

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: CANPAR Transport Limited
1290 Central Parkway West, Suite 500
Mississauga, Ontario
represented by Mr. Mark Hammond, Health & Safety
Coordinator

Respondent: George Rendell
Division Vice-President
Trucking division
Transportation Communications Union
London, Ontario

Mis en cause: Mariana Grinblat
Safety Officer #1712
Human Resources Development Canada
Toronto East District Office

Before: Bertrand Southière
Regional Safety Officer
Human Resources Development Canada

A hearing was held in Toronto on March 4, 1996. In attendance were:

- Mark Hammond
Health & safety co-ordinator, CANPAR
- Roland Weicht
Regional manager, CANPAR
- George Rendell
Division vice-president, Transportation-Communications Union
- Mariana Grinblat
Safety officer, Human Resources Development Canada

Background

Further to an inspection conducted at a workplace situated at 261 Queen's Quay East in Toronto and operated by CANPAR Transport Limited (hereafter CANPAR), safety officer Mariana Grinblat issued, on August 2, 1995, a direction to CANPAR in Toronto, Ontario, requiring that protective footwear be used in the above-referenced work place (appendix 1). A review of the direction was requested by CANPAR on August 10, 1995. A similar request was also presented by the Transportation - Communications Union on September 4, 1995.

The safety officer issued the direction after obtaining statistical information showing that, during the year 1994, there were seventy-two (72) foot injuries at this location with lost work days ranging from one to forty-eight for each event. A supporting document to her contention was joined to a letter she sent to the Office of the Regional Safety Officer on October 18, 1995. This is a one page document which lists 56 names, 27 of which appear to be the names of persons who have suffered foot injuries. The document appears to be incomplete because it does not list 72 foot injuries as asserted by Ms. Grinblat in her report. Furthermore, no explanations are given on how to read the document, no comparisons are made with other similar industries or with the industry as a whole.

Submission by the employer's representative

CANPAR's business is essentially small parcel delivery. The company has a number of warehouses across the country and about 1500 employees, of which roughly 1200 are unionized. In his submission, the employer states that there are 135 employees working at the warehouse in question. Within the warehouse itself, which is the site identified by the safety officer in her direction, there were actually four foot injuries in 1994. Of these four foot injuries, three were injuries to the ankle which would not have been prevented by safety boots. The fourth injury was to the top of the foot and could possibly have been prevented by safety boots. Total time lost was 120 hours for all four injuries; the employee who injured the top of his foot was away for two days.

Submission by the employees' representative

- In the courier industry, very few other companies require their employees to use protective footwear. Use is generally limited to people who work in the vicinity of heavy equipment, such as fork lift trucks.
- Protective footwear is expensive (about \$125 to \$150) and must be paid for by each employee: this is an additional burden for employees who have received no raise in the last 7 or 8 years.
- This union represents 9 trucking companies and it is familiar with the transportation industry; if it is felt that the job requires protective footwear, the union will agree with the requirement.

Discussion

The safety officer reached her conclusions and issued a direction based on information which was incorrect because it did not apply to the workplace she was inspecting: it was the yearly total for all workplaces operated by the company. Furthermore, no information was presented comparing the data obtained in this particular work place versus other similar operations. In the course of one year, there was one foot injury incurred by an employee and because of this one injury, the safety officer would require all employees in this workplace to purchase and to use protective footwear. The facts and statistics which have been presented to me do not support the direction.

I note in passing that the direction makes reference to paragraph 125(j) of the Canada Labour Code Part II. This is incorrect; the proper reference in this case would have been 125(v).

Decision

For the reasons outlined above, I HEREBY RESCIND the direction issued by Safety Officer Mariana Grinblat to CANPAR Transport Limited at the Queen's Quay Terminal in Toronto, Ontario, on the second day of August 1995.

Decision given on March 15, 1996.

Bertrand Southière
Regional Safety Officer

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

Direction to Employer under Subsection 145(1)

The undersigned Safety officer, did, on the 16 day of May, 1995 conducted an inspection at the workplace operated by Canpar, being an employer subject to the Canada Labour Code, part II at 261 Queens Quay E. in Toronto, and having conducted certain inspections at the said workplace;

Found that a number of foot injuries are occurring as safety shoes are not worn in the workplace;

1. 125(j) Canada Labour Code - provide every person granted access to the work place by the employer with such safety materials, equipment, devices and clothing as are prescribed

Refer to: The Canada Occupational safety & Health Regulation

12.6 Where there is a hazard of a foot injury or electric shock through footwear in a workplace, 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.

Hereby directs the said employer pursuant to subsection 145(1) of the Canada Labour Code to terminate contravention of the said provisions within 20 days of receipt of this direction and to ensure that future hazardous occurrences are investigated, recorded and reported in the manner prescribed.

Issued at Scarborough, Ontario, this 2nd of August 1995.

Mariana Grinblat
Labour Affairs Officer

To: Canpar
1290 Central Parkway West, Suite /500
Mississauga, Ontario L5C 4R9

SUMMARY OF REGIONAL SAFETY OFFICER DECISION

Applicant: CANPAR
1290 Central Parkway West, Suite 500
Mississauga, Ontario

KEYWORDS

Foot protection;

PROVISIONS

Code: 125(j) and (v) Canada Occupational Safety and Health
Regulations: subsection 12.5 (1)

SUMMARY

A safety officer issued a direction to CANPAR, in Toronto, to the effect that protective footwear had to be used in the work place by all employees who were at risk of injuring their feet. In support of her direction, the safety officer made use of statistics which indicated that there had been 72 foot injuries in this work place in 1994. In his submission, the employer stated that these statistics were for the whole company and that in this particular work place, there had been in fact only four foot injuries, three of which were ankle injuries. The direction was rescinded because of the lack of evidence.