



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

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Decision No.: 01-016  
June 6, 2001

*CANADA LABOUR CODE*  
PART II  
OCCUPATIONAL HEALTH AND SAFETY

Western Stevedoring Company Limited  
*applicant*

and

Diana Smith  
*health and safety officer*

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This review of a was heard by Douglas Malanka, appeals officer, in City of Vancouver, British Columbia, on May 11, 2001.

Appearances :

For the applicant:

Mr. E. Skowronek, British Columbia Maritime Employers Association, Mr. K. Moger, Western Stevedoring Company Limit

[1] On October 31, 2000, the British Columbia Maritime Employers Association (BCMEA) dispatch hall sent employee, Mr. Brian Lielke, to the Lynnterm location of Western Stevedoring Company Limited (Western Stevedoring). Later in the morning, the 80,000 pound capacity lift truck<sup>1</sup> operated by Mr. Lielke to load reinforcement bars onto a railway car suddenly tipped onto its nose. Mr. Lielke injured his hand in the accident.

[2] The next day, November 1, 2000, an employer and employee member of the health and safety committee investigated the accident and took witness statements. They prepared a "Hazard Occurrence Investigation Report" and submitted it to Human Resources Development Canada (HRDC) on November 9, 2000. The Report is required by the *Canada Labour Code*, Part II, (hereto referred to as the Code or Part II), and Part XV "Hazardous

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<sup>1</sup> The terms "lift truck" and "fork lift truck" were used interchanably in the evidence in this case.

Occurrence Investigation, Recording and Reporting” of the Canada Occupational Safety and Health Regulations (COSHRs).

- [3] In the report, the Western Stevedoring investigators concluded that the accident occurred because Mr. Lielke had incorrectly loaded the forklift truck on an incline, because he tilted the load too far forward, and because he turned the steering wheel while lowering the load. They recommended that:

“Operations of this nature to be reviewed prior to commencement taking into account procedures to be developed based on the above factors.”

- [4] Health and safety officer Diana Smith reviewed the Hazard Occurrence Investigation Report submitted to HRDC and asked Western Stevedoring to provide her with a copy of the training record for Mr. Lielke. The training report submitted on November 20, 2000, confirmed that Mr. Lielke had completed the BCMEA “Standard Lift Truck Program” in 1996, but not their “Heavy Lift Truck Program.”

- [5] On December 12, 2000, health and safety officer Smith issued a direction to Western Stevedoring pursuant to subsection 145.(1) of the Code. See appendix. Item one of the direction states that an employee operating an 80,000 pound capacity lift truck had not been properly instructed and trained in its safe and proper use in accordance with section 125 (q) of the Code and paragraph 14.23(1)(c) of the COSHRs. Item two of the direction states that the same employee had not received on-the-job training by a qualified person in its safe and proper use as required by paragraph 125.(q) and paragraph 14.23(3)(b) of the COSHRs. The direction orders Western Stevedoring to cease the contravention immediately.

- [6] On December 13, 2000, Western Stevedoring consulted with health and safety officer Smith concerning her direction. She clarified that she issued the direction because neither the BCMEA Standard Lift Truck Program nor their Heavy Lift Truck Program addresses the operation of lift trucks over 30,000 pound capacity. She did not indicate to them where the training programs are deficient relative to higher capacity lift trucks, but observed that the Heavy Lift Truck Program only addresses heavy container handling equipment.

- [7] In response, the company reminded her that it is a member of the BCMEA, and, according to the constitution of the Association, BCMEA conducts the training and retraining programs for its waterfront members. The letter cited article 2.(e) of the BCMEA Constitution and Bylaws, which reads:

2.(e) To conduct training and retraining programmes for or with respect to all or any workmen, servants, employees or officers of the members of the Society engaged in or associated directly or indirectly in the operations carried on by the said members or any of them.”

