

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: Mr. Pierre Smarlack
Canadian Airlines International Ltd.
Represented by: Mr. Harold C. Lehrer

Interested party: The Attorney General of Canada
The Department of Justice Canada
Represented by: Mr. Yves Laberge and Ms. Nadine Perron

Mis-en-cause: Denis Caron
Safety Officer
Human Resources Development Canada

Before: Serge Cadieux
Regional Safety Officer
Human Resources Development Canada

A hearing was held on January 8 and 29, 1996 at Montreal, Quebec

Intervention of the Attorney General of Canada

The Attorney General of Canada sought leave to intervene in the hearing in this case. The Attorney General of Canada argued that since it was possible that no party would intervene in support of the said directions, he had all the necessary interest in arguing that the impugned directions were consistent with Part II of the Canada Labour Code (hereinafter the Code). Because I was satisfied that the Attorney General of Canada had the necessary interest to intervene in this case, I granted him leave to intervene.

Agreement

It was agreed that evidence presented in the case of Mr. Mike Milcik would not be used in this case. Mr. Laberge explained that he intended to file documents in support of his arguments even if these documents were filed in Mr. Milcik's case and there would be independent proof in this case.

Objections

Mr. Lehrer objected to the entering in evidence in this case of almost all the documents filed by Mr. Laberge. Both parties presented arguments concerning each objection. Essentially, Mr. Lehrer's objection related to the fact that the safety officer had received the documents or had participated in the examination of witnesses with the knowledge that he could not make public the information obtained from these sources. Moreover, Mr. Lehrer pointed out to us that he could not cross-examine the persons who had made conflicting statements at either the coroner's inquest held in this case, or during Canadian's internal investigation.

I authorized Mr. Laberge to file a number of the contested documents since they all had a direct bearing on the circumstances that led the safety officer to issue the revised direction, either because the safety officer had had access to these documents during his investigation or because he participated in the various investigations in an official capacity under the Canada Labour Code, Part II. In all cases, I informed Mr. Lehrer that I would be very circumspect in admitting these documents and that I would give no more weight than was necessary to the statements contained in these documents, bearing in mind that we could not examine the witnesses. For example, a key witness in Mr. Mike Milcik's case (see unreported decision no. 95-018),

Mr. Paul Ritchie of Canadian, did not appear before the regional safety officer to testify because he knew that the Code did not authorize the regional safety officer to subpoena him.

There was also this whole question of the scope of the regional safety officer's investigation, which was supposed to be an inquiry conducted in a summary way, in accordance with subsection 146(3) of the Code, but which in the end assumed the proportions of a judicial inquiry. In these circumstances, the regional safety officer had an obligation to strike a balance between these two notions while ensuring that the review process was as equitable as possible without, however, leaning too far in either direction.

Background

The facts

On January 21, 1995, a work accident that caused the death of three employees of an employer covered by the Code, namely, the airline Canadian Airlines International Ltd. (hereinafter Canadian), occurred at Mirabel International Airport.

This accident occurred when three employees of Canadian and their fellow workers Alain Giroux and Pierre Smarlack were deicing¹ a Boeing 747-400 aircraft belonging to the national airline Royal Air Maroc (hereinafter RAM). The accident happened when the RAM aircraft began to move while deicing was still in progress. As a result, the aircraft's rear stabilizers struck the hydraulic booms that were supporting the buckets, overturning the two trucks performing the deicing. The three employees of Canadian in the buckets were thus thrown to the ground and died as a result of their fall.

¹ For information purposes, de-icing is a procedure used to melt frost, ice or snow that accumulates on an aircraft or to prevent one or another of the aforementioned from forming or accumulating.

The investigation

On January 21, 1995, Mr. Denis Caron, a safety officer, visited Mirabel International Airport to conduct an investigation pursuant to the Code. The safety officer reported that "on the evening of the accident, Alain Giroux, a driver and station attendant for Canadian, was driving the truck identified as truck #2, while Pierre Smarlack was driving the other truck (#1) and was performing the duties of Lead Snowman for Canadian".

The safety officer explained that "the vast majority of communications are on different radio frequencies", namely:

- frequency 121.8 reserved for Ground Control;
- frequency 122.4 reserved for Apron Control;
- frequency 130.775 reserved for communications with Canadian;
- walkie-talkie radio communication (U.H.F.) to talk to Canadian's operations;
- Hard-Wired communication between the driver of the truck and the bucket operator who is in the bucket.

