

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: Manitoba Pool Elevators
Rosser, Manitoba
Represented by: Gordon Geiger

Mis en cause: Judy Hickman
Safety officer
Human Resources Development Canada

Before: Serge Cadieux
Regional Safety Officer
Human Resources Development Canada

An oral hearing was held on February 1, 1996 in Winnipeg, Manitoba.

Background

Following an inspection of the Manitoba Pool Elevators' site situated at Rosser, Manitoba, safety officer Judy Hickman cited the employer for a contravention of subsection 12.5(1) of the Canada Occupational Safety and Health Regulations (the Regulations). The safety officer issued a direction (APPENDIX-A) under subsection 145(1) of the Canada Labour Code, Part II (the Code) for the following reason :

Employees handling farm fertilizer and chemical products and related equipment may be subject to foot injury.

Ensure all employees are protected from the hazard.

The safety officer listed in her narrative report the findings that caused her to issue the direction under appeal. They are:

1. At the time of my inspection in the chemical building I observed a propane forklift, pallets with pails weighing 18 kg. (40 pounds) each and boxes of chemical 18 kg. There is a hazard from the pails or boxes dropping on an employee's foot when handling the items and also from the weight of the forks of the forklift.

2. Outside the building was a pile of wooden pallets (Photo #2) which are held together with nails. At another Manitoba Pool site I have observed a broken wooden pallet on the ground with nails protruding and therefore there is a potential hazard for foot injury.
3. In the yard there were fertilizer spreaders (Photo #3), sprayer (Photo #4) and anhydrous ammonia tanks (Photo #5). I believe a foot injury hazard exists when employees handle this equipment due to the weight of the hitches.

Submission for the employer

Mr. Geiger made a number of submissions, some of which are more relevant than others. Of particular interest are the following points:

- When considering personal protective equipment, section 12.1 of the Regulations is of some importance and should be looked at prior to concluding to a contravention. For example, the board with protruding nails was promptly removed thereby making the need for personal protective equipment obsolete.
- The direction is vague in that it provides little information regarding the corrective measures that are required.
- The definition of "danger" at section 122 of the Code is predicated on the probability that an injury will occur. Hazards such as nails in boards can and will be corrected quickly as has been demonstrated.
- Particular attention should be paid to the Workers' Compensation Board Safety Officer Statistics reports for 1992, 1993 and 1994 for foot injuries. The foot injury indicated in the 1993 report was to a construction worker who is supplied with safety footwear.

Decision

The issue to be decided in this case is whether protective footwear must be used by employees of Manitoba Pool Elevators at the work site visited at Rosser. Section 12.1 of Part XII (Safety Materials, Equipment, Devices and Clothing) provides:

12.1 Where

- (a) it is not reasonably practicable to eliminate or control a safety or health hazard in a work place within safe limits, and
- (b) the use of protection equipment may prevent or reduce injury from that hazard,

every person granted access to the work place who is exposed to that hazard shall use the protection equipment prescribed by this Part.

and section 12.5 of the Regulations provides:

12.5 (1) Where there is a hazard of a foot injury or electric shock through footwear in a work place, protective footwear that meets the standards set out in CSA Standard Z195-M1984, Protective Footwear, the English version of which is dated March, 1984 and the French version of which is dated December, 1984, shall be used.

(2) Where there is a hazard of slipping in a work place, non-slip footwear shall be used.

It follows that, in the instant case, protective footwear is required when the following conditions are met, i.e.

1. there is a hazard of foot injury;
2. it is not reasonably practicable to eliminate or control the hazard in a work place within safe limits; and
3. the use of protective footwear may prevent or reduce injury from that hazard.

The above test will be applied to each problem situation identified by the safety officer. A decision will be made as to whether protective footwear is the appropriate solution in each case. It should be noted that injury through electric shock or by slipping were not issues considered by the safety officer during her investigation and therefore, I will not consider them as well.

