Decision No.: 95-016

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:	E. Skowronek Manager - Health & Safety British Columbia Maritime Employers Association Vancouver, B.C.
Respondent:	Ron Jackson Safety Coordinator Local 508 International Longshoremen's & Warehousemen's Union
Mis en cause:	John Haswell, Safety Officer, and Geoffrey S. Vale, Safety Officer (now retired) Canadian Coast Guard Nanaimo, B. C.
Before:	Bertrand Southière Regional Safety Officer Human Resources Development Canada

A hearing was held in Nanaimo on August 9, 1995. In attendance were:

- John Haswell
  Ship safety, Canadian Coast Guard
  Safety Officer
- Jack McCarthy
  Ship safety, Canadian Coast Guard
- Graham Constable
  Ship safety, Canadian Coast Guard
- Geoff Vale
  Argus Marine Surveyors
- Eric Skowronek
  British Columbia Maritime Employers Association
- Dianne Richards
  British Columbia Maritime Employers Association
- Stephen Cutler, Saga Forest Carriers

- Gerry Lutz
  Westcan Terminals Ltd. & Westcan Stevedoring Ltd.
- Mike G. Fothergill, Empire International Stevedores Ltd.
- Alan Russell, Local 508
- Wayne Sargent
  Safety Co-ordinator
  International Longshoremen's & Warehousemen's Union
- Ron Jackson, Local Safety Rep., Local 508
- Ken Arson, Canadian Stevedoring Co. Ltd.

Background

On April 10, 1995, there was a refusal to work aboard the M. V. Saga Spray at Nanaimo "C" Berth. As a result, Safety Officer G. Vale of the Steamship Inspection Office, Canadian Coast Guard, issued a direction upholding the refusal to work. The following day, April 11, 1995, his supervisor, F. M. Bullen rescinded the direction at the request of the employer. On April 25, 1995, Ron Jackson, Safety Co-ordinator, Local 508, requested that F. M. Bullen's decision be reviewed. A preliminary decision, No. 95-007 (appendix 1), was issued May 23, 1995.

A conclusion of this preliminary decision was that the original direction from G. Vale as well as the appeal by the employer were still valid. However, in the meantime, Mr. Vale retired from the Canadian Coast Guard and it was thought that he would be unavailable to explain the reasons motivating his decision. Accordingly, it was decided to issue an essentially identical direction to a similar ship, the M. V. Saga Crest, which direction was issued by Safety Officer John Haswell, certificate #2652, on June 28, 1992. This direction, essentially similar to the direction issued by G. Vale to the Saga Spray, reads as follows:

0930 HRS
No. 045 WEDNESDAY JUNE 28, 1995
AT NANAIMO "B" BERTH
TO: MASTER/OWNERS "SAGA CREST" VOY(?)9

IT WAS NOTED THAT THE EMERGENCY STOP "COWCATCHER" NOS 1 & 2 GANTRY CRANES, WHEN OPERATED, ONLY STOPS THE CRANE WHILE THE EMERGENCY STOP IS ACTUATED. THIS IS TO BE CHANGED "PRIOR TO THE VESSEL RETURNING TO CANADA" SO THAT WHEN THE EMERGENCY STOP IS ACTUATED THE CRANE REMAINS STOPPED (I.E. IS RESET FROM THE CONTROL CAB). THE REFUSAL TO WORK IS UPHELD.

(signed)
JOHN HASWELL
Tackle inspector

This direction was appealed on July 5, 1995, by the British Columbia Maritime Employers Association on behalf of the employer, Westcan Stevedoring Limited and the ship's representatives, Saga Forest Carriers International (Canada) Inc.

Additional information

The two vessels in question are bulk carriers; as a matter of interest, the Saga Crest measures close to 200 metres in length and has a summer displacement of about 57,000 metric tonnes; she was launched in December 1993. Each of these vessels is fitted with two 40 Long Ton SWL gantry cranes which are used for loading and unloading the ship. Rails installed along each side of the deck of the ships allow the gantry cranes to move over the length of the ship. The space between the gantry legs and the guardrails installed alongside the edges of the ship's deck is very limited on most ships. In fact, from the pictures in my possession, there is not enough room at this point on the Saga Spray to allow a man to pass in between. However, on the inboard side of the gantry legs, between the leg and the hatchway coaming, there appears to be enough space either for a man to go in between the leg and the hatchway or for the crane to go by a man standing alongside the hatchway.

The existing Tackle Regulations issued under the Canada Shipping Act do not contain any provision dealing specifically with this matter. However, a draft document, issued a few years ago as a proposal for a regulation, contained a provision, at section 6.39, which addressed this issue. This section reads as follows:

> "6.39 Operation of lifting appliances where the operator has a significantly restricted field of vision shall be in accordance with a procedure which will minimize the risk to persons in the blind sectors and the equipment shall include:
>
> (a) a stop button and an extended flexible warning touch element at the deck level of each trunk or leg of the lifting appliance; and
>
> (b) a self-contained portable radio or a non-voice signalling device between the deck foreman and the operator of the lifting appliance."

In simple terms, this requires that there be an emergency stop switch on each leg of the gantry and also, an "extended flexible warning touch element" which, on many vessels, consists of a length of wire attached to the front of each leg of the gantry, for the purpose of forewarning a person of crane proximity by contact with this wire.

The two vessels in question, in lieu of the "extended flexible warning touch element", feature instead a "cowcatcher": this is a small gate fitted at the front of each leg of the gantry cranes. This gate, installed at deck level, is about the same width as the gantry leg and, from the pictures, appears to be about two feet high. The gate is hinged at the top and is linked to a limit switch in a manner such that, if there is an obstacle in the way, the gate will swing backwards, actuating the switch, which in turn interrupts power to the crane translation motors. This is a temporary interrupt in the sense that, when the gate is released, power is restored and, if the operator is still actuating the control, the crane will resume its motion. By contrast, the emergency stop, which on these ships is a pull cord stretched between the gantry legs, shuts down the power to the motors by tripping the breaker; restoring power requires resetting the breaker which is located outside of the operator's control station.