The safety officer pointed out that employees Giroux and Smarlack, and the three deceased employees, were all Station Attendants. In Mr. Smarlack's case, the safety officer reported that his duties, on the evening of the accident, were Vehicle Driver and Lead Snowman. According to the safety officer, "the job (of Mr. Smarlack) consists generally in driving the truck, maintaining communications with the Iceman², with the person in the bucket of his truck, with truck #2, with the crew of the aircraft and following the instructions of the Bucket Operator".

The three deceased employees, one of whom was in training, were working as Bucket Operators. According to the safety officer, "the job of Bucket Operator consists in:

- maintaining communication with the driver of the truck by means of the hard-wired system;
- using hand signals, giving the driver of the truck the instructions necessary for his deicing work".

The safety officer, in the course of his investigation, took the following initiatives:

- he visited the deicing centre three times;
- he attended the questioning of Mr. Smarlack by Canadian on January 25, 1995;
- he personally questioned Mr. Smarlack in the presence of various persons on February 2, 1995;
- he gathered various documents, including:

² Iceman means "de-icing co-ordinator". On the evening of the accident, Mr Mike Milcik, an employee of Canadian, had been designated Iceman for the de-icing of the RAM Boeing 747 aircraft. See unreported decision No. 95-018 for further details.

- Canadian's deicing procedure;
- the transcript of the questioning of Pierre Smarlack by Canadian;
- the transcript of the questioning of Alain Giroux by Canadian; and
- various statements that he drafted and that were signed by Messrs. Giroux and Smarlack.

According to the safety officer, paragraph B(3) of section 3-7-9 of Canadian's Deicing Procedures provides that the general deicing rule is that the deicing of aircraft is done with the engines not running. However, relying on Canadian's Deicing Procedures (paragraph 3-7-13), the safety officer noted that, by way of exception to the general rule, "the only two types of aircraft that can be deiced while the engines are running are Canadian's Boeing 737-200s and Airbus A320-200s".

Based on the foregoing, the safety officer made the following observations concerning Mr. Pierre Smarlack:

- that he decided on his own initiative to ask the pilot of Royal Air Maroc's B-747-400 to leave the engines of his aircraft running during deicing;
- that he stated that he had training on paper only;
- that he stated that he was supervising the bucket from inside the truck, contrary to the Deicing Procedure set down by Canadian;
- that authorizing the pilot to leave the engines running interfered with communication between the driver of the truck and the bucket operator, and that in this case, the company's procedure requires the use of a Guideman;
- that he was aware that his employer had not provided for any procedures for deicing B-747s with their engines running.

The direction

In conclusion, the safety officer was of the opinion that Mr. Smarlack had contravened two provisions of the Code: paragraphs 126(1)(c) and 126(1)(d), both dealing with the duties of employees. He therefore issued a direction to Mr. Smarlack to this effect. The direction (APPENDIX-A) was issued by the safety officer on March 15, 1995, pursuant to section 145(1) of the Code.

The safety officer explained in his report the reasons why he had reached these conclusions:

"After noting all these facts and for all these reasons, I am of the opinion that Pierre Smarlack contravened the Canada Labour Code, more particularly section 126(1) of the said Code which reads as follows:

126. (1) (safety and health) While at work, every employee shall

- (c) take all reasonable and necessary precautions to ensure the safety and health of the employee, the other employees and any person likely to be affected by the employee's acts or omissions;

In fact, when Pierre Smarlack decided, in the circumstances, to de-ice the Royal Air Maroc B-747-400 aircraft while the engines were running and to tell the pilot that the deicing would be done with the engines running, he did not take all necessary and reasonable precautions to ensure his own safety and health and the safety and health of the other employees or of any person.

I am also of the opinion that Pierre Smarlack contravened section 126(1)(d) of the Canada Labour Code which reads as follows:

126. (1) (safety and health) While at work, every employee shall

(...)

- (d) comply with all instructions from the employer concerning the safety and health of employees;

In fact, Pierre Smarlack's decision to authorize deicing of the Royal Air Maroc Boeing 747-400 aircraft while its engines were running, when his employer's procedures stated that only Boeing 737-200 and Airbus A320-200 aircraft could be deiced with the engines running did not comply with the instructions from his employer concerning the safety and health of employees".

Submission on behalf of the employee

Mr. Lehrer's detailed arguments were entered in the record. Mr. Lehrer made numerous submissions during the hearing of this case. The relevant submissions are as follows.