Also, the concept of "reasonably practicable" has been dealt with in other decisions of the Regional Safety Officer. I have interpreted that expression to mean "the effort that is required, from the person on whom the duty is imposed, in terms of time, trouble and money, to comply with the duty". The duty of the employer in the instant case is expressed by paragraph 125(v) of the Code which provides:

(v) ensure that every person granted access to the work place by the employer is familiar with and uses in the prescribed circumstances and manner all prescribed safety materials, equipment, devices and clothing;

Therefore, if it is determined that protective footwear is required in specific circumstances, the duty of the employer will be to ensure that his/her employees wear protective footwear. The circumstances identified by the safety officer are as follows:

1. There is a hazard from the pails or boxes dropping on an employee's foot when handling the items and also from the weight of the forks of the forklift.

Employees of Manitoba Pool Elevators are not full-time materials handling employees. They are grain elevators employees whose primary function is to carry out tasks directly associated with the handling of grains, a job relatively free of the hazards that can cause feet injuries. Also, I was given little, if any, information by the safety officer regarding the size, shape, toxicity and other characteristics of the pails or boxes, of who and how often they carry those items and on what distance, whether instruction and training was given in the safe method of lifting and carrying those items, and so on.

While the safety officer can form an opinion without going into details of the task to be performed, it would certainly be advantageous to all concerned if the employer and the safety and health committee for that work place were involved in assessing the risk alleged. For example, if the employer had been asked to or, if necessary, required to carry out, in collaboration with the safety and health committee or representative, a Job Hazard Analysis¹ for the various situations identified by the safety officer, a decision based strictly on facts would have been reached and, more than likely, would be more readily acceptable by the affected parties.

The wording of section 12.5 of the Regulations would support this type of approach because, under that provision, the onus is on the employees to purchase their own protective footwear where a hazard of foot injury is identified and on the employer to ensure they use the protective footwear. It does not however specify who is required to assess the risk. While it can be argued that the employer has that general responsibility, it certainly weakens the process by putting employees at a disadvantage if they have no say in the analysis but must comply with its results.

In this particular case, I understand that the safety and health committee does not consider the situation identified by the safety officer as a problem. I am also aware that the injury statistics do not support the safety officer's contention that a hazard of foot injury exists.

In any event, if a hazard of foot injury exists, it is one that can easily be remedied through proper handling methods or appropriate corrective measures. As noted by Mr. Geiger, "if an employee was observed carrying a pail with a broken handle, it would be appropriate to have the damaged pail repaired, if this could not be done within a reasonable time then it would be necessary to consider alternatives, with the use of safety footwear being considered as a last resort." Evidently, it is reasonably practicable to control this type of hazard and the employer has shown his willingness to do just that. Also, the handling of boxes weighing 18 kg. can be achieved, in my view, in a safe manner if employees, who do not do this job on a regular basis, are appropriately trained and are fit for that job. While the risk of foot injury remains a possibility, it is a risk so remote for trained employees that, for all intents and purposes, the risk is well under control. In those particular circumstances, I would agree with Mr. Geiger that protective footwear is not the preferred solution and should only be required as a last resort.

However, working around a forklift truck can present hazards with the potential for serious injuries. I would classify and deal with this type of condition under the third item identified by the safety officer under equipment.

2. I have observed a broken wooden pallet on the ground with nails protruding and therefore there is a potential hazard for foot injury.

I need not dwell very long on this issue. While protruding nails or a pile² of wooden pallets which are held together with nails could be the source of feet injuries, the resolution of this problem is

¹ "Job Hazard Analysis" (JHA) is a procedure used to analyse work methods for the purpose of uncovering health or safety hazards and proposing solutions in order to protect the safety and health of employees doing that job.

² The direction of the safety officer is applicable only to the site inspected at Rosser, Manitoba. What the safety officer observed at another site is not relevant to the direction under appeal and not be considered in the context of this review.

not by requiring employees to wear protective footwear, as one would do in the construction industry. In this case, good housekeeping is the solution to this type of problem as specified by paragraph 14.49(2)(f) of the Regulations which provides

- (2) No materials, goods or things shall be stored or placed in a manner that may
- (f) be hazardous to the safety or health of any employee.

Again, protective footwear is not the appropriate solution in this case since it is relatively easy to eliminate or control the hazard in the circumstances described above. I leave it up to the safety officer to decide if housekeeping is a problem that requires her attention in this case.

