

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: Potomski Transportation Inc.
P.O. Box 7505
Windsor, Ontario
represented by: R. J. Potomski, President

Respondent: Rocco Tees
407 Northcliffe Blvd
Toronto, Ontario
M6E 3L3

Mis en cause: Darlene Kennedy
Safety Officer #1703
Human Resources Development Canada
London District Office

Before: Bertrand Southière
Regional Safety Officer
Human Resources Development Canada

A hearing was held in Windsor on April 10, 1996. In attendance were:

- R. J. Potomski
Potomski Transportation Inc.
- Jenny Jacobson
not an employee of Potomski Transportation Inc.;
involved in the refusal to work
- Darlene Kennedy
H.R.D.C. - Labour
- Keith MacDonald
H.R.D.C. - Labour

Background

The situation which gave rise to the refusal to work is well detailed in the Investigation Report and Decision prepared by safety officer Darlene Kennedy under Ref. No. 195M0280/1253, which report is on record. Briefly, Rocco Tees, a truck driver for Potomski Transportation Inc., was assigned to pick up a load at Prestressed Systems Inc. in Windsor, Ontario, and to take it to Cincinnati, Ohio. Rocco Tees arrived at Prestressed Systems Inc. at about 2330 hours on August 6, 1995 to pick up the load of 9 concrete slabs with an aggregate weight of about 44,000 pounds. At this point, he realized that there was only one three-inch strap and one winch to secure the load down on the flatbed trailer. He drove back to the Potomski yard and eventually, after a number of telephone calls, Jennie Jacobson provided him with three two-inch straps and the appropriate winches.

Rocco Tees then returned to the Prestressed Systems yard and, after securing the load with the one three-inch strap and the three two-inch straps, he drove the truck and trailer back to the Potomski yard as he had been instructed. At this time, he refused to work on the basis that:

- the load was not properly secured; previously, the loads were always secured with three-inch straps; the two-inch straps were not safe;
- the load was not properly positioned on the trailer;
- the truck was "bouncing" too much.

He was then instructed to take another strap from the office, knot it as it did not have an 18-inch tail, and use it for a tiedown at the centre of the load. The load would then be properly secured. Rocco Tees refused to follow these instructions because he felt it still would not be safe to work.

At this time, HRDC-Labour was informed of the refusal to work and a safety officer was dispatched to the work place on this same day. The safety officer investigated the refusal to work. During the investigation, the safety officer along with Mr. Potomski, met with personnel from the Ontario Ministry of Transportation. At these meetings, discussions were held regarding load securement and load positioning on the truck. A request was also made to Mr. Potomski to supply maintenance records for the truck in question, but to no avail.

According to the requirements of the Ontario Ministry of Transportation, the webbing with which the load was secured was sufficient for a load of about 18,000 pounds while the actual load was about 44,000 pounds; also, it is required that there be at least one tiedown for each three linear metres (10 feet) of lading, which requirement was not met. Further to these discussions and in view of the information supplied by the Ontario Ministry of Transportation, the safety officer concluded that the load was not adequately secured. Due to a lack of information, she reserved her decision on the two other complaints, that is, the load positioning and the exaggerated "bouncing" of the truck. The safety officer issued a direction to the employer on August 16, 1995 (appendix 1). The employer appealed the direction to the Regional Safety Officer on August 18, 1995.

Submission by the employer

The submission of the employer hinges on the fact that the employee, after his initial refusal to work, was told to make the load secure; he was not told to take the load anywhere, but to tie it down properly, "to make it right". Consequently, there was no danger to him and the refusal to work had no object. Also, even if the tie down arrangement does not meet the Ontario Ministry of Transportation requirements, this does not mean that it is unsafe.

It was also pointed out that Rocco Tees had been trained as a truck driver at the National Tractor Trailer School in Toronto from April to June 1995; as such, he had to know the Highway Traffic Act and as a trade employee, he should have knowledge of his job. The only training he received during his employment with Potomski Transportation dealt with the operation of the winches and ratchets used to tension the webbing when securing loads. Finally, Mr. Potomski said that, in his opinion, the concerns of Rocco Tees appeared to stem more from the width of the webbing rather than the quantity or the load capacity.

