



Human Resources
Development Canada

Développement des
ressources humaines Canada

Canada Appeals Office on Occupational Health and Safety • Bureau d'appel canadien en santé et sécurité au travail

Decision No. 01-011
Date April 19, 2001

CANADA LABOUR CODE
PART II
OCCUPATIONAL HEALTH AND SAFETY

Name
974644 Ontario Ltd.
applicant

and

Paul Danton
Health and Safety Officer

This case was heard by Douglas Malanka, appeals officer, in City of Kitchener, Ontario, on November 15, 2000.

Appearances:

For the applicant: Mr. I.S. Campbell, Counsel.

[1] Safety officers Jim Douglas and Paul Danton investigated an accident that occurred on December 1, 1998, and resulted in a fatality to a private citizen. On November 30, 1999, Human Resources Development Canada (HRDC) initiated a prosecution against 974644 Ontario Ltd. and two of its officers for contraventions to Part II of the Canada Labour Code (hereto referred to as Part II or the Code) and to the Canada Occupational Safety and Health Regulations (COSHRs).

[2] The Defendants took the early position that the charges laid were *ultra vires*. On February 15, 2000, they put the Crown on notice that they intended to dispute the jurisdiction of HRDC over matters of occupational safety and health concerning the Defendants. A motion to decide the issue of jurisdiction in the Ontario Court of Justice was set for October 6, 2000. Just before that date, the Crown sought an adjournment, according to Mr. Campbell, to reconsider its intent to proceed with its prosecution.

[3] On October 19, 2000, health and safety officer Paul Danton issued a direction to 974644 Ontario Ltd. pursuant to paragraph 141.(1)(i) of the Code. See Appendix. The direction ordered 974644 Ontario Ltd. (formerly Tippet-Richardson Moving and Storage) to produce documents specified therein by October 31, 2000. The documents sought to confirm that the Company is subject to federal jurisdiction.

[4] Since the matter of jurisdiction was already placed before the Ontario Court of Justice, Mr. Campbell wrote to the Canada Appeals Office on Occupational Health and Safety on October 27, 2000. On behalf of 974644 Ontario Ltd., he requested that the direction be rescinded or stayed until Court ruled on the matter

[5] On November 15, 2000, a hearing was held in Kitchener, Ontario to hear the appeal of direction requested by 974644 Ontario Ltd.. During the hearing, Mr. Campbell informed me that his client had just agreed with the Crown to plead guilty to the charges under the Code and COSHRs relative to the accident. He advised me that the guilty plea would be heard in the Ontario Court of Justice on December 13, 2000, and requested the direction be stayed until December 14, 2000. He also requested that, once the guilty plea is entered and dealt with by the Court, I rescind the direction because it would no longer serve any purpose.. Safety officer Danton agreed with Mr. Campbell that the direction would not be required after the guilty plea is entered because 974644 Ontario Ltd. is assenting that it is subject to federal jurisdiction.

[6] Because 974644 Ontario Ltd. was assenting that it is subject to federal jurisdiction, I decided to order a stay of the direction issued by safety officer Danton on October 27, 2000, until December 14, 2000. I also agreed to hear the Company's request that the direction be rescinded after the Court hearing on December 13, 2000.

[7] On December 22, 2000, I heard Mr. Campbell and Mr. D' Agostino, from the Office of the Crown Prosecutor, via a telephone conference hearing. They confirmed that 974644 Ontario Ltd. had entered a guilty plea before the Court on December 13, 2000, and that a fine had been imposed. They also confirmed that there were no outstanding charges in this matter, and that the prosecution was completed. Mr. Campbell reiterated that the direction is no longer needed and requested I rescind it.

[8] The issue that I must decide in this case is whether to vary, rescind or confirm the direction under review. For this, I will consider the applicable legislation in terms of the specific facts in the case.

[9] The applicable legislation in the case is:

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.

141.(1) Subject to section 143.2, a health and safety officer may, in carrying out the officer's duties and at any reasonable time, enter any work place controlled by an employer and, in respect of any work place, may

(h) direct the employer to produce documents and information relating to the health and safety of the employer's employees or the safety of the work place and to permit the officer to examine and make copies of or take extracts from those documents and that information; [my underline.]

(i) direct the employer or an employee to make or provide statements, in the form and manner that the safety officer may specify, respecting working conditions and material and equipment that affect the health or safety of employees; [my underline.]

146.1(1) If an appeal is brought under subsection 129(7) or section 146, the appeals officer shall, in a summary way and without delay, inquire into the circumstances of the decision or direction, as the case may be, and the reasons for it and may [my underline.]