3. I believe a foot injury hazard exists when employees handle this (farm) equipment due to the weight of the hitches.

The photos taken by the safety officer show the equipment's long and heavy hitches i.e. the hitches of the sprayer and the ammonia tanks, resting directly on the ground. This is an indication that supports are either not available on the equipment or are not being used. In either case, this particular situation presents the possibility of serious feet injuries. The equipment is delivered by an employee, or several employees depending on the time of the year, to farmers in the vicinity of the various elevators which means the equipment is hitched to a truck and unhitched at its delivery destination.

The problem, I believe, is compounded by the fact that Manitoba Pool Elevators have no control over the work sites where the equipment is delivered. The equipment is delivered on the premises of the farmers and therefore, the employees are exposed to various working conditions, many of which may be unsafe. For example, when picking up farm equipment that was rented out to a farmer, the equipment may be broken, or may not be resting on its support, or may be positioned in a hazardous manner or may be surrounded by other moving farm equipment. It is generally accepted and, I believe, it is good industrial practice that employees working around or handling heavy equipment such as farm equipment, wear protective footwear. While the statistics introduced by Mr. Geiger do not appear to support the need for protective footwear, the potential for serious feet injuries is a reality that merits particular attention. In my opinion, employees working around or handling farm equipment must wear protective footwear.

On the other hand, an employee working on a fork lift truck is not exposed to hazards that may cause feet injuries, at least not while the employee is driving the vehicle. If that employee is expected to descend from his vehicle to position the load or to work around the load, then it would be reasonable to have that employee wear protective footwear. If other employees were also expected to work around the load to assist the driver of the fork lift truck, those employees should also wear protective footwear. However, in this particular case, the safety officer merely observed the presence of a propane fork lift truck but did not report on the conditions described above. Furthermore, the statistics do not support the safety officer's contention that there exists in this case the potential for feet injuries. In these circumstances, I would rule in favour of the employees and the employer primarily because I have no facts that would support a finding that protective footwear is required.

For all the above reasons, I HEREBY VARY the direction given under subsection 145(1) of the Canada Labour Code, Part II, on June 28 1995 by safety officer Judy Hickman to Manitoba Pool Elevators by replacing the fourth paragraph of the direction with the following paragraph:

Employees working around or handling farm equipment are subject to foot injury. The employer is to ensure those employees are protected from the hazard of foot injury.

Decision rendered on March 8, 1996

Serge Cadieux
Regional Safety Officer

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

DIRECTION TO THE EMPLOYER UNDER SUBSECTION 145(1)

On June 12, 1995, the undersigned safety officer conducted an inspection in the work place operated by Manitoba Pool Elevators at Rosser, Manitoba.

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(v) of the Canada Labour Code, Part II, subsection 12.5(1) of the Canada Occupational Safety and Health Regulations and CSA Standard Z195-M1984, Protective Footwear.

Employees handling farm fertilizer and chemical products and related equipment may be subject to foot injury. Ensure all employees are protected from the hazard.

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 28, 1995.

Issued at Portage La Prairie, this 28th day of June, 1995.

Judy Hickman
Safety Officer

To: Manitoba Pool Elevators
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Winnipeg, Manitoba
R3C 3K7

SUMMARY OF REGIONAL SAFETY OFFICER DECISION

Applicant: Manitoba Pool Elevators

KEYWORDS

Protective footwear, foot injury, job hazard analysis, reasonably practicable, injury statistics, housekeeping, farm equipment, forklift truck.

PROVISIONS

Code: 125(v), 145(1)

COSH Regs: 12.1, 12.5, 14.49(2)(f)

SUMMARY

A safety officer gave a direction to the employer to ensure that employees (1) handling pails and boxes weighing 40 lbs, (2) working in an area where a board with protruding nails was seen to be on the ground and (3) handling farm equipment, wear protective footwear.

The regional safety officer disagreed with the first two situations identified by the safety officer on the basis that it was reasonably practicable to eliminate or control those hazards. The RSO agreed with the safety officer that employees working around or handling farm equipment should wear protective footwear. The RSO found that although the injury statistics submitted by the employer did not appear to support this finding, it was good industrial practice to wear protective footwear in this case. The regional safety officer VARIED the direction accordingly,