Decision No.: 99-011

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: Cape Breton Development Corporation
Represented by: T. MacNeil.

Respondent: United Mine Workers of America
Represented by: M. Warren

Mis-en-cause: Bill Gallant
Safety Officer
Human Resources Development Canada

Before: Douglas Malanka
Regional Safety Officer
Human Resources Development Canada

## Background

On October 13, 1998, safety officers investigated the refusal to work by two chain runners employed by Cape Breton Development Corporation at Point Aconi Road, Point Aconi, Nova Scotia. The employees refused to operate a trip[1] to transport heavy roof jacks[2] weighing 6 to 7 tonnes into the mine because the only other available trip was out of service. According to their right to refuse work complaint, the employees feared that the heavy equipment could fall or be dislodged from the trip and damage the track or the rope rendering the trip unusable. They held that this constituted a danger for miners working in the mine because, if this were to occur, there would be no rake available to evacuate the miners in an emergency.

[1] In this review, parties used the terms “tram,” “rake," “slope” and “trip” almost interchangeable when referring to the conveyance used in mines to transport people and the heavy roof support jacks in and out of the mines. The only term that is defined in the Coal Mines (CBDC) Occupational Safety and Health Regulations is the term, “trip” which is defined as *“a mine car or mine cars connected together.”* In turn, “man car” is defined as, *“a vehicle that is used underground to transport persons along a fixed rail, track or trolley beam”*, and a “material car” is defined as, *“a vehicle that is used underground to transport material or equipment along a fixed rail, track or trolley beam.”*

The Shorter Oxford English Dictionary (1993) defines the word “rake“ as “a series of wagons or carriages on a railway or of wagons or trucks in a mine or factory,” and the word “slope” to mean, “(Mining) - an inclined roadway.” In my decision, the terms “trip” or “rake” refer to the conveyance and all ancillary equipment consisting of ropes, rails, tracks, or trolley beams as the case may be. The terms “rake road” and “slope” refer to the roadway upon which or wherein the “trip” or “rake” are constructed and operate regardless of whether the terms apply in other respects.

[2] The term, “roof jack,” “jack” or “hydraulic powered roof support” was described at the hearing as being a device used to support the long wall face.

Safety officers from Human Resources Development Canada (HRDC) investigated the refusals to work and decided in the circumstances that the use of the rake to transport roof jacks did not constitute a "danger"[3] under the Canada Labour Code (hereto referred to as the Code or Part II) for the other miners working in the mine. This was because the employer has contingency procedures to deal with the situation when both trips are out of service.

However, the safety officers decided that a "danger" existed for the chain runners who exercised their right to refuse. They learned from the employees refusing to work that they did not know the exact height of the jack, the location of areas of restricted clearance in the shaft, or the exact clearances above and to the sides of the material car and jack available in areas of restricted clearance. In the safety officers' opinion, it was reasonable in the circumstances to expect that, if the chain runners proceeded with transporting a jack into the mine, the jack would strike the roof supports or the walls in an area of limited clearance in No. 2 Slope and injure the chain runners. A safety officer issued a direction pursuant to subsection 145.2(a) and directed the employer to immediately protect the safety and health of the employees. A copy of the direction is attached as Appendix 1.

On October 23, 1998, the employer requested a review the direction pursuant to section 146 of the Code. A hearing was held on February 17, 1999, by the Regional Safety Officer.

**Safety Officer:**

Safety officer Bill Gallant submitted a written report to the Regional Safety Officer on November 9, 1998, which provided information leading up to his direction dated October 13, 1998. The Report forms part of the file and will not be repeated here. I retain the following facts from safety officer Gallant's Report and testimony.

The two chain runners who exercised their refusal to work under Part II told the safety officers that they refused to transport heavy equipment on the trip because of a time honoured practice or tradition in the mine not to use a trip for transporting heavy equipment when the only other trip was out of service. They held that transporting the jacks was a high risk activity that could put the trip out of service. If this were to occur, the safety and health of miners working in the mine would be in danger because the only other available trip was out of service. As a result, there would be no way of transporting the miners out of the mine in an emergency.