(a) vary, rescind or confirm the decision or direction;

[10] For deciding whether to vary, rescind or confirm a direction, consideration must be given to both the correctness and reasonableness of the direction. In this case, safety officer Danton issued his direction pursuant to paragraph 141.(1)(i) and required 974644 Ontario Ltd. to produce documents. The documents requested included trip sheets, customer moving contracts, fuel tax documentation, company tax records, workplace safety and insurance board form 7, employee payroll documents, log bills and bills of lading.

[11] However, I note that paragraph 141.(1)(i) applies in respect of statements respecting working conditions and material and equipment that affect the health and safety of employees. On the other hand, paragraph 141.(1)(h) applies in respect of documents respecting health and safety. Since the documents requested by safety officer Danton in his direction do not appear to be related to working conditions or to materials and equipment, I am of the opinion that paragraph 141.(1)(h) should have been cited in the direction instead of 141.(1)(i). That being the case, I can only vary or rescind the direction.

[12] According to the purpose clause of the Code, the purpose of Part II is to prevent accidents and injury to health. For deciding whether to vary or rescind the direction, I recall that safety officer Danton agreed with Mr. Campbell that the direction was no longer needed if the Company entered a guilty plea on December 13, 2000. I also recall that Mr. Campbell confirmed on December 22, 2000, that there were no outstanding charges in this matter, and that the prosecution was completed. In consideration of the facts in the matter and the purpose clause in Part II, I find that there is no need for the direction at this time and that varying the direction would serve no useful purpose.

[13] For this reason, I HEREBY RESCIND the direction that safety officer Danton issued to 974644 Ontario Ltd. on October 19, 2000, pursuant to paragraph 141.(1)(i) of the Code.

Decision rendered July 19, 2001.

Douglas Malanka
Appeals Officer

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

DIRECTION TO EMPLOYER UNDER PARAGRAPH 141.(1)(i).

On the 7th, 8th and 9th of December 1998 the undersigned health and safety officer conducted an investigation in the workplace operated by 974644 Ontario Limited being an employer subject to the Canada Labour Code, Part II, at 25 Groff Place Unit # 6 Kitchener, Ontario the said workplace being formerly known as Tippet-Richardson Moving and Storage.

Therefore you are HEREBY DIRECTED, pursuant to paragraph 141.(1)(i) of the Canada Labour Code, Part II, to make or provide, no later than 31 October 2000, specifically but not limited to the following:

Trip sheets, customer moving contracts, fuel tax documentation, company tax records, workplace safety and insurance board form 7, employee payroll documents, log books, bills of lading, for the period of November 30th 1997 to November 30th 1998 inclusively, and to permit the said health and safety officer to examine and make copies or take extracts of such documents.

Issued at London, this 19th day of October 2000.

Paul G. Danton Health & Safety Officer # 156

To: Mr. Ron Smith, President
974644 Ontario Limited
Tippet-Richardson Moving & Storage
25 Groff Place
Unit # 6
Kitchener, Ontario
N2E 2L6

SUMMARY OF REGIONAL SAFETY OFFICER DECISION

Applicant: 974644 Ontario Ltd.

Respondent: None

KEY WORDS

Accident; fatality; documents; jurisdiction;

PROVISIONS

Code: 122.1, 141.(1)(h), 141.(1)(i), 146.1(1)

SUMMARY

Following a hazardous occurrence that led to the death of a private citizen, Human Resources Development Canada (HRDC) initiated a prosecution against 974644 Ontario Ltd. and two of its officers for contraventions to Part II of the Canada Labour Code and to the Canada Occupational Safety and Health Regulations. The Defendants took the early position that the charges laid were *ultra vires*. On October 19, 2000, a health and safety officer issued a direction to 974644 Ontario Ltd. (formerly Tippet-Richardson Moving and Storage) pursuant to paragraph 141.(1)(i). The direction, which sought to confirm that the Company is subject to federal jurisdiction, ordered 974644 Ontario Ltd. to produce documents by October 31, 2000. An appeal of the direction was heard on November 15, 2000.

At hearing, Counsel representing 974644 Ontario Ltd. informed the Appeals Officer that his client had just agreed with the Crown that the Company would enter a guilty plea on December 13, 2000, when the charge would be heard in Court. On December 22, 2000, Counsel for 974644 Ontario Ltd. confirmed that the Company had plead guilty on December 13, 2000, and that matter was now finalized. He reiterated his request that the Appeals Officer rescind the direction since it no longer served any purpose. The appeals officer rescinded the direction because it was no longer needed and served no purpose.