

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: Ms. Joan Ellis
Employee
Cogeco Cable Systems Inc.
Toronto, Ontario
Represented by: Melissa J. Kronick

Mis-en-cause: Rod Noel
Safety Officer
Human Resources Development Canada

Before: Serge Cadieux
Regional Safety Officer
Human Resources Development Canada

Background

Ms. Joan Ellis is an employee of Cogeco Cable Systems Inc. (“Cogeco”). She has made a number of complaints regarding health and safety issues related to her workplace at Cogeco. According to Ms. Kronick, safety officer Rod Noel carried out an investigation of the alleged unsafe workplace on the 8th and 12th January, 1999 and concluded his investigation by issuing a direction pursuant to subsection 145(1) of the Canada Labour Code, Part II (“Code”) to Cogeco on January 19, 1999. Cogeco requested a review of the direction under subsection 146(1) of the Code in a timely fashion but later withdrew its appeal. A decision respecting the withdrawal was issued by Regional Safety Officer Douglas Malanka on November 15, 1999. That file was closed.

Almost one year later, i.e. on December 31, 1999, safety officer Rod Noel issued a direction (see ANNEX) under subsection 145(1) of the Code to his manager and immediate supervisor at Human Resources Development Canada for allegedly interfering with the safety officer’s compliance efforts in the Cogeco case. The manager formally appealed the December 31, 1999 direction (hereafter to be referred to as the “Direction”) on January 10, 2000, which is within the fourteen days time limit set by subsection 146(1) of the Code.

On January 24, 2000, Ms. Ellis also submitted an application under section 146 of the Code to have the Direction reviewed. According to the submission of Ms. Kronick, Ms. Ellis was on sick leave from her position at Cogeco when the direction was issued and was only informed of the Direction *in early January 2000*. According to the same submission, Ms. Ellis received notice of the safety officer’s manager’s formal request for review of the Direction on or about January 12, 2000. Ms. Kronick notes that the Direction makes reference to the initial direction that had been issued to Cogeco on January 19, 1999.

Subsequent to Ms. Ellis' application under section 146 of the Code, I informed Ms. Kronick that I intended to dismiss her client's request for review of the Direction on the basis that the request was untimely. However, in the spirit of fairness, I indicated that I was prepared to hear her client's submissions on the issue of timeliness.

Employee's submission:

On January 24, 2000, Ms. Kronick requested on behalf of her client a review of the Direction and submitted the following reasons in support of the request:

We seek review of the December 31, 1999 Direction to the Employer, HRDC operating the workplace under subsection 145(1). We submit that as an employee of Cogeco and complainant against Cogeco Ms. Ellis is affected by the December 31, 1999 Direction. In particular the Cogeco workplace to the best of our knowledge continues to be unsafe as there continues to be non-compliance with the directions issued to Cogeco on 20 Code violations between January and May 1999. Given the seriousness of the violations and the dangerous situation which continues to exist in the Cogeco workplace we seek a variation of the December 31, 1999 Direction to HRDC to incorporate a direction under section 145(2) directing the employer HRDC and/or Cogeco to immediately protect Ms. Ellis, among others, from the dangers as set out in the January 12 and January 19, 1999 directions, as well as such further directions as issued between January and May 1999.

In response to my letter to her, in which I specifically requested submissions on the timeliness of the request for review of the Direction, Ms. Kronick replied the following:

1. Ms. Ellis, our client, received a copy of the Direction dated December 31, 1999 in the mail *sometime in the first week of January*. There was no covering documentation explaining the content of the document to her and/or any notice of her right to request a review let alone any notice of any time limit within which she would be required to make such a request. Furthermore, at the time that Ms. Ellis received the December 31 Direction, she was off work due to illness which has been diagnosed as fibromyalgia associated with workplace stress.
2. Ms. Ellis is an employee of Cogeco and she initiated several complaints which led to the original Directions against Cogeco between January and May 1999. Ms. Ellis is directly affected by the December 31, 1999 Direction because the Direction attempts to address Code Violations in her workplace which continue to exist. She is clearly aggrieved by the December 31, 1999 direction and as such she ought to have been given proper notice of the Direction and been advised of her right to request a review as well as any time limits for making such a request.

Ms. Kronick submits that in regards to all those circumstances, their request for review of the Direction should be considered timely.