Mr. Lehrer was of the opinion that the safety officer erred in his reasoning when he concluded that deicing a 747 with its engines running was not permitted by the employer, and that Mr. Smarlack was the one who made the decision to deice the Royal Air Marco 747 with its engines running.

First, noted Mr. Lehrer, the safety officer relied on paragraph 3-7-13 of the document filed as Exhibit D-3S, Canadian's Deicing Procedures, in concluding that the company limited deicing while the engines were running to two types of aircraft: the Boeing 737-200 and the Airbus A320-200. This was a mistake on the safety officer's part because these aircraft did not land at Mirabel, whereas other similar types of aircraft did and they were deiced at Mirabel with their engines running. The safety officer should therefore have concluded that Canadian's policy of deicing aircraft with their engines running was not limited solely to these two types of aircraft, whether or not they were mentioned in the procedure.

Second, Mr. Lehrer pointed out to us that the safety officer also erred in concluding that Mr. Smarlack was the one who decided to deice the 747 with its engines running because it was the pilot who made the final decision. There was a certain chain of command in relations between the ground crew and the crew of the aircraft that did not permit a member of the ground crew to give the pilot an order. Without exception, the pilot was always in charge of his aircraft and the pilot always had the final say.

Mr. Lehrer drew our attention to the circular published by Transport Canada (Aviation), dated August 22, 1994, entitled AIR CARRIER ADVISORY CIRCULAR, that "is intended to encourage air carriers to allow their aircraft to be deiced/anti-iced with the main engines running, where technically feasible". How could a government agency encourage deicing with the engines running and at the same time a safety officer find that there had been a contravention of the Code because the employer did not permit deicing? According to Mr. Lehrer, Mr. Smarlack and Mr. Milcik established that it was technically feasible to perform deicing with the engines running, Mr. Smarlack having done so three to six³ times previously.

The employer's testimony before the coroner, i.e., that deicing of 747s with their engines running was not permitted by Canadian, was completely false. The faxes filed by Mr. Lehrer, clearly showing that the employer was testing the deicing of a 747 with its engines running, was conclusive proof to the contrary. The employer also recognized in this internal correspondence that this was technically feasible.

Mr. Lehrer admitted to us that he had a great deal of difficulty understanding the logic of the safety officer who stated that it was dangerous to perform deicing with the engines running and who at the same time rescinded a direction to this effect that he had issued to the employer previously. If there was a danger, why allow the employer to do it? Logically speaking, if a Boeing 737-220 or an Airbus A320- 200 aircraft could be deiced with the engines running, then so too could a Boeing 747-400 because there was very little difference between these types of aircraft.

Finally, Mr. Lehrer strongly objected to the safety officer's comment in his direction when he concluded, in connection with Mr. Smarlack's decision, that leaving the engines running caused the accident. There was no connection between the fact that the engines were running and the accident. The pilot alone was responsible for the accident because he put the aircraft in motion without confirming that deicing had been completed and without confirming that the aircraft had been cleared for departure.

Submission of the Attorney General of Canada

The detailed submission of the Attorney General of Canada was entered in the record. Mr. Laberge explained that, on the strength of the documents filed, the employer had established procedures that permitted deicing, with the engines running, of certain limited types of aircraft (paragraph 3-7-13, Canadian's Deicing Procedures, Exhibit D- 3S). However, there was a more general provision (page 19, paragraph 3 of the same above-mentioned procedures) which

³ During Mr. Smarlack's testimony and in his written statement to the safety officer, the number of times reported is six to seven.

provided that normally, deicing should be done with the engines not running, except that, under certain conditions, deicing could be done with the engines running. The safety officer relied on the employer's procedures when he conducted his investigation.

The safety officer questioned Mr. Smarlack who made the statement to him that he told the pilot to leave the engines running. This statement by Mr. Smarlack was corroborated by a number of witnesses such as Ms. Beaulieu, Ms. Campbell and even Mr. Milcik. Moreover, Mr. Laberge did not accept Mr. Lehrer's argument that the pilot had the final say in all matters.

With regard to the Transport Canada circular, Mr. Laberge explained that it was intended first and foremost as an invitation to the airlines to examine the possibility of deicing aircraft with their engines running, but not at any cost. The employer must establish the procedures governing this type of operation. None of the procedures filed stated that the employer authorized the deicing of 747s with their engines running. To date, all that the procedures said was that deicing with the engines running was not authorized in the case of 747s, but only in the case of 737s and 320s.