- [8] In December, Western Stevedoring wrote to health and safety officer Smith and stated that it would comply with her direction by making BCMEA aware of the direction, and by requesting BCMEA to establish on-the-job training referred to in item two of the direction.

The company further agreed to ensure in the future that only experienced operators operate their higher capacity lift trucks and agreed to ensure that the operators are properly supervised during operations. With regard to item 2 of the direction, Western Stevedoring held that paragraph 14.23(3)(b) of the COSHRs does not apply because it refers to manual material handling equipment.

- [9] For its part, BCMEA advised its dispatch hall to only send employees who have completed the Heavy Lift Truck Program to operate heavy lift trucks. BCMEA also advised its member companies that, when requesting an operator to operate their heavy lift trucks, they must specify an employee who has completed the Heavy Truck Program. The Association also provided health and safety officer Smith with a draft revised Standard Lift Truck Program and a draft revised Heavy Lift Truck Program. The modifications in the revised standards address requirements for heavy lift trucks.
- [10] BCMEA conducted a survey amongst its members on their use of heavy lift trucks. The survey completed by BCMEA established that its member companies use a wide variety of lift trucks, and not all of them use heavy lift trucks. For its part, Western Stevedoring reported that it uses 55,000, 60,000, 80,000 and 90,000 pound capacity lift trucks, but not all of the heavy equipment is used all the time, and none is used constantly. Mr. Frank Vick indicated in the survey response that it might be better to have a trainer “familiarize” the operator at the start of a shift rather than to create a heavy lift truck rating standard.
- [11] On January 3<sup>rd</sup>, 2001, health and safety officer Smith responded in writing to Western Stevedoring regarding her direction. With regard to item one of the direction, she reiterated that Western Stevedoring is responsible for ensuring that every one of its operators of motorized materials handling is instructed and trained as required by paragraph 14.23(1)(c) of the COSHRs regardless of who actually provides the training and instruction. She required BCMEA or Western Stevedoring to provide her with a specific and detailed training proposal for operators of heavy lift trucks by January 31, 2001.
- [12] With regard to item two of her direction, she conceded that paragraph 14.23(3)(b) of the COSHRs refers to manual materials handling equipment and so did not apply in the circumstances. She stated, however, that only an appeals officer is empowered to vary the direction and rescind item two.
- [13] At the hearing held on May 11, 2001, health and safety officer Smith reiterated that Western Stevedoring was in contravention of the Code and COSHRs because Mr. Lielke had not received training on the operation of heavy lift trucks. She added that a fatality had occurred in August of 2000, and that both Mr. Rick Tessier, BCMEA trainer, and Mr. Pasacreta, VP Operations, Western Stevedoring, agreed that BCMEA’s Heavy Lift Truck Program does not address larger capacity forklift trucks.
- [14] Mr. Eric Skowronek, Manager, Occupational Safety and Health, BCMEA, testified for Western Stevedoring at the hearing. I retain the following from his testimony and brief.

