result in a hazard of injury to the hands.

Roger Doiron, a Canadian National North America employee who was also a member of the safety and health committee at the Taschereau yard, raised the matter at the committee's meeting in July 1994. At that time, he distributed a copy of the above-mentioned decision to the other members of the committee and the matter was discussed, but no decision was made. Dissatisfied with the employer's response, Mr. Doiron complained to the regional office of Transport Canada, Surface, in Montreal on September 21, 1994. Transport Canada Safety Officer Nathalie Belliveau was assigned to investigate the complaint.

On commencing her inquiry, Ms. Belliveau suggested that the committee continue its discussions with the employer to try to settle the disagreement internally. In January 1995, Ms. Belliveau was told by the transportation superintendent, Laurentian District, CN North America, that the employer did not intend to provide its employees with gloves. After that conversation, the following direction was issued on February 6, 1995:

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 20 of 1995, the undersigned Safety Officer conducted an inquiry in the workplace operated by CN North America, Laurentian District, being an employer subject to the Canada Labour Code, Part II, at 935 La Gauchetiere street, Montreal, province of Quebec.

The undersigned 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.

All Transportation employees that are required to perform duties such as handling switches, uncoupling or coupling rolling stock, riding rolling stock, tightening or untightening handbrakes 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 17, 1995.

Issued in Montreal, this 6th day of February 1995.

Nathalie Belliveau
Safety Officer 2979

Arguments

The employer raised the following arguments in support of its request:

- the officer did not really conduct an inquiry before issuing her direction; it was essentially based on the inquiry conducted at CP, which resulted in a direction and, eventually, in decision No. 94-006 by Regional Safety Officer Serge Cadieux in July 1994; she then assumed that a similar situation existed at Canadian National when she issued her direction; the direction accordingly has no basis in fact;
- the direction appears to indicate that the officer conducted her inquiry at 935 De la Gauchetière Street, Montreal; that is the company's head office; work such as that described in the direction is not performed at that location;
- the purpose of the above-mentioned decision No. 94-006 was not to determine whether protection equipment had to be used by the employees concerned but to decide who was responsible for paying for that protection equipment;
- section 8.10 of the On Board Trains Occupational Safety and Health Regulations was amended on February 21, 1995; in the CP case, the discussion seems to have concerned the protection of hands from the cold; however, the new wording of the section clearly provides that the hazard of injury or disease must result from contact with the skin and not from exposure to natural variations in temperature; consequently, the conclusions of decision No. 94-006 do not apply.

Counsel for the employer also filed a large number of documents, which were placed in the file. Those documents deal among other things with the company's policy on personal protection equipment, certain conditions of the collective agreement and the situation in the federal public service.

As for Mr. Michaud, the employees' representative, he submitted a bulky binder, which was also placed in the file. It contains, among other things:

- "These Wheels Must Turn: A Handbook of Safety Practices for Railroad Officers and Employees," published by the Association of American Railroads;
- a booklet entitled "CN Exploitation - Règlement de sécurité"; and
- a document entitled "Canadian National Railways: Protective Clothing Policy".

In responding to questions from Mr. Michaud, Ms. Belliveau testified that her duties as a Transport Canada safety officer include inspecting five trains a month. During those inspections, she has noted that the employees to whom the direction applies always wear gloves. Ms. Belliveau added that she worked for Canadian National from May 1985 to September 1991 as trainman, yardman and conductor.

Discussion

It is interesting to note that in the various booklets submitted, the illustrations of employees performing the various duties mentioned in the direction show them wearing gloves. In the "Handbook of Safety Practices for Railroad Officers and Employees" published by the

Association of American Railroads, the following comment appears on page 3 entitled "Employees ready for work are dressed for safety": "[Safety-conscious railroad employees] wear gloves to protect their hands."

When the safety officer issued her direction, she was well acquainted with the situation through both her work and her past experience. I therefore consider it wrong to say that the officer assumed that the situation at CP might exist at CN and that the direction she issued is based only on an assumption that the situation at CN is the same as at CP.

Counsel for the employer also argued that before issuing a direction, the safety officer's opinion must be based on a reasonable and probable ground identified, for example, in the inquiry conducted under section 141 of the Canada Labour Code. I think that it would be appropriate at this point to review the wording of section 145 of the Code:

145. (1) Where a safety officer is of the opinion that any provision of this Part is being contravened, the officer may direct the employer or employee concerned to terminate the contravention within such time as the officer may specify and the officer shall, if requested by the employer or employee concerned, confirm the direction in writing if the direction was given orally.

Section 145(1) does not specify how the officer is to form his or her opinion; for example, it does not read "Following the inquiry conducted under section 141...." It therefore appears to me that the officer in the present case was well acquainted with the situation through both the requirements of her work and her past experience, and that her opinion was based on the facts and not on assumptions.

In decision No. 94-006, rendered about a year ago, the regional safety officer made the following comment: "The issue to be decided is, in my view, who must pay for the hand protection". In his opinion, it was obvious that an employee responsible for handling switches, uncoupling cars, riding rolling stock and performing other similar tasks must wear skin protection equipment in the form of gloves or mittens, so this was not even an issue. In the present case, I feel that this same need to protect the hands exists and that, like the employees of other railway companies performing similar duties, CN's employees too must wear protection equipment for their hands.

Finally, concerning the address of the work place mentioned in the direction issued by the safety officer, that is, 935 De la Gauchetière, Montreal, my interpretation is that in addressing her direction in this way she was aiming it at the main office of the company's Laurentian District rather than a specific site so that the direction would have as broad a scope as possible. Furthermore, the direction clearly states that it applies to: "All Transportation employees that are required to perform duties such as handling switches, uncoupling or coupling rolling stock, riding rolling stock, tightening or untightening handbrakes and any other similar tasks which may result in a hazard of injury to the hands...." In my opinion, the argument that the type of work described in the direction is not performed at the address mentioned therein is not persuasive.

Decision

In conclusion, section 8.10 of the Regulations is in my opinion perfectly clear:

8.10 Where there is a 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.

The revised text dated February 22, 1995, is in my opinion equally clear:

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

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

It has been demonstrated to my satisfaction that the work performed by these employees was capable of causing injury to the hands and that protection was accordingly necessary. The employer is therefore required to provide, at its own expense, adequate protection for its employees' hands. I hereby confirm the direction issued to CN North America, Laurentian District, by Safety Officer Nathalie Belliveau on February 6, 1995.

Decision rendered on August 21, 1995.

(signed)
Bertrand Southière
Regional Safety Officer