With regard to Mr. Smarlack's training to deice 747s with their engines running, Mr. Laberge stated that during his questioning, Mr. Smarlack replied that he had not had a training session on this type of deicing. Mr. Laberge did not accept the so-called training that Mr. Smarlack had apparently received from Mr. Massie because even if Mr. Massie was highly competent, he was not a trainer and, furthermore, Mr. Smarlack was very evasive concerning the content of the training and of the manuals, and one could not therefore tell what kind of training he apparently received. In fact, there was a clear contradiction between Mr. Smarlack's statement that he received training in deicing 747s with their engines running and his statement of February 2, 1995 that he received no training.

According to Mr. Laberge, the facts showed that Mr. Smarlack had the necessary authority to ask the pilot to shut down the engines of his aircraft, a precaution which he did not take in this case. Mr. Smarlack held a permit that authorized his movement about the airport apron, a special traffic area that required security measures, especially when working near a 747, whose four engines generated a lot of noise. There was then a communication problem that was not taken into account.

Decision

The direction issued to Mr. Smarlack refers to a contravention of paragraphs 126(1)(c) and (d) respectively of the Code. The safety officer explained, in his investigation report, the reasons why he identified the two contraventions, and this enabled the parties in question to argue their respective cases before me.

The first question that I must decide in this case is whether Canadian authorized deicing with the engines running or if only certain members of management had decided to conduct preliminary tests. In my opinion, Canadian's policy in this regard was clear: deicing with the engines running was not performed on aircraft other than Boeing 737-200s and Airbus A320-200s, regardless of whether these aircraft landed at Mirabel. More specifically, the Boeing 747-400 was an aircraft on which the employer was preparing to conduct tests but which presented special problems. Be that as it may, it was not an aircraft the deicing of which was permitted with its engines running

and for which a special procedure had been provided. There had been no official authorization of the deicing of Boeing 747-400s with their engines running, which leads me to believe that if tests were being conducted on this type of aircraft, they were still at the preliminary stage. This situation caused a great deal of confusion in deicing operations and in the assigning of responsibilities to the various persons involved in these operations.

Mr. Smarlack told us that he performed deicing on different types of aircraft, including Boeing 747-400s, six or seven times. In my opinion, Mr. Smarlack likely deiced wide body aircraft similar to Boeing 747- 400s with their engines running. He may even have participated in tests on Boeing 747-400s while their engines were running, although it was never shown to me, with supporting evidence, that such was the case. I note that during the questioning conducted by the safety officer, Mr. Smarlack stated, in answer to question 15, that he deiced 747s with their engines running six or seven times. I also note that in reply to question 23(A) that the safety officer asked him, i.e, "Under the work procedures, is deicing 747 aircraft while their engines are running allowed?", Mr. Smarlack avoided directly answering the question as asked. Instead, he replied, "Since I received training in deicing with the engines running, since then we've been doing it regardless of whether it's a 747 or not." This statement seems to indicate that Mr. Smarlack had in fact received training in deicing Boeing 747-400s with their engines running. Had he left it at that, I would be inclined to believe Mr. Smarlack and to ignore the ambiguities in the questions and answers even though his statements suggest that this type of operation was conducted regularly at the deicing centre, a situation which, to my knowledge, was never officially acknowledged by the company. However, if there is some ambiguity in all these statements, there is none when, during his questioning of Mr. Smarlack, the safety officer clearly asked him question 23(c), i.e., whether he had received training in deicing 747s while their engines were running. Mr. Smarlack replied without hesitation "no", contrary to what he implied at the hearing in this case. No matter how one interprets this question and Mr. Smarlack's answer, I am not persuaded that he had received any training in deicing 747s with their engines running. The question is very straightforward and unambiguous and does not require a complex answer.

In short, what I conclude in this case is that Mr. Smarlack never received any formal training in deicing 747s while their engines were running and he therefore lacked the necessary competence to perform this operation. The "on-the-job" training that Mr. Smarlack claims to have received from Mr. Massie cannot be recognized as being training provided by the company because although Mr. Massie is very competent at doing his job, he was not recognized as being a trainer.