- [15] Employees in the Stevedoring industry work from a dispatch hall where work is assigned on a day-to-day basis. Under this system, employee qualifications and availability are matched with employer assignments. Employees can be dispatched to seven different employers in a week. The task of training and instructing sufficient numbers of employees to service the Stevedoring industry exceeds the capacity of most employer members in the Association. For this reason, training and instruction for most of the industry is conducted by the BCMEA.
- [16] BCMEA training and instruction programs are developed in consultation with the International Longshore and Warehouse Union. Currently, there are approximately twenty general areas of training which are further broken down into subcategories. In 2000, the BCMEA training budget was approximately \$2.4 million dollars and BCMEA expects to exceed \$5 million in 2001. He said that these amounts do not include individual instruction and training provided by some member companies.
- [17] Lift trucks in the stevedoring industry vary widely in design and capacity. Capacities vary from 5,000 pounds for operating in relatively small locations, to 15,000 and 30,000 pound machines for moving pulp, lumber and various other commodities, to 80,000 to 90,000 pound machines for moving heavy cargo and containers. BCMEA has two general training programs. These include the Standard Lift Truck Program and the Heavy Lift Truck Program.
- [18] The Standard Lift Truck Program trains employees to operate forklift trucks to move various cargoes. The training and instruction connected with this Program is very extensive and last for six weeks compared with lift truck training programs in other industries, which last for only for a 1 to 7 days. The focus of the Program is on lift trucks having a capacity of 5000 to 30,000 pounds, and the most commonly used lift truck in the industry is the 30,000 pound capacity unit. The Heavy Lift Truck Program deals exclusively with heavy container handling equipment.
- [19] Mr. Lielke had successfully completed the Standard Lift Truck Program in 1996, and had logged more than 2,400 hours of operating forklift trucks subsequent to 1997. He had also completed a course on the operation of bulldozers and excavators on ships and had operated a 60,000 pound capacity lift truck for two days a month prior to the accident. On the day of the accident, Mr. Lielke had already transported four loads of the reinforcement bars to railway cars.
- [20] Mr. Skowronek held that Mr. Lielke was properly trained and instructed as required by the Code and COSHRs and the accident did not confirm a lack of training. He asked that I rescind the direction in its entirety.

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- [21] The issue that I must decide in this case is whether or not the Standard Lift Truck Program satisfies the instruction and training requirements in paragraph 14.23(1)(c) of the COSHRs relative to lift trucks having a capacity greater than 30,000 pounds. To decide the matter, I

must consider the words in paragraphs 14.23(1)(c) and 14.23(3)(b) of the COSHRs, and the evidence in the case.

[22] Paragraph 14.23(1)(c) and subsection 14.23(3)(b) of the COSHRs reads:

14.23(1) Subject to subsection (2), every employer shall ensure that every operator of motorized materials handling equipment has been instructed and trained in procedures to be followed for

(c) its safe and proper use, in accordance with any instructions provided by the manufacturer and taking into account the conditions of the work place in which the operator will operate the materials handling equipment..

14.23(3) An employer shall ensure that every operator of manual materials handling equipment receives on-the-job training by a qualified person on the procedures to be followed for

(b) its safe and proper use, in accordance with any instructions of the manufacturer and taking into account the conditions of the work place in which the operator will operate the manual materials handling equipment and the operator's physical capabilities. [My underline.]

[23] In my opinion, paragraph 14.23(1)(c) of the COSHRs is a performance standard rather than a specification standard. That is, it prescribes what is to be achieved as opposed to how the standard is to be achieved. The only criteria provided in paragraph 14.23(1)(c) is that the instruction and training be in accordance with manufacturer instructions and take into account the conditions of the workplace in which the operator operates.

[24] However, one cannot ignore sections 122.1<sup>2</sup> (the purpose clause) and 124<sup>3</sup> (general duty clause) of the Code. These provisions dictate that the training and instruction required in paragraph 14.23(1)(c) must meet or exceed accepted minimum industry standards and be sufficient to protect the health and safety of employees. It is also worthy to note that paragraph 14.23(1)(c) does not require the employer to provide the instruction and training. Rather, it requires the employer to ensure that every operator employed is instructed and trained in accordance with the standard.

[25] With regard to the facts in the case, I find that evidence presented by Mr. Skowronek was substantially more persuasive than that presented by the health and safety officer. Health and safety officer Smith held that neither the BCMEA Standard Lift Truck Program nor its Heavy Lift Truck Program provided instruction and training for the operation of heavy fork lift trucks. However, she did not identify where or how the programs were deficient. Although she referred in her testimony to a lift truck accident last August where, according to her, an

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<sup>2</sup> Section 122.1 of the Code reads,  
“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.”