Decision :

The issue of timeliness must be addressed in the context of the power of the safety officer to issue directions under subsection 145(1) and the amount of time provided by subsection 146(1) of the Code to request a review of any direction. Those provisions read:

145(1) Where a safety officer is of the opinion that any provision of this Part is being contravened, the officer may direct the employer or employee concerned to terminate the contravention within such time as the officer may specify and the officer shall, if requested by the employer or employee concerned, confirm the direction in writing if the direction was given orally.

146. (1) Any employer, employee or trade union that considers himself or itself aggrieved by any direction issued by a safety officer under this Part may, within fourteen days of the date of the direction, request that the direction be reviewed by a regional safety officer for the region in which the place, machine or thing in respect of which the direction was issued is situated.

Subsection 145(1) authorizes the safety officer to issue directions for any contravention to the Code. The Direction under appeal was given verbally and integrally to the safety officer's manager on December 31, 1999 subsequent to a meeting held on December 30, 1999 with the safety officer's manager. There is no issue on this point since the safety officer confirmed this in a covering letter attached to the Direction which was addressed to his Regional Director and dated January 4, 2000. There is also no issue that the written Direction is not a new direction but merely a notice or a confirmation of the oral Direction given earlier which does not give rise to new rights of appeal. This issue was decided in 1994 by the Federal Court, Trial Division, in the case of *Brink's Canada Limited and Serge Cadieux et al*, file T-959-93. Therefore, the date of the direction is December 31, 1999.

The manager considered himself aggrieved by the direction and, on January 10, 2000, applied under subsection 146(1) to have the direction reviewed. Subsection 146(1) provides that a request for review must be made within fourteen days of the date of the direction which brings the closing date to make his request at January 14, 2000. The manager's request was therefore timely. Ms. Kronick, on the other hand, applied to have the direction reviewed on January 24, 2000, well beyond the time limit set by subsection 146(1) of the Code. On this basis alone, I intend to dismiss the request.

Ms. Kronick is suggesting that because her client was not notified of her right to appeal the Direction that had been issued to the safety officer's manager nor of the time limit for doing so, due to her absence from work, the date of the Direction should consequently be considered the date at which her client eventually became notified of the Direction. I do not agree with that argument.

Ms. Ellis confirmed that she received a copy of the Direction *sometime in the first week of January, 2000*, the last day of which corresponds to January 8, 2000. The date of the Direction has been established at December 31, 1999. Thus Ms. Ellis had at least six calendar days to January 14, 2000, the last day to apply under subsection 146(1) to have the Direction reviewed, to contact a safety officer about her concern and desire to request a review of the Direction. While I agree that six days is little time to request a review of the Direction, it should be noted that the Regional Safety Officer has no power under section 146 to extend the fourteen days statutory time limit no matter how good Ms. Ellis' reasons may be.

Ms. Kronick also argued that Ms. Ellis was aggrieved by the direction. I disagree with this argument also. Ms. Ellis was not personally notified of the Direction simply because she had no direct involvement in the issue which resulted in the Direction. The issue in this case is the alleged interference, under section 143 of the Code, by the safety officer's manager in the

compliance efforts of the safety officer. The issue is not the specific Code violations listed in a direction issued on January 19, 1999 by the safety officer to Cogeco. During the review of the Direction, the Regional Safety Officer will inquire into the circumstances of the Direction and decide whether the allegation of interference, which is prohibited by section 143 of the Code, is substantiated. He cannot look at and decide whether the numerous Code violations identified in a previous direction were justified or complied with. That matter is not before him at this time.

Therefore, from the perspective of interference, I find that Ms. Ellis is not aggrieved by the Direction and that her request to have the Direction reviewed is untimely.

Furthermore and for greater certainty, Ms. Kronick is asking the Regional Safety Officer to vary the Direction for interference and incorporate into it a new direction for danger applicable to the workplace of Cogeco. This request exceeds the powers of the Regional Safety Officer. It would require that the Regional Safety Officer issue a new direction for danger to Cogeco, a power which has not been entrusted upon the Regional Safety Officer under subsection 146(3) of the Code. Currently, those powers are limited to confirming, varying or rescinding the existing Direction which is issued pursuant to subsection 145(1) of the Code. The power of the Regional Safety Officer under subsection 146(3) does not authorize him to look at whether the safety officer should have issued directions under subsection 145(2) for danger and issue such directions.

For all the above reasons, I am dismissing Ms. Ellis' request to have the Direction issued on December 31, 1999 under subsection 145(1) of the Code by safety officer Rod Noel to Mr. Trevor Mills of Human Resources Development Canada on the basis that the request was not made within fourteen days of the date of the Direction.

