

Compagnie d'Arrimage de Québec Ltée v. Canadian Union of Public Employees

SUMMARY OF REGIONAL SAFETY OFFICER DECISION

Applicant: Compagnie d'Arrimage de Québec Ltée
Quebec City, Quebec

Respondent: Canadian Union of Public Employees (CUPE)

KEY WORDS

Ship, crane, winch, safety officer, signature.

PROVISIONS

Code: 129(1), 129(4), 140(1), 145(2)(a)

SUMMARY

An officer of the Coast Guard of Transport Canada investigated a refusal to work exercised by two stevedores on board a ship. He concluded that there was a danger to the two employees and gave a direction to the employer pursuant to paragraph 145(2)(a) of the *Code*. The direction was signed by the Coast Guard officer and was also initialled by a safety officer. The employer challenged the direction and asked for explanations regarding the signature. The Regional Safety Officer's inquiry into this matter revealed that the Coast Guard officer was not a safety officer designated pursuant to the *Code* at the time of the investigation. The other safety officer involved apparently initialled the direction to lend it legitimacy, knowing that the first officer had not yet been appointed as a safety officer. The Regional Safety Officer RESCINDED the direction on the grounds that the officer who issued the direction was not authorized to do so, and that the officer who initialled the direction did not lend it any legitimacy because he did not take part in the investigation and did not issue the direction.

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: Compagnie d'Arrimage de Québec Ltée
Quebec City, Quebec
Represented by: Jean Gaudreau and Denis Caron

Respondent: Canadian Union of Public Employees (CUPE)
Represented by: André Gauvreau Local 2614

Mis en cause: Bernard Lachance and Gilles Marcotte
Safety Officers
Transport Canada

Before: Serge Cadieux
Regional Safety Officer
Human Resources Development Canada

This case was dealt with by way of written submissions.

Background

On August 14, 1997, two employees of Compagnie d'Arrimage de Québec Ltée exercised their right to refuse to work. According to the investigation conducted by Mr. Lachance, the two employees refused to work on board the ship Lefkothea L because "the loads on winches 3 and 4 had started to drop slowly without any means of controlling them, and as a result 3 bundles of wood pulp fell into the water." In his investigation report, Mr. Lachance described the situation in question as follows:

"I went up near the winch control levers with the two derrick operators, the senior ship's officer and the representative of the classification society. I asked the operator to summarize the facts for us, and then I asked the senior officer to explain the system. Next I consulted the society's representative. We came to understand that, when the stevedore turned off the hydraulic system of the hoist winch's control lever, this lever, when it was deactivated, left the winch in the down position, which caused the load to slowly drop. Note that the winch could just as well have been left in the neutral or up position.

What the stevedores wanted to do was to close the valve and quickly activate the lever, as if pumping it, so as to get a tighter control lever. This operation should not have been carried out with a load on the winch (approximately 16 tons)."

As a result of his investigation, Mr. Lachance decided that it was dangerous for the two employees to work under such circumstances. He therefore issued a direction (see Appendix) under paragraph 145(2)(a) of the *Canada Labour Code*, Part II (hereinafter referred to as the "*Code*"), to the employer. A review of this direction was requested by Compagnie d'Arrimage de Québec Ltée.

Employer's submission

Mr. Caron supplied the employer's submission. Mr. Caron argued that the request for the review was based on three considerations.

The first consideration was that the two stevedores acknowledged that they had exercised a refusal to work but that the employer had not disputed this refusal. The duly signed statements of these employees confirmed this situation and were attached to the employer's submission. According to Mr. Caron, the employer had not appealed to Transport Canada to intervene in a refusal to work, but only to obtain the expertise that would allow for better operation of the cranes.

The second consideration was that Mr. Lachance had linked the firm's name to the ship's name. According to Mr. Caron, this link could adversely affect the firm, and he therefore asked that this situation be corrected.

The third consideration deals with two items of the direction. The first item is the description of the dangerous circumstance. Mr. Caron argued that the situation described in the direction, to wit: "The operation of closing or opening the valves on the derrick controls should never be performed while working with loads" does not adequately describe the danger existing at the time of the alleged refusal. The second item of the direction, and possibly the more important one at this stage, is Mr. Lachance's signature, which appears under the direction. Mr. Caron asked the following question:

"Why did Mr. Bernard Lachance sign for Mr. Gilles Marcotte, does this mean that Mr. Marcotte was not qualified to sign a direction? I would like clarification on this last point."