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[3] The term "danger" is defined in subsection 122.(1) of the Canada Labour Code as:
*"SS 122.(1)danger" means any hazard or condition that could* <u>*reasonably be expected*</u> *to cause injury or illness to a person exposed thereto* <u>*before*</u> *the hazard or condition can be corrected." [My underline.]*

The New Shorter Oxford English Dictionary (1993) defines danger in broader terms as being, "…liability or exposure to harm, injury, risk, peril..." It should be noted that, unlike the definition found in the Canada Labour Code, the common dictionary definition does not qualify or quantify a time frame or probability relative to the liability or exposure to harm causing an injury or illness.

Safety officer Gallant confirmed that neither of the employees refusing to work claimed that the existing track, the hoist rope or the mine cars[4] constituted a "danger". However, he recalled that the chain runners told him that they did not know the exact clearances available in areas of restricted clearance and that there was some areas along No. 2 Slope which had less than one inch clearance above a fully retracted jack. They also stated that there was one area where the clearance to the side of the trip was less than one inch.

The employees explained to the safety officers that the procedure was to transport one jack at a time and to reduce the normal speed of the trip to approximately half. The speed of the trip was further reduced when they approached and passed through a section where the chain runner suspected or knew that there were reduced clearances. The safety officer testified that proceeding down the mine under these circumstances was a "danger" for the chain runners because they could only proceed down the mine until they got stuck and then react to whatever occurred. Safety officer Gallant acknowledged that "danger" specified in his direction was different from the danger claimed by the chain runners who exercised their right to refuse work. He did not find a "danger" in respect of the employees' complaint because there were contingency plans in place to deal with a situation where a trip becomes unusable. These included halting mining activity in the mine until the operation of the trip was reestablished.

Safety officer Gallant explained that some clearances in No. 2 Slope are less than the minimum occupational safety and health standard of 300 mm specified in subparagraph 60.(1)(d) of the Coal Mines (CBDC) Occupational Safety and Health Regulations (CBDC OSH Regulations) and that this has been the case for several years. He explained that the Company has been able to continue operations in No. 2 Slope because the Coal Mining Safety Commission (CMSC) has exempted the Company from complying with paragraph 60.(1)(d) of the CBDC OSH Regulations in respect of No. 2 Slope through a series of Exemptions[5]. According to safety officer Gallant, the first Exemption was granted on April 12, 1994 and remained in force until April 12, 1996. That Exemption was renewed on March 27, 1996 and made effective to March 27, 1998. The current Exemption was renewed on October 1, 1998, and made effective to October 1, 2000. The current Exemption, like the previous ones, is conditional on the Company complying with conditions specified therein.

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[4] The following definitions appear in the Coal Mines (CBDC) Occupational Safety and Health Regulations:
*"mine car" means a man car or a material car; (wagonnet de mine)*
"man car" means a vehicle that is used underground to transport persons along a fixed rail, track or trolley beam; (*wagonnet de transport des personnes*)
"material car" means a vehicle that is used underground to transport material or equipment along a fixed rail, track or trolley beam; (*wagonnet de transport du matJriel*)

[5] Subsection 137.2(3) and 125.3(1) reads:

"SS 137.2(3) <u>On the application</u> of an employer, the Commission may, where in its opinion protection of the safety and health of employees <u>would not thereby be diminished</u>, by order,
(*a*) <u>exempt</u> the employer from compliance with any provision of the regulations in the operation of coal mines controlled by the employer, <u>subject to any conditions contained in the order</u>; or…" [My underline.]

"SS 125.3 (1) Every employer of employees employed in a coal mine shall
(*a*) <u>comply with every condition imposed</u> on the employer pursuant to paragraph 137.2(2)(*b*) or <u>[137.2](3)(*a*);</u> [My underline.]

Safety officer Gallant testified that one of the conditions in the current Exemption is that an indicator must be affixed to the trip at all times to provide early indication of reduced clearance. This is so employees can take remedial action prior to reaching an area where the clearance above the trip or load is 150 mm or less. Item 2 of the Conditions reads:

> "Item 2. A indicator shall be affixed to the trip at all times to provide early indication of reduced clearance so that remedial action can be taken prior to reaching 150 mm clearance."

