

CANADA LABOUR CODE
PART II
OCCUPATIONAL SAFETY AND HEALTH

Review under section 146 of the Canada Labour Code,
Part II, of a direction given by a safety officer

Applicant: Brian Braceland
Coordinator, Occupational Safety & Health Group
National Research Council Canada
Ottawa, Ontario

Respondent: Ed Renaud
Research Council Employees Association
Ottawa, Ontario

Mis-en-cause: Pierre Guénette
Safety Officer
Human Resources Development Canada

Before: Serge Cadieux
Regional Safety Officer
Human Resources Development Canada

This case was decided on the basis of the report of the safety officer and the reasons submitted by the employer. Mr. Ed Renaud of the Research Council Employees Association has shown no interest in participating in the proceedings before the Regional Safety Officer.

Background

A direction (ANNEX) was issued under subsection 145(1) of the Canada Labour Code, Part II (the Code) following the fatal accident of an electrician on the premises of the National Research Council of Canada (NRC). Following the request for review of the direction, the safety officer submitted his report and acknowledged that NRC was not the employer of the deceased electrician. On this basis, the safety officer recommended the Regional Safety Officer rescind the direction. The review process nonetheless followed its normal course and parties were invited to make submissions.

Investigation of the Safety Officer

Since there is no disagreement on the facts, I have decided to reproduce textually the safety officer's report.

On June 17, 1998, a certified electrician (Christian Cyr) was killed as a result of an accident at National Research Council of Canada, in building M-55. The victim was an employee of McCauley Electric, a company that comes under the provincial jurisdiction. The work site is under the federal jurisdiction. On June 18, 1998, a verbal direction was issued and confirmed in writing June 19, 1998.

McCauley Electric had signed a contract to perform some work inside buildings M-54 and M-55 with the National Research Council of Canada.

In the morning of June 17, 1998, two employees (Christian Cyr and Pierre Bédard) did some work on an electrical panel in the building M-54. They started working on the electrical panel only after electricians from the National Research Council of Canada had made the isolation of the system and verified that there was no voltage at the existing isolation switches and the associated isolation switches. The work was done at approximately 1:00 p.m. After lunch, Christian Cyr and Pierre Bédard removed their tools from building M-54 and went to building M-55 and set up their tools and preparation (sic) in the diesel room of Building M-55, to get ready for the shutdown for that part of the project, that was scheduled for 5:00 p.m. The work was to start only after the isolation of the power from the existing transfer switch. At 4:40 p.m., the Contract Coordinator for the National Research Council of Canada, Fernand Maisonneuve went to the diesel room of Building M-55 to see the two employees. At that time, Pierre Bédard had opened the electrical panel in order to check the phasing of the system, that has to be done before the isolation. Pierre Bédard was not working on the system when Fernand Maisonneuve was at the site. Fernand Maisonneuve informed the two employees that he would come back at 5:00 p.m. to perform the isolation. At approximately 5:00 p.m., Fernand Maisonneuve was informed by phone about an accident at Building M-55. When he arrived at Building M-55, Christian Cyr was on the floor and someone was performing C.P.R. on him, trying to revive him. After that the Fire Department arrived on the site. Christian Cyr was pronounced dead at 4:45 p.m..

At the time of the accident there was only Pierre Bédard in the room with Christian Cyr. According to Pierre Bédard, Christian Cyr was working with a drill at the time of the accident. It seems that Christian Cyr was drilling some holes at the bottom of the right side of the electrical panel. The door of the electrical panel was open. For an unknown reason, the head of Christian Cyr touched the live (600V) circuits and he had been electrocuted instantly. Both electricians were not authorized to work on the electrical panel before the isolation of the system.

The Ontario Ministry of Labour was informed of the accident. The first officer on site was Gina Gnassi at 9:00 p.m.. The officer in charge of the investigation (Don Cote) was at the site at 10:25 p.m..

The undersigned Safety Officer attended the scene at 7:50 p.m.. My role in the investigation was to determine the level of involvement of the Contract Coordinator Fernand Maisonneuve and the other employees of the National Research Council of Canada with respect to that specific contract and also to check their safety procedures in place for use of federally regulated workers

On June 17, 1998, at this phase of the investigation, it was not clear if employees who were authorized to work with electrical equipment were working in a safe manner with live equipment. Therefore, I issued a verbal direction to Wilf Hidlebaugh (Manager, Area "A" Facilities Maintenance administrative Services & Property Management Branch). The direction was confirmed in writing on June 19, 1998, to Brian Braceland (Coordinator, Occupational Safety and Health Group). On the following days, the National Research Council of Canada demonstrated to me that their group of employees authorized to work with electrical equipment do have a safety procedure in place to follow when they work with live equipment. Upon further investigation and discussion, it was confirmed that employees always follow the safety procedures in place.