On the evening of the accident, Mr. Smarlack served as Lead Snowman, a job which I would describe as the on-site person in charge of the deicing crew. In this capacity, Mr. Smarlack was in direct contact with the crew of the aircraft, the deicing crew and the deicing co-ordinator (Iceman). His job consisted, among other things, in co-ordinating on site the deicing of both sides of the aircraft simultaneously, effectively and safely. It follows from this description that Mr. Smarlack had, in my opinion, the necessary authority to ask the pilot to shut down the aircraft's engines, since this procedure was the company's official policy. Moreover, Mr. Smarlack himself established that he had this authority because he asked the pilot, on his initial contact with him and other than to determine what type of deicing he wanted, to "shut down his engines". The pilot

wanted to comply, but informed Mr. Smarlack that his A.P.U.⁴ was shut down. According to Mr. Smarlack's duly signed statement of February 2, 1995, he said, "I then told him to keep his engines running; he confirmed to me that he would do that."

I must elaborate on this last point. Mr. Lehrer interprets Mr. Smarlack's words as a suggestion or a question put to the pilot of the aircraft, to which the pilot apparently replied yes and that in doing so, it was the pilot who was authorizing deicing with the engines running. I do not accept this interpretation. It is true that the pilot is responsible at all times for his aircraft and it goes without saying that in leaving the deicing centre before being informed that deicing was completed, the pilot bears a very heavy responsibility for the consequences. It is also true that the pilot must assume some of the responsibility by not objecting to the deicing of his aircraft with its engines running. However, that is not the matter at issue here.

When a pilot arrives at the deicing centre, he entrusts to competent employees responsibility for performing the various maintenance operations, in this case deicing, and does not have to question the competence of these people. The pilot's responsibility is not at issue here; what is at issue is Mr. Smarlack's responsibility. Mr. Smarlack was not competent to ask the pilot to leave his engines running because he had not received the training necessary to do so. Mr. Smarlack also was not authorized to do so because it was contrary to Canadian's policy to deice 747-400s while their engines were running. Moreover, being the on-site person in charge of the deicing operation, Mr. Smarlack should never have allowed an employee in training to participate in an operation for which there were no clearly defined procedures.

I do not have to decide here who is responsible for the accident, but I must say that, in my opinion, the performing of the deicing while the engines were running is not the cause per se of the accident. Moreover, as Mr. Lehrer pointed out, Transport Canada was recommending that deicing be done with the engines running where technically feasible. However, this operation should have been done only under very strict supervision and using very strict safety procedures. But these procedures had not yet been developed and, for all practical purposes, there were no precautions specifically adapted to deicing a Boeing 747-400 with its engines running. Mr. Smarlack did not therefore take special safety precautions to deice a Boeing 747-400 with its engines running because, beside the fact that he was not competent to decide to take such precautions, there were no precautions.

With regard to the issuing of the direction to the employer under paragraph 145(2)(a) of the Code, I share, in part, Mr. Lehrer's opinion on this matter. When the safety officer detects a condition that constitutes a danger, the Code requires him, under paragraph 145(2)(a), to

- (a) notify the employer of the danger and issue directions in writing to the employer directing the employer immediately or within such period of time as the officer specifies
 - (i) to take measures for guarding the source of danger, or

⁴ A.P.U. means Auxiliary Power Unit. The A.P.U. is the auxiliary engine that must supply the power to keep the aircraft's main functions operating while the main engines are shut down.

- (ii) to protect any person from the danger;

This is what the safety officer did during his investigation. In my opinion, the safety officer could have followed up his action in this case by ensuring that the employer complied with the directions issued. Naturally, the Code contains other provisions related to this responsibility of the safety officer, but it does not allow him to alter the content of the directions. I find it regrettable that the safety officer issued a direction to Canadian and that following certain contacts with representatives of the company, he rescinded for all practical purposes the direction, an action which is the responsibility of the regional safety officer under section 146 of the Code. The safety officer had directed Canadian to do the following:

to adopt a safe work procedure whereby visual contact is maintained with the pilot of the aircraft in order to confirm the start and completion of deicing work on the aircraft."

Later, the safety officer notified Canadian of the following:

"Given your full compliance with these directions, the prohibition issued to you to stop deicing any type of aircraft while its engines are running is no longer in force."

One of the problems with this interference by the safety officer in the regional safety officer's role is that it absolves, or at least appears to absolve, the employer of its initial responsibility as regards the circumstances of the accident, but maintains the employees' responsibility without allowing them to exercise their rights and express their viewpoint. In acting as he did, the safety officer left only the employees to face possible charges, with the possibility of multiple prosecutions, while taking the employer's side without any further formalities. I do not agree with this action and I believe that Parliament never intended that justice be dispensed so summarily.

