

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: Canadian Auto Workers
Represented by: Robert W. Bourrier

Respondent: Canadian National Railway Company
Prince George, British Columbia
Represented by: Donald N. Kruk

Mis-en-cause: Todd Campbell
Safety Officer
Human Resources Development Canada

Before: Douglas Malanka
Regional Safety Officer
Human Resources Development Canada

On November 16th and 17th, 1998 safety Officer Todd Campbell conducted an inquiry in the work place operated by Canadian National Railway Company (CN) following a refusal to work. He then issued a direction to the employer under paragraph 145(2)(a) on November 19, 1998. The safety officer was of the opinion that requiring a CN Carman to perform the Winterization Program on coal railcars alone in a remote and unoccupied area of the yard constituted a violation of section 124 of the Canada Labour Code, Part II (hereafter the Code) and a danger.

On December 14, 1998, the Canadian Auto Workers's Union requested a review of the direction 25 days after the written direction was issued to the Company. Subsection 146(1) of the Canada Labour Code establishes a mandatory time limit of fourteen (14) days to request a review of a direction. Consequently, I find that I do not have jurisdiction to review the direction.

For the above reason, I hereby dismiss the request for review of the above-noted direction on the basis that it is untimely.

Issued on May 3rd, 1999

Douglas Malanka
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 November 16-17th, 1998, the undersigned safety officer conducted an inquiry following the refusal to work made by Shawn Spencer in the work place operated by CANADIAN NATIONAL RAILWAY COMPANY, being an employer subject to the Canada Labour Code, Part II, at Building # 1, and Track 53, 855 River Road, Prince George, B.C., the said work place being sometimes known as the Prince George Yard.

The said safety officer considers that the following provision of the Canada Labour Code, Part II is being contravened, by requiring Shawn Spencer, a CN Carman, to perform the Winterization Program on coal railcars alone, in a remote and unoccupied area of the yard and that this situation constitutes a danger to an employee while at work:

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

The Winterization Program consists of changing all eight brake shoes on a coal railcar. The work is labour intensive as the employee must use a four foot long pointed metal pry-bar to pry the old brake shoe away from the wheel. The bar presents one potential hazard to the employee in the event that he slips and falls against it. The work becomes progressively more difficult to replace the last few brake shoes on a car, requiring more force on the pry-bar, which increases the possibility of the bar or the employee slipping. The work is performed in close proximity to the railcar jack plate protrusion that presents a hazard to the employee hitting his head in the event that he loses his footing. Often the employee must climb a railcar ladder to operate the hand brake, which introduces the possibility of falling. On occasion the air brakes "set-up" during the work, which may result in the pry-bar being clamped between the old brake shoe and the wheel, and the bar hitting the employee. In addition Shawn Spencer was being asked to perform this work at night, which required that he use a portable flashlight to see the locking pin that holds the brake shoes in place. The difficulty of seeing the pin increases the amount of time and effort he would have to expend on each brake shoe, and therefore increases his exposure to the above hazards. And finally, given that Shawn Spencer was working alone in a remote and unoccupied area of the yard, if he did suffer a major injury that prevented him from using the radio to call for assistance, his condition could remain undetected for up to 30 minutes.

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

Issued at Surrey, B.C., this 19th day of November 1998.

Todd Campbell
Safety Officer

To: CANADIAN NATIONAL RAILWAY COMPANY
Building # 1, 885 River Road, P.O. Bag 9400
Prince George, B.C.
V2L 5M5

SUMMARY OF REGIONAL SAFETY OFFICER DECISION

Applicant: Canadian Auto Workers

Respondent: Canadian National Railway Company
Prince George, B.C.

KEYWORDS

Railcars, hazard, brake shoe, pry-bar.

PROVISIONS

Code: 124, 145(2)(a),
Reg: n/a

SUMMARY

A safety officer gave a direction to Canadian National Railway Company. Canadian Auto Workers's Union requested a review of the direction. Because of the untimely nature of the request, the RSO had no jurisdiction to review the direction. The request was therefore dismissed.