The safety officer confirmed that, on the night of the refusal to work, a man car was equipped with an adjustable indicator set to detect clearances of 150 mm (equivalent to approximately 6 inches) or less above the man car. He stated, however, that the minimum height of a retracted jack on the material car is 57 inches, while a man car is only 54 inches. Moreover, the height of the jack could be even greater depending on whether it had been completed retracted prior to being placed on the tram, and its placement or orientation on the material car. As a result, safety officer Gallant held that the indicator on the man car was not useful for indicating the clearances above the material car and jack.

Safety officer Gallant further pointed out that item #2 of the Exemption conditions further requires that the aforementioned indicator be affixed to the trip "so that remedial action can be taken prior to reaching the restricted clearances." The safety officer held that, since a trip includes both a man car and an material car, the indicator should have been affixed to the material car with the jack to comply with the condition imposed by the CMSC for the Exemption.

Reference was also made by safety officer Gallant to Item # 3 of the Exemption which reads:

> "Item 3. A detailed survey of the haulage roads will be conducted and a plan prepared by October 31, 1998, which clearly shows:
> (a) the extent of the reconstruction completed,
> (b) areas where clearance is less than 150 mm,
> (c) areas where clearance is between 150 mm and 300 mm, and
> (d) a comparison with similar areas shown in Drawing 476-T, Revision 2."

He attested that, at the time of the refusals and his investigation of them, the up-dated survey was not available to him. As a result, the Company was not in compliance with this condition of the Exemption.

He further pointed out that a fourth condition of the Exemption was that:

> "Item 4. The above survey results shall be submitted to the Joint Safety and Health Committee and the Coal Mining Safety Commission by October 31, 1998."

Safety officer Gallant noted that, at the time of the refusals and his investigation of them, the up-dated survey was not available to the joint occupational safety and health committee.

Finally, safety officer Gallant referred to Item # 5 of the 1998 Exemption which states that:

> "Item 5. All areas of the rake roads where clearance above the top of any load or trip is 150 mm or less are to be clearly indicated and test strip indicators placed on all steel roof beams where clearance is 150 mm or less."

Safety officer Gallant had two concerns relative to the Company's compliance with this Exemption condition. His first concern was that the location of the existing strip test indicators was based on survey data from previous surveys conducted in 1996 or 1997, and not on current survey data due on October 31, 1998. His second concern was that the placement of strip test indicators in No. 2 Slope was based on clearance measurements above a man car and not the material car and jack. As a result, safety officer Gallant felt that there was a "danger" for the chain runners, despite the fact that a quantity of the jacks had been transported out of the mine on No. 2 Slope within recent months.

**Applicant:**

Mr. MacNeil, Mine Manager, Prince Mine submitted a copy of mine survey plans or Prince Colliery prior to the hearing and distributed a document outlining his reasons for requesting that the direction issued by safety officer Gallant be rescinded. These and his testimony form part of the file and will not be repeated here. I retain the following from his documents and testimony.

Mr. MacNeil provided an overview of the history of the development of Prince Mine. He indicated that the Company began in 1983 to use the type of roof jacks currently being used. He said that, when the CBDC OSH Regulations were amended in 1990, the Company knew the rake roads in Prince Colliery did not meet the new requirements in subparagraph 60.(1)(d) of the Regulations. As a result, the Company applied to the CMSC for an exemption to subparagraph 60.(1)(d) and obtained an Exemption, with conditions, on April 12, 1994. The Exemption was renewed on March 27, 1996 and October 1, 1998. He indicated that over 1000 jacks have been transported without incident on No. 2 and 3 No. Slopes.

He then referred to the Prince Mine survey plans that had been prepared in compliance with the conditions of the Exemptions granted by the CMSC on March 31, 1994, March 11, 1996 and October 21, 1998. He stated that areas that have been reconstructed are in green, areas with less than 300 mm (approximately 12 inches) clearance are in yellow, and areas with less than 150 mm (approximately 6 inches) clearance are in red. He pointed out that re-brushing has continued since 1994 and that conditions have vastly improved over time.