Decision rendered on February 24, 2000

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 December 30, 1999 the undersigned safety officer arrived at the work place operated by HUMAN RESOURCES DEVELOPMENT CANADA, LABOUR PROGRAM, being an employer subject to the Canada Labour Code, Part II, at 457 RICHMOND ST., 5TH FLOOR, LONDON, ONTRIO for the purpose of exercising the powers granted by subsection 141(1) of the Canada Labour Code, Part II.

On October 15, 1999 the undersigned safety officer was ordered by his Manager, Trevor Mills, to temporarily suspend an active investigation into workplace health and safety complaints by employees of Cogeco Cable Systems Inc., Burlington, Ontario.

The said safety officer was advised by Trevor Mills that the suspension was necessary, while HRDC investigated complaints made to the Minister of Labour, Claudette Bradshaw, by Cogeco Cable Systems following the safety officer's inspection and subsequent issuing of directions to the employer on twenty (20) Code violations, between January and May, 1999.

On December 30, 1999 the said safety officer was further ordered by Trevor Mills to permanently cease his compliance efforts in the Cogeco investigation, and to have no future contact with this employer or any Cogeco workplace.

The said safety officer was further advised by Trevor Mills that, despite the fact that the employer, Cogeco, had:

initially appealed and then, on the day before the scheduled hearing, withdrew their appeal of the directions;

had been critical of the Regional Safety Officer review process, which would have been a more appropriate forum for their complaints;

had clearly stated, in a letter to the Labour Program Regional Director, their intent to contravene the Code;

and had complained about the safety officer's actions that were conducted in accordance with published departmental policies and procedures;

that these facts would not alter his decision in the matter.

The said safety officer was further advised that a prosecution proposal submitted by him would be rejected by HRDC-Labour Program.

The said safety officer advised Trevor Mills that his suspending of the safety officer's activity in this file was unnecessary, and was obstructive and hindering of the safety officer in the performance of his duties.

Section 143 of the Code states: "No person shall obstruct or hinder, or make a false misleading statement either orally or in writing to, a safety officer engaged in carrying out his duties under this part."

Therefore, you are HEREBY DIRECTED, pursuant to subsection 145(1) of the Canada Labour Code, Part II, to take measures immediately to ensure compliance with section 143 of the Canada labour Code, Part II, by permitting the undersigned safety officer to carry out his duties as designated by the Minister of Labour.

Issued at London, Ontario this 31st day of December, 1999.

ROD NOEL
Safety Officer
No. 2010

To: HUMAN RESOURCES DEVELOPMENT CANADA
LABOUR PROGRAM
DOMINION PUBLIC BUILDING
457 RICHMOND STREET, 5TH FLOOR
LONDON, ONTARIO
N6A 3E3

Attn: Trevor Mills, District Manager

SUMMARY OF REGIONAL SAFETY OFFICER DECISION

Applicant: Ms. Joan Ellis
Employee
Cogeco Cable Systems Inc

KEYWORDS

Timeliness, power of Regional Safety Officer, fourteen days time limit, aggrieved by a direction, confirmation of direction, oral direction, direction to manager

PROVISIONS

Code: Code: 143, 145(1), 145(2), 146(1), 146(3)

Regulations: n/a

SUMMARY

A safety officer had issued a direction to a company for several Code violations on January 19, 1999. The company had appealed the direction but later withdrew its appeal. Approximately one year later i.e. on December 31, 1999, the safety officer gave a direction to his own manager for allegedly interfering into his compliance efforts against the company which had received the January 19, 1999 direction. An employee of the company who had initiated the complaint against the company in the first case appealed on January 24, 2000 the direction which was issued by the safety officer to his manager. The employee, through her representative, argued that her request should be considered timely because she was home sick when the direction was issued, that she had not been notified of the direction, that she only received a copy of the direction during the first week of January 2000 and that she was aggrieved by the direction because the direction referred to the first direction respecting several Code violations.

The Regional Safety Officer established that the date of the direction issued by the safety officer to his manger was December 31, 1999 and that the statutory time limit set by subsection 146(1) of the Code to request a review of that direction had elapsed. On this basis, the Regional Safety Officer ruled that the request was untimely and that he had no power to extend the time limit. He also ruled that the employee appealing the direction was not aggrieved by the December 31, 1999 direction because the issue in that direction was interference and not the Code violations listed in the January 19, 1999 direction. The Regional Safety Officer dismissed the request on the basis that it was untimely.