When the accident occurred, the safety officer was informed that the Canadian Transportation Accident Investigation and Safety Board (hereinafter the TSB) would investigate in this case. We know that the TSB has exclusive jurisdiction to investigate an aviation occurrence in order to make findings as to their causes and contributing factors. The safety officer has all the necessary authority to investigate in this situation where employees under federal jurisdiction are involved in the accident. However, I stated in *Aéroports de Montréal*, unreported decision number 95-012, that where the TSB investigates, [translation] "the safety officer's responsibility in these cases is to determine whether the Code was contravened, and not to assign responsibility for the accident". Consequently, the references that the safety officer made in the direction, namely, the words "with the result that accidents occurred", will be deleted from the direction. The immediate effect of this amendment is to ensure that if Mr. Smarlack is found to have contravened the Canada Labour Code, this finding will not have the effect of establishing, in respect of him, a direct causal link with the accident. This is the responsibility of the TSB.

For all the above-described reasons, I am of the opinion that Mr. Smarlack contravened paragraphs 126(1)(c) and (d) of the Canada Labour Code, Part II. Bearing in mind the comment that I made earlier concerning the assigning of responsibility for the accident, I HEREBY VARY the direction issued on March 15, 1995, pursuant to subsection 145(1) of the Canada Labour Code, Part II, by safety officer Denis Carron to Mr. Pierre Smarlack of Canadian Airlines International

Ltd., by deleting from the direction the reference, under paragraph 126(1)(d) of the Code, to the expression "with the result that accidents occurred" and by deleting from the direction, under paragraph 126(1)(c) of the Code, the reference to the expression "with the result that work accidents occurred".

Decision rendered on February 27, 1996

Serge Cadieux
Regional Safety Officer

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

DIRECTION TO THE EMPLOYEE UNDER SECTION 145(1)

On January 21, 1995, the undersigned safety officer conducted an investigation in the workplace operated by Canadian Airlines International Limited, an employer subject to Part II of the Canada Labour Code, and for whom Mr. Pierre Smarlack works as a station attendant driver, which employer is located at 12600, Terminal A-1, local 2134, Montreal International Airport, Mirabel, Quebec, J7N 1C9, the said place being sometimes called the Deicing Centre.

The said safety officer is of the opinion that following provisions of Part II of the Canada Labour Code have been contravened:

Paragraph 126.(1)(d) of Part II of the Canada Labour Code (Part II)

The employee did not follow the employer's instructions concerning deicing, by deciding to deice a B 747-400 with its engines running, with the result that accidents occurred.

Paragraph 126.(1)(c) of Part II of the Canada Labour Code (Part II)

The employee, by not following the instructions of his employer not to deice a B 747-400 with its engines running, did not take all reasonable and necessary precautions to ensure his own safety and health and the safety and health of the other employees, with the result that work accidents occurred.

CONSEQUENTLY, you are HEREBY ORDERED, under section 145(1) of Part II of the Canada Labour Code, to cease all contraventions forthwith.

Issued at LaSalle, this 15th day of March 1995.

Denis Caron
Safety Officer
#1521

TO: Mr. Pierre Smarlack
Station Attendant Driver
163, Domaine Cloutier
St-Colomban, Quebec
JOR 1N0

SUMMARY OF THE DECISION OF THE REGIONAL SAFETY OFFICER

Applicant: Mr. Pierre Smarlack, Lead Snowman

Interested party: The Attorney General of Canada

KEY WORDS

De-icing, Boeing 747-400, training, Lead Snowman, A.P.U., TSB (Canadian Transportation Accident Investigation and Safety Board)

PROVISIONS

Code: 126(1)(c), 126(1)(d), 145(1)

SUMMARY

Following a tragic accident in which three employees of Canadian engaged in deicing an aircraft belonging to the airline Royal Air Maroc died, a safety officer issued a direction to the employee who was in charge of the on-site deicing operation. The Regional Safety Officer (RSO) was essentially in agreement with the direction issued to the employee. However, the RSO VARIED the direction by deleting from it the references to the words "with the result that accidents occurred". The RSO determined that the safety officer's role, where an aviation occurrence is investigated by the TSB, is to determine whether the Code was contravened. The determination of the cause of the accident is, in these cases, the responsibility of the TSB.