<sup>3</sup> Section 124 of the Code reads,  
“Every employer shall ensure that the health and safety at work of every person employed by the employer is protected.”

official of Western Stevedoring conceded that the Standard Lift Truck Program does not address “blind spots” or “larger turning radii” associated with the operation of heavy lift trucks. However, she did not provide me with any evidence to confirm the accident, the accident investigation findings, or the action taken by HRDC, if any. Additionally, she did not provide me with any hazardous occurrence reports, accident statistics, or health and safety committee reports that would support her conclusion, or show that employees have concerns with the adequacy of the instruction and training provided to them.

- [26] In opposition, Mr. Skowronek testified that BCMEA develops its training and instruction programs in consultation with the International Longshore and Warehouse Union. He added that the BCMEA training is extensive, having a budget of approximately \$2.4 million dollars in 2000.
- [27] Mr. Skowronek stated that the BCMEA Standard Lift Truck Program lasts for six weeks, compared with forklift truck training programs in other industries which last for only 1 to 7 days. He insisted that the Standard Lift Truck Program provides employees with the instruction and training necessary to operate any size lift truck and meets the requirements of the Code and COSHRs. He confirmed that the Heavy Lift Truck Program dealt with lifting heavy containers and not the operation of heavy lift trucks.
- [28] He explained that the focus of the Standard Lift Truck Program is on 5,000 to 30,000 pound capacity lift trucks because the majority of forklift trucks used in the industry are within this capacity range. He insisted that the revisions to the Training Programs proposed by BCMEA are not an admission that the Standard Lift Truck Program is inadequate, or in contravention of paragraph 14.23(1)(c) of the COSHRs. Rather, the revisions are only to provide clarity.
- [29] He argued that training record for Mr. Lielke shows that he completed the Standard Lift Truck Program and that he had further instruction on operating heavy materials handling equipment. Mr. Lielke’s work record confirmed that he had over 2500 hours of experience operating lift trucks of various capacities and approximately 600 hours of experience in the operation of ship mobile equipment. His employment record also showed that Mr. Lielke had operated an 80,000 pound capacity lift truck just days before the accident, and that he had already moved four loads of bars prior to the tip over. Mr. Lielke did not complain in his accident statement that the lack of instruction and training was a cause or contributing factor of the accident.
- [30] The Western Stevedoring health and safety committee members who investigated the accident attributed the accident to the fact that the load was being handled on a down hill incline, the load was tilted too far forward and the operator turned the steering wheel on the lift truck while lowering the load. I note with interest, that they confirmed that Mr. Lielke had been trained to do the work in 1996, and did not attribute the accident to a training deficiency. I further note that the Standard Lift Truck Manual - Evaluation Program document submitted by the health and safety officer as evidence appears to confirm that the Standard Lift Truck Program addresses the procedures that the Western Stevedoring health and safety committee members identified as causes and contributing factors to the accident.

- [31] While the International Longshoring and Warehouse Union might have been able to assist in the hearing, they decided on the day of the hearing not to attend. In the absence of reason for not appearing, I am inclined to conclude that the Union does not disagree with BCMEA and Western Stevedoring that the Standard Lift Truck Program complies with the COSHRs relative to all sizes/capacities of lift trucks.
- [32] In terms of the second item of the direction, the safety officer agreed with Western Stevedoring that paragraph 14.23(3)(b) of the COSHRs does not apply. This is because Mr. Lielke was not operating manual material handling equipment at the time of the accident.
- [33] Having carefully considered and weighed the evidence in this case, I must find, by a preponderance of that evidence, that BCMEA and Western Stevedoring have established its case that the BCMEA Standard Lift Truck Program that Mr. Lielke completed is in compliance with subsection 14.23(1)(c) relative to its lift trucks. For the above reasons, I rescind the direction that Health and safety officer Smith issued to Western Stevedoring pursuant to section 145.(1) of the Code on December 12, 2000.
- [34] Notwithstanding this decision, I encourage Western Stevedoring to reconsider the merits of the suggestion that Mr. Frank Vick, Lynnterm/SIT is reported to have made in Mr. Drew Sagar's interoffice memorandum to FAP, dated January 8, 2001. According to the memorandum, Mr. Vick suggested that it might be better for Western Stevedoring to have a trainer "familiarize" operators at the start of a shift on the operation of heavy lift trucks and to record this action, rather than to create its own heavy lift truck rating standard for ensuring that drivers are instructed and trained. Such "familiarization" sessions could address any peculiar traits of a lift truck, e.g. blind spots and larger turning radii, if they exist. This approach is also consistent with the "corrective measures" that Western Stevedoring recommended in the Hazardous Occurrence Investigation Report it submitted to HRDC. The recommendation reads:
- "Operations of this nature to be reviewed prior to commencement taking into account procedures to be developed based on the above factors."
- [35] Nothing in this decision prevents a health and safety officer from reassessing the matter.