Mr. McNeil submitted dictionary definitions for the words "reasonable" and "knowledge" and argued that employees had a "reasonable knowledge" of the clearances. He insisted that the chain runners who refused to work knew that the height of a retracted jack was 57 inches, that the jacks were higher than the man car, and that the indicator mounted on the man car was there in accordance with the CMSC Exemption. He reiterated that, over the years, employees had transported more than 1000 shields without incident. He further held that the employees had reasonable knowledge of the clearances because strip test indicators had also been applied to the

roof supports where the clearance was 150 mm, or less, in compliance with the conditions of the Exemption.

He further pointed out that the employees refused to work because transporting heavy equipment, like the jacks, was contrary to a long held custom or tradition not to transport heavy equipment when the only other trip was out of service. They had not refused because of the clearances.

**Respondent:**

Mr. Warren confirmed that the two chain runners refused to transport the heavy jacks into the mine because the employer failed to comply with a time-honoured practice or tradition of not transporting heavy equipment on a trip when the only other trip was out of service. He emphasized that this was important because Prince Mine goes out several miles under the sea. Should an employee suffer a heart attack or sustain an injury there would be no way of getting the miner out of the mine quickly. He confirmed that, at the time of their work refusal, the two refusing employees were not concerned about the existing condition of the rope, the track or any of the mine cars. Rather, their concern was that the trip would be put out-of-service if something caused the trip to go off the road and the rope was damaged. Mr. Warren agreed with the safety officers that the two employees who refused to work had mentioned the reduced clearances in the mine as one of the factors that could cause the jack to leave the trip.

**Arguments:**

Mr. MacNeil reiterated that the refusal by the employees was not due to their concern over the rope, the track, the trip or the clearances. Rather it was their concern that a custom or tradition of not transporting heavy equipment on a trip when the only other one is out of service was not being followed.

He added that the task of brushing the walls has taken a long time and the CMSC Exemption had to be renewed in 1996 and 1998. Given this extended time period, and the surveys prepared as condition of the Exemptions, he held that all employer representatives, union officials, employees and safety officers at HRDC know about the restricted clearances. He argued that the “danger” cited by safety officer Gallant was based on “what ifs” rather than something real or immediate. He reiterated that the employees had “reasonable knowledge” of the clearances because they have traveled the mine on numerous occasions and know where areas of limited clearance occur. In addition, he reiterated that; over 1000 jacks have been transported without incidence; the man car was equipped with an indicator; and test strip indicators were in place in the mine as required by the Exemption.

For his part, Mr. Warren complained that safety officer Gallant has never informed the refusing employees of his decision concerning the danger they specified at the time of the refusal. He indicated that he expected me to address their concern in my decision.

**Decision:**

Prior to deciding the matter, I must address myself to Mr. Warren's complaint at the hearing that safety officer Gallant never advised the employees who refused to work of his decision regarding the danger they had cited. I must also address his insistence that I rule on the danger cited by employees in my decision.

In this regard, parties will recall that I held a telephone conference on February 19, 1998, 2 days following the hearing, to discuss this issue. I confirmed that section 146 of the Code only authorizes me to review the direction actually issued by the safety officer for the purposes of varying, rescinding or confirming it. Subsection 146.(3) reads:

> 146.(3) The regional safety officer shall in a summary way inquire into the circumstances of the direction to be reviewed and the need therefor and may vary, rescind or confirm the direction and thereupon shall in writing notify the employee, employer or trade union concerned of the decision taken.

I stated further that I could not comment on whether or not transporting jacks constituted a "danger" for miners working in the mine when the only other trip is out of service. This was because safety officer Gallant's testimony at the hearing was that he decided that there was no "danger" for the other miners, and so informed the employer and the employees refusing to work of his decision. In this regard, subsection 129.(5) of the Code states:

> 129.(5) Where a safety officer decides that the use or operation of a machine or thing does not constitute a danger to an employee or that a condition does not exist in a place that constitutes a danger to an employee, an employee is not entitled under section 128 or this section to continue to refuse to use or operate the machine or thing or to work in that place, but the employee may, by notice in writing given within seven days of receiving notice of the decision of a safety officer, require the safety officer to refer his decision to the Board, and thereupon the safety officer shall refer the decision to the Board. [My underline.]

