

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: Mirabel AJro-Service
Dorval International Airport
Dorval, Quebec
represented by: Jean-FranHois Gilbert, Lawyer

Mis en cause: Pierre GuJnette
Safety Officer
Human Resources Development Canada

Before: Serge Cadieux
Regional Safety Officer
Human Resources Development Canada

On 27 September 1995, safety officer Pierre GuJnette issued a direction (see APPENDIX) under subsection 145(1) of the Canada Labour Code, Part II (hereinafter "the Code") to Mirabel AJro-Service. The direction was issued in connection with the inquiry which the safety officer had conducted after an employee of the company had suffered injuries while operating a scissors lift. A request for a review of the direction was made to the regional safety officer within the required timeframe. However, Mr. Gilbert asked the regional safety officer to stay the hearing of the case temporarily because Human Resources Development Canada was instituting criminal proceedings against his client. Mr. Gilbert's submission convinced me that it was not urgent that the case be heard because the employees were protected by a direction in the meantime. I therefore granted Mr. Gilbert's request and postponed the hearing of this case until the conclusion of the proceedings instituted by the Department.

Once the case between the Department and Mirabel AJro-Service had been settled, I informed Mr. Gilbert that I intended to hear the case immediately. Mr. Gilbert then informed me that his client was withdrawing its request for a review of the above-mentioned direction. However, Mr. Gilbert indicated that his client's withdrawal was subject to the following condition: "that no further criminal or other proceedings be instituted against our client in relation to the events of 11 March 1995 at issue here.@

A review before the regional safety officer is a quasi-judicial process. Consequently, any proceedings brought by Human Resources Development Canada against a party are separate from the review process before the regional safety officer. The Office of the regional safety officer

operates independently from the Department and its safety officers and does not interfere in any way in the administration of the Code. Similarly, the Department in no way interferes in managing the affairs of the Office of the regional safety officer.

Consequently, Mr. Gilbert cannot make his withdrawal subject to a condition over which the regional safety officer has no control. Moreover, the Office of the regional safety officer had given verbal guarantees to Mr. Gilbert that there would be no prejudice to his client because the Department was initiating its own proceedings. I therefore dismiss the condition imposed by Mr. Gilbert because it is motivated by self-interest and is without basis.

As the regional safety officer responsible for reviewing the direction, I hereby confirm that Mirabel AJro-Service has **WITHDRAWN** the request it had made for a review of the direction issued on 27 September 1995, under subsection 145(1) of the Code, by safety officer Pierre GuJnette. I declare this file closed.

Decision issued on 15 November 1996

Serge Cadieux
Regional Safety Officer

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

DIRECTION TO EMPLOYER UNDER SUBSECTION 145(1)

Between 11 March and 5 September 1995, the undersigned safety officer conducted an inquiry in the work place operated by First Air, a division of Bradley Air Limited (hereinafter called First Air), an employer subject to the *Canada Labour Code*, Part II, at 100 Thad Johnson Road, Gloucester, Ontario, the said work place being sometimes known as the First Air Hangar at the MacDonald-Cartier Airport in Ottawa, Ontario, where an employee of Mirabel Aero Service, an employer also subject to the Code, was working on contract for First Air. The offices of Mirabel Aero Service are located at 625 Stuart Graham North, Suite 15, Montreal International Airport, Dorval, Quebec.

The said safety officer is of the opinion that the following provisions of the *Canada Labour Code*, Part II, are being contravened:

1. Section 124 and paragraph 125q) of the *Canada Labour Code*, Part II; subsections 12.15(1), 12.15(2) and 12.15(4) of the Canada Occupational Safety and Health Regulations (COSHR), sections 5.1.4, 16.1.1 and 16.1.2 of CSA Standard CAN3-B354.2-M82, Self-Propelled Elevating Work Platforms for Use on Paved/Slab Surfaces; operating and maintenance manual and parts catalogue for Skyjack series SJ1000, page 2-1, paragraph 1, and pages 2-8.

Mirabel Aero Service did not clearly explain the safety precautions or provide written or other procedures on the use, by the injured employee, of the scissors lift and personal protection equipment such as safety belts.

The employer did not ensure that the operator of the scissors lift received the necessary training, and Mirabel Aero Service did not provide the operator with training.

The operator neglected to manually deploy the four stabilizers for the scissors lift horizontally before raising the platform. The operator deployed the stabilizers for the work platform once the platform was raised.

2. Section 124 and paragraph 125v) of the *Canada Labour Code*, Part II; paragraph 12.10(1)(b) of the Canada Occupational Safety and Health Regulations (COSHR); sections 16.2.1 and 16.1.2 of CSA Standard CAN3-B354.2-M82, Self-Propelled Elevating Work Platforms for Use on Paved/Slab Surfaces; operating and maintenance manual and parts catalogue for Skyjack series SJ1000, page 1-2, figure 1-1.

The operator left the gate in the platform railing open when the platform was raised and neglected to close the gate and wear his safety belt while trying to adjust the level of the platform when it was thirty feet above the ground.

3. Paragraph 125s) of the *Canada Labour Code*, Part II.

The employer did not inform the employee that he was running the risk that one or more of the hydraulic stabilizers would sink and that, consequently, the platform would lean to one side and come in contact with objects or ledges above it.

Therefore, you are HEREBY DIRECTED, pursuant to subsection 145(1) of the *Canada Labour Code*, Part II, to correct the situation no later than 11 October 1995.

Issued at Ottawa this 27th day of September 1995.

Pierre GuJnette
Safety Officer No. 1759

To: Mirabel Aero Service
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SUMMARY OF DECISION OF A REGIONAL SAFETY OFFICER

Applicant: Mirabel AJro-Service
Dorval International Airport

KEYWORDS

Scissors lift, condition, proceedings, withdrawal.

PROVISIONS

Code: 124, 125q), 125s), 125v), 145(1)

COSHR: 12.10(1)(b), 12.15(1), 12.15(2), 12.15(4)

SUMMARY

A direction was issued to Mirabel AJro-Service after an employee operating a scissors lift suffered injuries. The company asked the safety officer to stay the hearing of the case because the Department was instituting criminal proceedings in this matter, and this was done. At the conclusion of the proceedings, the company withdrew its application for review, on condition that no criminal or other proceedings be initiated against it. The Regional Safety Officer rejected this condition and confirmed the WITHDRAWAL of the application for review.