The refusals to work, the first one occurring on April 10, 1995, on board the M.V. Saga Spray, the second one occurring June 28, 1995, on board the M.V. Saga Crest, are based on the employees' contention that, because the interruption caused when the"cowcatcher" hits an obstacle is momentary, there is a danger that someone could be hurt because the crane can restart without the operator verifying the cause of the interruption. The employees want the "cowcatcher" interrupt wired in such a way that, if it is deflected by an obstacle, it will trip the breaker. This will force the operator to get out of his position to find the cause of the interruption and to reset the breaker.

Submission by the employer

The employer submits that the Canada Occupational Safety and Health Regulations do not apply aboard a ship. Furthermore, the Marine Occupational Safety and Health Regulations do not apply to vessels, but only to employees. The applicable regulations are the Tackle Regulations promulgated under the Canada Shipping Act and the two vessels more than meet the applicable requirements. The vessels do have emergency stops for the gantry cranes and the "cowcatchers" in question are supplementary safety systems intended as substitutes to the "extended flexible warning touch elements" referred to in section 6.39 of the draft Tackle Regulations.

The employer also argues that the situation does not constitute a danger as defined in the Canada Labour Code. Consequently, there is no ground to support the refusal to work.

Submission by the employees

The argument presented by the employees is essentially that, if a person was to fall in front of a moving crane, the crane would stop when it touches him. If he is moved aside, then the crane could resume its travel and go over him, likely causing injury. If the "cowcatcher" is rigged as an emergency stop, then the crane operator will have to leave his station and investigate the cause of the shutdown before resetting the breaker. This would eliminate the risk described above.

Decision

As noted in the employer's submission, the Canada Occupational Safety and Health Regulations do not apply aboard a ship. The Marine Occupational Safety and Health Regulations do apply to employees employed in the loading and unloading of ships (see subsection 1.3(c) of the Marine Occupational Safety and Health Regulations), but, there are no provisions applicable in the instant case. Questions related to materials handling equipment on board ships have always been considered as coming under the Tackle Regulations.

However, the Canada Labour Code does apply to employees working aboard ships and they do have the right to refuse dangerous work. In so far as my authority stems from the Canada Labour Code, I can make a decision on the issue of the refusal to work; I have no authority to interpret the Tackle Regulations. The only issue I can review then as Regional Safety Officer is this: did the safety officers make a correct decision in accepting the refusal to work?

I have reviewed the employees' argument to the effect that a person could fall infront of a moving crane, then, after the crane has stopped because the cowcatcher has detected the obstacle, he could roll away, allowing the crane to continue its trave. This assumes that the operator is still holding the crane travel control, in which case the person could get run over. I cannot accept this argument: if the person rolls ahead of the crane, as soon as the crane starts moving again, the cowcatcher will again engage with the obstacle and again stop the crane; if the person rolls by the side enough to be out of reach of the cowcatcher, then the crane will travel either by him or over him, because the cowcatcher's gate is very low, about the same width as the gantry's leg and basically sweeps the full path of the gantry.

An argument was also made that when the crane stops, especially when it has just restarted, it is liable to hesitate or shudder somewhat as it stops. However, when I asked if this was the case with these particular vessels, I was answered in the negative. The definition of "danger" contained in the Code is quite specific:

> "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.

I do not believer the situation on these two ships constitute a danger as defined in the Code. I understand that there might be other similar vessels where conditions might be such as to be qualified of "dangerous" as envisioned by the Code, but it is not the case presently.

Accordingly, I HEREBY RESCIND the directions issued by Geoffrey Vale to M/V Saga Spray on April 10, 1995 and by John Haswell to M/V Saga Crest on June 28, 1995.

Decision given on November 27, 1995.

Bertrand Southière
Regional Safety Officer

Decision No.: 95-016

SUMMARY OF REGIONAL SAFETY OFFICER DECISION

Note: To be read in conjunction with Decision # 95-007(p)

Applicant: British Columbia Maritime Employers Association
represented by E. Skowronek, Manager, Health & Safety

KEYWORDS

Gantry cranes; emergency stops; extended flexible warning touch element; tackle inspectors; Tackle Regulations.

PROVISIONS

Code: 128(1)

SUMMARY

Further to a refusal to work on board the M.V. Saga Spray, in Nanaimo harbour, the safety officer upheld the refusal to work and issued a direction to the employer ordering him to modify the two gantry cranes on board the ship. These gantry cranes move along the length of the ship on rails set on each side of the deck and feature, at the front of each leg of the gantry, an obstacle detector. These detectors consist of a gate at deck level suspended on the front of each leg. If the gate encounters an obstacle, it swings back, actuating a switch which cuts the power to the translation motors. If the obstacle is removed, the crane can resume its movement immediately if the operator is still inputting the command. The direction required that this obstacle detector operates similarly to an emergency switch whereby, if an obstacle was detected, the main breaker would be tripped, requiring the operator to go to the control cab to reset the breaker. These gantry cranes also feature separate emergency switches.

A second direction, essentially identical to the first one, was issued to the M.V. Saga Crest, a sistership of the Saga Spray, in June 1995. The reason for this was that the safety officer who had issued the first direction had retired and it was thought that he would not be available to explain his decision.

The RSO rescinded the directions because it could not be demonstrated that there was a danger due to the fact that the crane would remain stopped only as long as there was an obstacle in front of it.