I suggested to Mr. Warren that, if the employees who exercised their right to refuse work under the Code insist that safety officer Gallant has not notified them of his decision concerning the danger to the other miners, they could request the safety officer to refer his decision to the Board and seek their determination respecting the matter and the timeliness of their appeal. In any event, the Regional Safety Officer is not authorized to address a safety officer decision of no "danger."

In the case before me, safety officer Gallant decided that transporting a jack on No. 2 Slope without having a reasonable knowledge of the clearance that exists over top and to the sides of the load constituted a "danger" for the chain runners. He issued his direction pursuant to subsection 145.(2)(a)[6] of the Code and ordered the employer to protect any person immediately.

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[6] Subsection 145.(2)(a) reads:

"SS145.(2)(a) Where a safety officer considers that the use or operation of a machine or thing or a condition in any place constitutes a danger to an employee while at work,

(*a*) the safety officer shall notify the employer of the danger and issue directions in writing to the employer directing the employer immediately

Therefore, the issue I must decide is whether I agree with safety officer Gallant that the transportation of the heavy equipment constituted a "danger" within the meaning of the Code for the chain runners who were required to transport the jack the night of his investigation. If I agree that a "danger" existed for the chain runners in question, I must then decide if this was related to their level of awareness or knowledge concerning clearances in the mine, or to some other factor.

In this regard, safety officer Gallant held that the employees who exercised their right to refuse did not have reasonable knowledge of the clearances that were available in the mine because the employer was not in compliance with several conditions of the 1998 Exemption granted by the CMSC. He explained that the employer was not in compliance with Item 2 of the CMSC Exemption which requires that:

> "Item 2. A indicator shall be affixed to the trip at all times to provide early indication of reduced clearance so that remedial action can be taken prior to reaching 150 mm clearance." [My underline.]

For interpreting this provision, I note that there are two criteria contained therein. The first establishes that the indication provided by the indicator must come in advance of the trip actually reaching the point where the clearance above the trip is 150 mm or less. The second is that the advance indication must be early enough to provide the operator with sufficient time to take remedial action. As a result, one cannot interpret this provision to mean that the indicator is only required to indicate when the clearance above the trip is 150 mm or less. Rather, the indicator must indicate in advance when the clearance above the trip is about to be 150 mm or less, and the indication must come early enough that the operator can take remedial action prior to actually reaching the point where the clearance is 150 mm.

In practical terms, this appears to mean that the indicator affixed to the trip must be located and/or calibrated so that it detects clearances relative to the highest point on the trip. It also appears to mean that the indicator must be affixed sufficiently forward of the highest part on the trip, or be capable of detecting clearances in advance of a trip, so that it provides sufficient advance notice to the operator of reduced clearances, taking into account the speed of the trip and the speed of the indicator response. Given the evidence in this case, I agree with safety officer Gallant that is unlikely that the indicator affixed to the man car the night of his investigation of the refusal to work would have been capable of indicating when the clearance above the jack was 150 mm or less with sufficiently early indication that the operators could take remedial action.

Safety officer Gallant testified that the employer was not in compliance with Item 3 of the CMSC Exemption dated October 1, 1998, because the detailed survey plan specified therein was not available at the time of this investigation. He further pointed out that the previous CMSC Exemption had expired on March 27, 1998. As a result, he held the survey plan was out-of-date at the time of his investigation.

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or within such period of time as the safety officer specifies
(i) to take measures for guarding the source of danger, or
(ii) to protect any person from the danger; and…"

While, I agree with safety officer Gallant that the March 1996 Exemption had expired for a period of time and, technically, the surveys were outdated, I can not give it much weight as proof that employees were not knowledgeable concerning the clearances. I note that the interval between surveys by Exemptions was from 1 to 2 years. That is, the first Exemption required a survey plan by March 1995, the second Exemption required a survey plan by March 1997 and the current Exemption by October 31, 1998. For the same reason, I cannot give a great deal of weight to the fact the updated survey plan had not been submitted to the joint safety and health committee at the time of safety officer Gallant's investigation. This is because the updated survey plan was not required until October 31, 1998 and the previous one had been submitted on March, 1997.