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Appeals Officer  
Douglas Malanka

PART II - OCCUPATIONAL HEALTH AND SAFETY

DIRECTION TO EMPLOYER UNDER SUBSECTION 145(1)

On November 20<sup>th</sup>, 2000, the undersigned health and safety officer conducted an inquiry of an incident that occurred on October 30<sup>th</sup>, 2000 at the work place operated by WESTERN STEVEDORING COMPANY LIMITED, being an employer subject to the Canada Labour Code, Part II, at 15 MOUNTAIN HIGHWAY, NORTH VANCOUVER, B.C., the said work place being sometimes known as Lynnterm.

The said health and safety officer is of the opinion that the following provision of the Canada Labour Code, Part II have recently been contravened:

1. Canada Labour Code, Section 125(q) and Canada Occupational Safety and Health Regulation 14.23(1)(c)

An employee was operating an 80,000 pound capacity lift truck but had not been properly instructed and trained in its safe and proper use.

2. Canada Labour Code, Section 125(q) and Canada Occupational Safety and Health Regulation 14.23(3)(b)

An employee was operating an 80,000 pound capacity lift truck but had not received on-the-job training by a qualified person in its safe and proper use.

Therefore, you are HEREBY DIRECTED, pursuant to paragraph 145(1)(a) of the Canada Labour Code, Part II, within the time specified by the health and safety officer, to take steps to ensure that the contravention does not reoccur.

Issued at Surrey, this 12<sup>th</sup> day of December 2000.

Diana Smith  
Health & Safety Officer

To: WESTERN STEVEDORING COMPANY LIMITED  
15 MOUNTAIN HIGHWAY, LYNNTERM  
NORTH VANCOUVER, B.C.  
V7J 2J9



SUMMARY OF DECISION OF APPEALS OFFICER

Applicant: Western Stevedoring Company Limited

Respondent: n/a

**KEY WORDS**

Lift truck, forklift truck, high load capacity lift trucks, instruction and training.

*Code:* 122.1, 124, 125.(q), 145.(1)

*COSHRs:* 14.23(1)(c), 14.23(3)(b)

**SUMMARY**

On October 31, 2000, the 80,000 pound capacity lift truck operated by Mr. Brian Lielke while loading reinforcing bars onto a railway car suddenly tipped onto its nose. Mr. Lielke injured his hand in the accident. An employer and employee member of the health and safety committee investigated the accident and submitted a "Hazard Occurrence Investigation Report" to Human Resources Development Canada. The report concluded that the accident occurred because Mr. Lielke had incorrectly loaded the forklift truck on an incline, because he tilted the load too far forward, and because he turned the steering wheel while lowering the load. Health and safety officer Diana Smith subsequently reviewed the Hazard Occurrence Investigation Report and concluded that the employer, Western Stevedoring, had not ensured that Mr. Lielke had adequate instruction on the operation of heavy lift trucks. The health and safety officer later conceded that item 2 of the direction does not apply because Mr. Lielke was not operating manual material handling equipment.

Following his review, the Appeals Officer rescinded the direction. He concluded on the preponderance of the evidence that Western Stevedoring had ensured that Mr. Lielke had been trained and instructed in the operation of lift trucks in compliance with Part II and the COSHRs.