

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: Services de Quai Fagen inc.
Represented by: Jean Gaudreau, counsel

Respondent: United Steelworkers of America
Represented by: Patrick Lenormand, union steward

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

Before: Serge Cadieux
Regional Safety Officer
Human Resources Development Canada

This case was heard by way of written submissions.

On December 14, 1995, safety officer Denis Caron issued a direction (ATTACHED) to Services de Quai Fagen inc. under subsection 145(1) of the Canada Labour Code, Part II. The safety officer issued a direction in this case to the employer concerning the accident suffered by Mr. Guévin, a longshoreman working for Services de Quai Fagen inc., on November 15, 1995. The safety officer described as follows the circumstances in which the accident occurred:

"8. On November 15, 1995, at the time of the accident, the employee of Services de Quai Fagen inc., Mr. Jean Pierre Guévin, and his fellow workers (Patrick Lenormand and Marcel Tremblay) were passengers in a flatbed truck that was transporting a load of packaged steel from Shed "D" to Shed "A".

9. This accident occurred when Mr. Jean Pierre Guévin, who was on his way from Shed "D" to Shed "A" to take his break, climbed onto the loaded flatbed of the truck between the cab and the load of packaged steel. When the truck, with Mr. Marcel Tremblay, foreman and driver, and Mr. Patrick Lenormand, passenger, in the cab, began to move, Mr. Guévin sat down on the load of steel. When the truck reached the place where it was to be unloaded, Marcel Tremblay, the driver, slowed down, at which point Mr. Guévin began to stand up. The truck stopped suddenly, whereupon Mr. Guévin was propelled headlong into the wall of the cab, his body crumpled up, and the flying packages of steel struck him in the legs, breaking them both."

An application to review the direction issued by the safety officer was filed within the prescribed time limits by Mr. Jean Fortier, engineer, health and safety, for Services de Quai Fagen inc. The reason given by Mr. Fortier is that "the work done on the premises in question was not under your jurisdiction, but under the jurisdiction of the Commission de la santé et de la sécurité du travail [du Québec]."

Later, Mr. Gaudreau intervened in this case and represented the interests of Services de Quai Fagen inc. He sent the regional safety officer a detailed statement of the reasons for the application for review of the directions. Since the reasons given by Mr. Gaudreau were essentially the same as those cited by Mr. Fortier, I sent Mr. Gaudreau a letter dated April 16, 1996 in which I explained the following:

"As you know, section 57¹ of the Federal Court Act provides that notice shall be served on the Attorney General of Canada and the attorney general of each province where the applicability of an Act of Parliament is in question before a federal board, commission or other tribunal, such as the regional safety officer.

(2) Except where otherwise ordered by the Court or the federal board, commission or other tribunal, the notice referred to in subsection (1) shall be served at least ten days before the day on which the constitutional question described in that subsection is to be argued.

(3) The Attorney General of Canada and the attorney general of each province are entitled to notice of any appeal or application for judicial review made in respect of the constitutional question described in subsection (1).

(4) The Attorney General of Canada and the attorney general of each province are entitled to adduce evidence and make submissions to the Court or federal board, commission or other tribunal in respect of the constitutional question described in subsection (1).

(5) Where the Attorney General of Canada or the attorney general of a province makes submissions under subsection (4), that attorney general shall be deemed to be a party to the proceedings for the purposes of any appeal in respect of the constitutional question described in subsection (1).

You will find enclosed a copy of section 57 of the Federal Court Act, and the list of addresses of the thirteen attorneys general. The notices in question must be in accordance with Form 2.1 of the Federal Court, a copy of which is also enclosed."

Further to this notice, Mr. Gaudreau sent me a letter dated April 29, 1996 to inform me of the following:

¹ 57.(1) Where the constitutional validity, applicability or operability of an Act of Parliament or of the legislature of any province, or of regulations thereunder, is in question before the Court or a federal board, commission or other tribunal, other than a service tribunal within the meaning of the National Defence Act, the Act or regulation shall not be adjudged to be invalid, inapplicable or inoperable unless notice has been served on the Attorney General of Canada and the attorney general of each province in accordance with subsection (2).

"Without making any admission as to the applicability of the Canada Labour Code, Part II, we are withdrawing our application for review of the direction issued on December 14, 1995, without prejudice."

As the Regional Safety Officer responsible for reviewing this direction, I hereby confirm that Services de Quai Fagen inc. has WITHDRAWN the application for review that it had filed in respect of the direction issued by safety officer Denis Caron on December 14, 1995. I declare this file closed.

Decision rendered on May 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 December 12, 1995, the undersigned safety officer conducted an inspection in the workplace operated by Services de Quai Fagen inc., an employer subject to Part II of the Canada Labour Code and located in the Port de Sorel, C.P. 97, Sorel (Québec) J3P 5N6, the said workplace being located at 201, rue Montcalm, St-Joseph-de-Sorel, and sometimes called Shed #5 Beloit.

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

1. Subsection 127.(1) of Part II of the Canada Labour Code:

The employer moved, without the authorization of a safety officer, the debris and objects associated with the work accident of Mr. Jean-Pierre Guévin, "operator", that occurred on November 15, 1995.

2. Paragraph 125(c) of Part II of the Canada Labour Code and paragraph 15.8(2)(b) of the COSHR:

The employer did not submit to a safety officer, within fourteen days after the accident on November 15, 1995, an investigation report on the hazardous occurrence.

Accordingly, you are **HEREBY ORDERED**, under subsection 145.(1) of Part II of the Canada Labour Code, to cease all contraventions not later than December 12, 1995.

Issued at Montreal, this 14th day of December 1995.

Denis Caron
Safety Officer

TO: Services de Quai Fagen inc.
Port de Sorel
C.P. 97
Sorel (Québec)
J3P 5N6

SUMMARY OF THE DECISION OF THE REGIONAL SAFETY OFFICER

Applicant: Services de Quai Fagen inc.

Respondent: United Steelworkers of America

KEYWORDS

Accident, jurisdiction, Federal Court Act, withdrawal, longshoreman.

PROVISIONS

Code: 145(1)

Federal Court Act: 57

SUMMARY

An accident occurred when a longshoreman, who was employed by Services de Quai Fagen inc., had both his legs broken while he was seated on a load of packages of iron transported by a truck. The safety officer issued a direction that was contested on the ground that the work performed was not under the jurisdiction of the Canada Labour Code, Part II. The regional safety officer then informed the lawyer representing the company of the applicability of section 57 of the Federal Court Act, whereupon the company withdrew the application for review. The file was then closed.