Next, safety officer Gallant testified that the employer was not in compliance with Item 5 of the Exemption. Item #5 requires that:

> "Item 5. All areas of the rake roads where clearance above the top of any load or trip is 150 mm or less are to be clearly indicated and test strip indicators placed on all steel roof beams where clearance is 150 mm or less."

For interpreting this condition, I note that the provision requires that test strip indicators be placed on all roof beams where the clearance between the trip or load and the roof beam is 150 mm or less. As pointed out by safety officer Gallant, trip refers not only to the man cars but also to the material cars. Therefore, it seems to me that the Exemption requires that test strip indicators be placed wherever the clearance above the material car and retracted jack is 150 mm or less. Therefore, I would agree with safety officer Gallant that the placement of the test strip indicator does not comply with this provision of the CMSC Exemption and the chain runners could not rely on the test strip indicators to alert them of limited clearances relative to the jack.

Finally, safety officer Gallant stated that his investigation of the two refusals to work also established that the employer had not complied with Item 7 of the CMSC Exemption because the chain runners had not been informed of the procedures to follow in areas of reduced clearance. While there was no deadline specified in the Exemption for completing this, it was a new provision not previously included in the CMSC Exemptions. Therefore, I regard this as a significant provision in the Exemption.

Based on the discrepancies safety officer Gallant noted between the actual practice at the mine and the Exemptions conditions, I am in agreement with safety officer Gallant that the employer is not in full compliance with the Exemption conditions. However, since a violation of a safety and health standard does not necessarily constitute a "danger," I must still decide whether the transportation of the heavy equipment constituted a "danger" for the chain runners who exercised their right to refuse work because they lacked reasonable awareness or knowledge concerning clearances in the mine, or to some other factor.

In this regard, Mr. MacNeil argued that employees are generally knowledgeable concerning the clearances and have transported numerous jacks over the years without incident. He also noted that the employees who exercised their right to refuse did so because of concerns for the miners working below and not out of concern for their own safety and health.

However, the Exemption granted by the CMSC requires the employer to inform employees concerning clearances available in the mine through their safety and health committee. The Exemption also requires the employer to inform the chain runners and mine examiners of the procedures to be followed in areas of reduced clearance through safety talks. In my view, this establishes the requirement, for safety reasons, for a high level of knowledge as opposed to a general or indefinite knowledge. Therefore, I cannot give significant weight to Mr. MacNeil's argument that the employees who exercised their right to refuse possessed reasonable knowledge concerning the clearances for the reasons specified.

In the case before me, the practical evidence is that; these chain runners did not know the exact clearances available in areas of restricted clearance; did not know the exact height of the material car and jack relative to the rake road; had not being briefed on proper procedures to follow in areas of reduced clearance; and, could not rely on the indicator on the man car, or the test strip indicators to warn them of reduced clearances relative to the jack. Notwithstanding this, the procedure was to proceed down the mine at approximately half normal speed and to reduce the speed of the trip further if they suspected or knew that there was reduced clearances. This being the case, I tend to agree with safety officer Gallant's assessment that the procedure was to simply proceed down the mine until they struck the roof or walls of the rake road and to react thereafter. I suggest that the chain runners intuitively understood that transporting jacks under the circumstances was a "danger". Only, they refused to do the work out of concern for the safety and health of their fellow miners working below rather than their own.

Given the hazardous nature of mining in general, the fact that the employer was not in compliance with the Exemption respecting clearance indicators, and the fact that the employees who refused to work did not have the knowledge of clearances required by Exemptions, I agree with safety officer Gallant that a "danger" existed for the chain runners at the time of his investigation and am inclined to confirm the direction in total. However, the employer argued that the chain runners had "reasonable" knowledge to carry out their work and questioned the use of the term, "reasonable knowledge" in the wording of the direction. To properly reflect the requirements in the Exemption, I **HEREBY VARY** the direction issued by safety officer Gallant to the Cape Breton Development Corporation on October 13, 1998, pursuant to subsection 145.(2)(a), to change the term, "reasonable knowledge" to "required knowledge and indications."