Submission by the employee

Rocco Tees, the employee who made the refusal to work, no longer works for Potomski Transportation Inc. Although he was invited to attend, he was not present at the hearing. The employees of Potomski Transportation Inc. are not unionized and as a result, there was no representation for the employee.

Discussion

There is no doubt in my mind that, according to the Ontario Ministry of Transportation requirements, the load was not properly secured. I accept the employer's argument that this does not automatically mean that it was unsafe. However, there should be documentation showing that the arrangement in question was indeed safe and this has not been forthcoming. The suggestion regarding the addition of a three-inch strap in the centre by "knotting it because it did not have the required 18 inch tail" would not have made the load safer because webbing that is knotted cannot be counted as part of a tiedown system (Load Security in Ontario, page 16). I accept then the safety officer's conclusion that the load was not properly tied down.

I also accept that a load that is not properly tied down presents a danger to the driver. Even with a bulkhead at the front of the trailer, a heavy load that is improperly secured could slide forward and ram the truck cab if the truck decelerates abruptly, such as during an emergency braking situation or in an accident.

The employee then recognized a situation of danger, even if he did not do so for the right reasons. The underlying issue in this case appears to be that both the employer and the employee were unaware of the requirements regarding load security laid down by the Ontario Ministry of Transportation. At the hearing, the employer acknowledged that the meetings with the personnel of the Ontario Ministry of Transportation, after the refusal to work, were a learning experience for

him. He mentioned that since then, he makes sure that each of his driver gets a copy of the booklet entitled "Load Security in Ontario", prepared by the Ministry of Transportation Compliance Branch.

In conclusion, there were shortcomings in the training of the driver regarding the safe and proper use of the equipment. There was also a shortage of equipment to properly tie down the load due to insufficient awareness of highway safety requirements. I believe this is what the safety officer attempted to correct.

Decision

For the reasons outlined above, I HEREBY CONFIRM the direction issued by Safety Officer Darlene Kennedy to Potomski Transportation Inc. on August 16, 1995.

Decision given on April 23, 1996.

Bertrand Southière
Regional Safety Officer

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

DIRECTION TO EMPLOYER UNDER SS. 145(2)

The undersigned Safety Officer, did, on the 7th day of August 1995, attend at the work place operated by Potomski Transportation Inc., being an employer subject to the Canada Labour Code, Part II, at 630 Tecumseh Road West, Windsor, Ontario the work place being sometimes known as the Potomski yard and having conducted an investigation into the Refusal to Work at the said workplace; consider that the use or operation of a machine or thing described hereunder or that a condition exists in the said work place which constitutes a danger to an employee while at work.

The said Safety Officer considers that the following provision of the Canada Labour Code, Part II is being contravened due to the employees being required to transport loads that are not properly secured;

Section 124: "Every employer shall ensure that the safety and health at work of every person employed by the employer is protected."

Therefore, you are **HEREBY DIRECTED**, pursuant to Subsection 145.(2)(a) of the Canada Labour Code Part II, to immediately protect any person from the danger.

Issued at Windsor, Ontario, this 16th day of August, 1995.

DARLENE KENNEDY
SAFETY OFFICER
#1703

TO: Mr. Bob Potomski, Officer and Director
Potomski Transportation Inc.
P.O. Box 7505
Windsor, Ontario
N9C 4G1

SUMMARY OF REGIONAL SAFETY OFFICER DECISION

Applicant: Potomski Transportation Inc.
P.O. Box 7505
Windsor, Ontario
N9C 4G1

KEYWORDS

Trucking; load securement

PROVISIONS

Code: 124

SUMMARY

A truck driver was asked to pick up a load of concrete slabs weighing 44,000 pounds for delivery from Windsor, Ont. to Cincinnati, Ohio. Only a three-inch strap was available for securing the load. The driver asked for more straps and was supplied with three additional two-inch straps. After strapping the load down, he drove his truck from the production yard to the trucking company yard, a distance of about 10 kilometres, where he made a refusal to work because the load was not tied down safely. He was then offered an additional three-inch strap with which to tie down the load, but he felt it still would not be safe and he maintained his refusal to work. After investigating, the safety officer issued a direction to the employer. The regional safety officer confirmed the direction.