Employer submission

In a letter dated 22 June 1998 addressed to the safety officer, Mr. Braceland wrote:

It should be noted as we discussed on Thursday 18 June that there remains come(sic) confusion over the terminology used in the direction. For purposes of clarification, I have added some phraseology in brackets. The statement then reads 1. An electrician (this was not an NRC electrician) worked on live electrical equipment without a safety ground connected to the equipment, contrary to the employer's established procedures (owner's established procedures as NRC is the owner and NRC was not the employer in this situation). Thus, NRC staff did not contravene the provision of sub-paragraph 125(d)(iii) of the Canada Labour Code, Part II ((as there was no requirement to post any direction prior to the accident)) and paragraph 8.5(1)(b) of the Canada Occupational Safety and Health Regulations ((as no employee of NRC was involved)).

Mr. Braceland requested the direction be reviewed and asked the safety officer to rescind it. The direction was passed on to the Regional Safety Officer, as it properly should, for review.

Decision

The issue to be decided in this case is whether this case attracts federal or provincial jurisdiction and, depending on the outcome, whether the NRC can be held to be in contravention of sub-paragraph 125(d)(iii) of the Code and paragraph 8.5(1)(b) of the Canada Occupational Safety and Health Regulations (the Regulations).

It has been established to my satisfaction that McCauley Electric is a company that comes under provincial jurisdiction. In any event, in the absence of evidence to the contrary, I am prepared to accept NRC's statement as well as the safety officer's assertion to this effect since this matter was also investigated by provincial authorities. Mr. Christian Cyr, the deceased electrician is an employee of McCauley Electric and not an employee of NRC. Both McCauley Electric and the victim are covered by provincial occupational safety and health legislation and not by the federal Canada Labour Code, Part II (occupational safety and health) and no-one has come forward to challenge the jurisdiction of the company in this case. On this basis alone, the direction is not justified since NRC has no authority and no jurisdiction over the victim. The safety officer exceeded his authority by issuing a direction to NRC. It is therefore my ruling that this matter is a

provincial jurisdiction matter and not a federal jurisdiction matter. Consequently, NRC is not in contravention of the Code and the Regulations as specified in the direction.

For the above reason, **I HEREBY RESCIND** the direction issued under subsection 145(1) of the Code on June 19, 1998 by safety officer Pierre Guénette to NRC.

Decision rendered on September 16, 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 SUBSECTION 145(1)

On June 18th, 1998, the undersigned safety officer conducted an inquiry in the work place operated by NATIONAL RESEARCH COUNCIL CANADA, being an employer subject to the Canada Labour Code, Part II, at Building M-55, MONTREAL ROAD, OTTAWA, ONTARIO, the said work place being sometimes known as National Research Council Canada, Montreal Road Campus.

The said safety officer is of the opinion that the following provision of sub-paragraph 125(d)(iii) of the Canada Labour Code, Part II and paragraph 8.5(1)(b) of the Canada Occupational Safety and Health Regulations, are being contravened:

1. An electrician worked on live electrical equipment without a safety ground connected to the equipment, contrary to the employer's established procedures.

Therefore, you are HEREBY DIRECTED, pursuant to subsection 145(1) of the Canada Labour Code, Part II, to terminate the contravention no later than June 18th, 1998.

Issued at Ottawa, this 19th day of June 1998.

PIERRE GUÉNETTE
Safety Officer
1759

TO: NATIONAL RESEARCH COUNCIL CANADA
NATIONAL RESEARCH COUNCIL
ADM. SERV. & PROPERTY MGT BR.
MONTREAL ROAD, M-19
OTTAWA, ONTARIO
K1A 0R6

SUMMARY OF REGIONAL SAFETY OFFICER DECISION

Applicant: National Research Council Canada

Respondent: Research Council Employees Association

KEYWORDS

PROVISIONS

Code: 125(d)(iii), 145(1)

Regulations: 8.5(1)(b)

SUMMARY

An electrician working for a provincial contractor was electrocuted while working on the premises of the National Research Council (NRC) of Canada, a federal establishment. The safety officer issued a direction to NRC for allowing the victim to work under unsafe conditions. However the safety officer later acknowledged the company for which the victim was working came under provincial jurisdiction and the direction should not have been issued to NRC, a federal enterprise. On review the RSO agreed the NRC could not be held in contravention of the Code and the Regulations as this matter was a provincial jurisdiction matter. The RSO **RESCINDED** the direction.