In addition, safety officer Gallant referred in his direction to "a condition in any place." However, it is my view that the "danger" related to "the use or operation or a machine or thing" rather than to a condition in the work place. The use of the trip to transport the jacks constituted a "danger" for the chain runners because the employer had not complied with the Exemption conditions and the employees who were required to transport the jacks did not have the required knowledge or indication to carry out the work safely. For certainty, the varied portion of the direction now reads:

> "The said safety officer considers that the use or operation of a machine or thing constitutes a danger to an employee while at work:

> Transporting large loads such as powered roof supports and dintheaders on No. 2 trip without the required knowledge and indication of the clearance that exists over the top and to the sides of the load is a danger." [My underline of the changes.]

Decision rendered on May 3, 1999.

Douglas Malanka
Regional Safety Officer

APPENDIX

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

DIRECTION TO EMPLOYER UNDER SUBSECTION 145(2)

On October 13th, 1998, the undersigned safety officer conducted an inquiry following the refusal to work made by Mr. G. Tanner and Mr. V. MacLean in the work place operated by CAPE BRETON DEVELOPMENT CORPORATION, being an employer subject to the Canada Labour Code, Part II, at POINT ACONI ROAD, POINT ACONI, NOVA SCOTIA, the said work place being sometimes known as Prince Mine.

The said safety officer considers that a condition in any place constitutes a danger to an employee while at work:

> Transporting large loads such as powered roof supports and dintheaders on No. 2 trip without a reasonable knowledge of the clearance that exists over the top and to the sides of the load is a danger.

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

Issued at Point Aconi, this 13th day of October, 1998.

Bill Gallant
Safety Officer
1829

To: CAPE BRETON DEVELOPMENT CORPORATION
PRINCE MINE
POINT ACONI ROAD
POINT ACONI, NOVA SCOTIA
B0C 1B0

Decision No.: 99-011

SUMMARY OF REGIONAL SAFETY OFFICER DECISION

Applicant: CAPE BRETON DEVELOPMENT CORPORATION

Respondent: United Mine Workers of America
Canadian Auto Workers
Canadian Union of Public Employees

## KEY WORDS

Coal mine, chain runner, trip, rake, rake road, slope, power roof supports, limited clearances, surveys, Coal Mining Safety Commission, Exemption, Exemption conditions, danger, right to refuse work, man cars, material cars, indicators, strip test indicators, safety talk, decision of no-danger, Board appeal.

## PROVISIONS

Code: 122.(1), 125.3(1)(a), 137.2(3), 129.(5), 145.(2)(a), 146.(3)
Coal Mines (CBDC) Occupational Safety and Health Regulations: 2, 60.(1)(d)

## SUMMARY

On October 13, 1998, safety officers investigated the refusal to work by two chain runners employed by Cape Breton Development Corporation at Point Aconi Road, Point Aconi, Nova Scotia. The employees refused to operate a trip to transport heavy roof jacks weighing 6 to 7 tonnes into the mine because the only other available trip was out of service. According to their right to refuse work complaint, the employees feared that the heavy equipment could fall or be dislodged from the trip and damage the track or the rope rendering the trip unusable. They held that this constituted a danger for miners working in the mine because, if this were to occur, there would be no rake available to evacuate the miners in an emergency.

Following their investigation, the safety officers decided that the use of the rake to transport a roof jack did not constitute a "danger" under the Canada Labour Code (hereto referred to as the Code or Part II) for the other miners working in the mine. This was because the employer has contingency procedures to deal with the situation when both trips are out of service.

However, the safety officers decided that a "danger" existed for the employees refusing to work because it was reasonable in the circumstances to expect that the jack would strike the roof supports or the walls in areas of limited clearance in No. 2 Slope and injury the chain runners. The safety officer issued a direction pursuant to subsection 145.2(a) and directed the employer to immediately protect the safety and health of the employees.

The Regional Safety Officer reviewed the direction on February 17, 1999, and agreed with the safety officer findings. Nonetheless, the Regional Safety Officer **VARIED** the direction to address two technical matter.