Decision

The question relating to Mr. Lachance's signature at the bottom of the direction must be resolved first, because it concerns the competency of this person to investigate a refusal to work pursuant to subsection 129(1) and his authority pursuant to subsection 129(4) of the *Code* to issue such direction as is set out there. These provisions are as follows:

129. (1) Where an employee continues to refuse to use or operate a machine or thing or to work in a place pursuant to subsection 128(8), the employer and the employee shall each forthwith notify a safety officer, and the safety officer shall forthwith, on receipt of either notification, investigate or cause another safety officer to investigate the matter in the presence of the employer and the employee or the employee's representative.

129. (4) Where a safety officer decides that the use or operation of a machine or thing constitutes a danger to an employee or that a condition exists in a place that constitutes a danger to an employee, the officer shall give such direction under subsection 145(2) as the officer considers appropriate, ...

Upon examination, it is clear from these provisions that:

1. Only a safety officer appointed pursuant to the *Code* may act under subsection 129(1) of the *Code*.
2. Only a safety officer may conduct an investigation pursuant to this same provision.
3. Only the safety officer who carried out the investigation may decide that a situation constitutes a danger.
4. Only the safety officer who decided that a situation constitutes a danger under 129(4) may and must give the direction pursuant to subsection 145(2).

In response to an inquiry to the Coast Guard of Transport Canada, the Office of the Regional Safety Officer was informed that Mr. Lachance, who was on training at the time, did not have a safety officer card at the time of the investigation. In fact, at the time, Mr. Lachance was not designated as a safety officer pursuant to subsection 140(1) 1 for the purposes of Part II. Consequently, Mr. Lachance had no authority to investigate a refusal to work under subsection 129(1) of the *Code* and, hence, was not authorized to give a direction pursuant to subsection 145(2).

As for the fact that Mr. Marcotte had placed his initials under Mr. Lachance's signature, this does not add any legitimacy to the direction because he is not the safety officer who investigated this case. In fact, Mr. Marcotte, who is a safety officer, did not participate in the investigation and did not issue the contested direction. Consequently, the fact that Mr. Lachance signed this direction and that Mr. Marcotte initialled it does not lend any legitimacy to the direction. It is for all practical purposes null and void.

I think that the following comment is appropriate under the circumstances. I do not doubt for an instant that Mr. Lachance and Mr. Marcotte were acting in good faith when they committed this error. However, it would be difficult now to conduct the investigation again, since the ship is no longer at the site. The investigation that was carried out by Mr. Lachance identified a situation that may arise again on the same ship if it returns to the wharf of Compagnie d'Arrimage de Québec Ltée., or if another ship with the same problem shows up at this wharf for loading or unloading. The employer is advised to take careful note and to make sure that it protects the safety and health of its employees in such an eventuality. The present case does not involve an error of investigation, but a technical error only. In my opinion, the investigation has all the merits of an excellent investigation. However, the direction must be rescinded because Mr. Lachance was not at the time authorized pursuant to the *Code* to investigate the matter and issue a direction to the employer.

For all the above reasons, I HEREBY RESCIND the direction dated August 25, 1997, issued to Compagnie d'Arrimage de Québec Ltée pursuant to subsection 145(2)(a) of the *Code* by Mr. Bernard Lachance, and initialled by Mr. Gilles Marcotte.

Decision rendered February 24, 1998.

Serge Cadieux
Regional Safety Officer

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

DIRECTION TO THE EMPLOYER UNDER PARAGRAPH 145(2)(a)

On August 14, 1997, the undersigned safety officer visited the work place operated by Compagnie d'Arrimage de Québec Ltée / the ship LEFKOTHEAL, being an employer subject to the *Canada Labour Code*, Part II, at 961 Champlain Blvd., P.O. Box 1502, Quebec City, Quebec, the said work place being located in section 102 of the Port of Quebec. After inspecting the said work place, and considering that the operation of the cargo ship cranes constitutes a danger to an employee or employees while at work:

The operation of closing or opening the valves on the derrick controls should never be performed while working with loads.

Hereby directs the said employer, pursuant to paragraph 145(2)(a) of the *Canada Labour Code*, Part II, to immediately take measures for guarding the source of danger.

Issued at Quebec City, this 25th day of August 1997.

Bernard Lachance
(original signed by Mr. Lachance)
for Gilles Marcotte
(original initialled by Mr. Marcotte)
Safety Officer No. 3028