

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: Public Works and Government Services Canada
Charlottetown, P.E.I.
Represented by: Dee Sabiston

Respondent: Union of Public Works Employees
Local 90031
Represented by: Alan Younker

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

Before: Serge Cadieux
Regional Safety Officer
Human Resources Development Canada

A telephone conference was held with the parties and the safety officer on May 4, 1999.

Background

The facts of this case are not disputed. They are described by Ms. Sabiston in the following manner:

“As stated in the report prepared by Pierre St-Arnauld, HRDC Safety Officer, on 14 December 1998, HRDC-Safety Officer, Pierre St-Arnauld, visited the Dominion building. The visit was in response to a request initiated by PWGSC for HRDC to investigate a hazardous situation existing on the roof of the Dominion building. PWGSC’s concern was that two tenant organizations - Emergency Preparedness Canada and AT & T - were creating a physical hazard on the rood (pictures enclosed), thereby exposing EPC and AT&T employees and volunteers to possible injury as a result of the potential risk of tripping and falling. Each of the mandates of these organizations require them to install antennas and other communication devices. AT&T (formerly Unitel, formerly CNCP Telecommunications) have been installing antennas and other devices on the roof of the Dominion Building since they first became a tenant in 1979; EPC since 1998 (they also inherited the antennas installed by Environment Canada, a former tenant). Efforts made by PWGSC to have the situation corrected by the applicable tenant organizations have been

unsuccessful. PWGSC as the owner/custodian, decided it was appropriate to bring the matter to the attention of HRDC.”

The safety officer requested that a PWGSC employee accompany him to inspect the roof of the building in question. He noticed that some of the anchorage points of the antennas guy wires were located at the edge of the roof. In order to secure those wires, someone had to go at the edge of the roof. It was made clear to the safety officer that tenants from various Public Service Departments have no business on that roof except Public Works employees, personnel from AT&T and the P.E.I. emergency organization. The safety officer was of the opinion that the roof is under the control of PWGSC. Therefore, anyone who is granted access to the roof is not protected and is being exposed to the hazard of falling.

The safety officer issued a verbal direction to Mr. Roche, Properties and Facilities Manager, PWGSC, and delivered the written direction (APPENDIX) on December 15, 1998.

Arguments for the Employer

Ms. Sabiston’s detailed arguments are on file. Essentially, Ms. Sabiston noted that the direction given to the employer is a direction for danger to an employee. However, at the time of the safety officer’s inspection, there were no PWGSC employee involved in any operation on the roof. In fact, PWGSC has only one employee housed in that building and “that employee’s job description does not require work to be performed within the 6 feet area from the roof’s edge.”

Furthermore, Ms. Sabiston explains that PWGSC employees were not involved in the installation or maintenance of the antennas or towers on the said roof and, as a consequence, the 6 foot area near the edge of the roof referred to by the safety officer does not constitute a work place for PWGSC employees. The antennas and other devices on the roof are not the property of PWGSC. They were installed by other tenants, however, PWGSC is not the employer of those personnel who made the installation. PWGSC has no responsibility in maintaining that equipment. That responsibility rests with the personnel of EPC and AT&T.

Arguments for the Employees

Mr. Younker confirmed the submissions made by Ms. Sabiston. There are no employees represented by his local working on the roof of the building located at 97 Queen Street.

Reasons for Decision

The issue to be decided in this case is whether the direction to PWGSC is appropriate in the instant case given the arguments of Ms. Sabiston? Essentially, Ms. Sabiston is arguing the direction is not valid because PWGSC is not the proper employer in this case.

The purpose of the Canada Labour Code, Part II (hereafter the Code) is stated at section 122.1 which reads:

122.1 The purpose of this Part is to prevent accidents and injury to health arising out of, linked with or occurring in the course of employment to which this Part applies.

The issue of the application of the Code to employment was first dealt by the Public Service Staff Relations Board (PSSRB) in J. Bidulka et all v Treasury Board, PSSRB Files 165-2-2 to 13, in which Deputy Chairman Michael Bendel wrote:

The application of Part IV (now Part II) is defined, not in terms of places subject to federal jurisdiction, but in terms of employment subject to federal jurisdiction...The “pith and substance” or the “matter” of Part IV is employment.

Since the direction is given to an employer, the employer in this case being PWGSC, it follows that an employer-employee relationship must exist between PWGSC and the employees carrying work on the roof of the building located at 97 Queen Street. In the absence of such a relationship, the direction has no foundation in law and must be rescinded.

The safety officer admitted during the telephone conference that there were no employees of PWGSC working at the site at the time of his inspection. The safety officer explained that he went on the roof merely in response to a request from PWGSC to establish whether a hazard existed to employees in general. According to the safety officer, a PWGSC employee is expected at times to go on the roof to conduct a visual inspection. Nonetheless, the safety officer also acknowledged that no employee of PWGSC was in a situation of danger at the time of his inspection. The safety officer was taking a view of the site but was not responding to a refusal to work under the Code or was not observing an employee about to be injured.

This last point is also important because a direction for danger can only be justified if an employee is in a situation likely to cause injury or illness to him/her before the hazard or condition can be corrected. The abundant jurisprudence that exists in this respect is to the effect that the danger must be real and present at the time of the safety officer’s investigation, it must be immediate and its realization must be more than hypothetical. Obviously, none of the above characteristics existed at the time of the safety officer’s inspection. In the absence of an employee of PWGSC and in the absence of danger, I must rescind the direction.

Decision

For all the above reasons, **I HEREBY RESCIND** direction issued under paragraph 145(2)(a) of the Code on December 15, 1998 by safety officer Pierre St-Arnauld to Public Works and Government Services Canada.

Decision rendered on May 10, 1999.

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 December 14th, 1998, the undersigned safety officer conducted an inspection in the work place operated by PUBLIC WORKS GOVERNMENT SERVICES CANADA, being an employer subject to the Canada Labour Code, Part II, at 97 QUEEN ST. CHARLOTTETOWN, P.E.I., the said work place being sometimes known as Dominion Building.

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

Person granted access to the roof are not protected, with a fall arrest system, when working within 6 feet from the edge.

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 Charlottetown, this 15th day of December 1998.

PIERRE ST-ARNAULD
Safety Officer
1753

To: PUBLIC WORKS GOVERNMENT SERVICES CANADA
1 HARBOURSIDE
BRECKEN-YATES BUILDING
CHARLOTTETOWN, P.E.I.
C1A 7N8

SUMMARY OF REGIONAL SAFETY OFFICER DECISION

Applicant: Public Works Government Services Canada

Respondent: Union of Public Works Employees

KEY WORDS

Edge of roof, danger, employer, employment

PROVISIONS

Code: 145(2)(a)

C.O.S.H. Regulations: 12.10(1)

SUMMARY

Following a request made by Public Works and Government Services Canada (PWGSC) a safety officer inspected a roof of a building where antennas and other devices had been installed by other tenants to determine if a hazard existed to employees working within 6 feet of the edge of the roof. The safety officer felt that a danger existed to employees who would be required near the edge without fall-arrest equipment and gave a direction to PWGSC as the alleged employer. Upon review, it was determined that no employee of PWGSC work at the site in question and that the safety officer did not observe an employee about to be injured during his inspection. The RSO concluded that in the absence of an employer-employee relationship and in the absence of danger, the direction had no foundation in law and RESCINDED the direction.