



Decision No.: 01-017
June 8, 2001

CANADA LABOUR CODE
PART II
OCCUPATIONAL HEALTH AND SAFETY

Canadian National
applicant

and

United Transportation Union
union

and

Judith Harris
safety officer

This case was decided by Michèle Beauchamp, Regional Safety Officer, based on written submissions sent by Michel Huart, General Counsel, on behalf of Canadian National. The union made no representations.

[1] On November 8, 2000, Michel Huart, General Counsel, Canadian National (CN), appealed*, under section 146 of the *Canada Labour Code*, Part II, a direction (in appendix) issued to CN regarding the Fort Rouge yard, in Winnipeg, Manitoba, by Judith Harris, safety officer, Transport Canada, Surface Branch, on September 5, 2000.

[2] Safety officer Harris' direction, issued under subsection 145(1) of the *Canada Labour Code*, Part II, reads:

* The appeal of directions process established by subsection 146(1) of the "new" *Canada Labour Code*, Part II, corresponds to what used to be the review of directions under subsection 146(1) of the "old" *Canada Labour Code*, Part II. In the following decision, I will refer to CN's appeal as a request for a review of the direction.

The said Safety Officer is of the opinion that the following provision of the Canada Labour Code, Part II, are being contravened:

Subsection 124(p) of the Canada Labour Code, Part II and section 10.15 of paragraph 12.9(b) of the On-Board Trains Occupational Safety and Health Regulations.

A yard employee was observed riding on the outer edge of the deck of a flat car while in motion. The practice of riding flat cars exposes the employee to the potential risks as flat cars are not designed for the transporting or positioning of employees.

[3] This written direction was followed by letters and teleconferences between the employer and the safety officer, to give or obtain clarifications on the direction itself or on the measures taken by CN to comply with it.

[4] Finally, on October 18, 2000, safety officer Harris wrote to Steve Pound, CN's General Manager Operations in Winnipeg:

In summation of discussions with Mssrs. Tom Thompson, Don Watts and Sam Buratta this morning, when handholds and sill steps are properly maintained and utilized on flat cars, an employee may take up a position on the side of such equipment, when it must be ridden. However, as indicated in my Direction of September 5, 2000 the practice of riding on the deck of flat cars is an unsafe practice and exposes employees to potential risks.

[5] Safety officer Harris had issued her direction prior to the coming into force of the *Canada Labour Code*, Part II (the Code), as amended, on September 30, 2000. Consequently, the time limit to request a review of the direction under the *Canada Labour Code*, Part II, in application at the time that the direction was issued, was fourteen days.

[6] On January 16, 2001, I wrote to Mr. Huart to advise him of my intention to dismiss CN's request for review of the direction because the time limit established by the Code had elapsed. However, in the spirit of fairness governing the review process, I extended to him the opportunity to present submissions on the timeliness of his request before rendering a final decision.

[7] In his submission of February 5, 2001 sent in reply to my letter, Mr. Huart explained that the direction was a source of confusion, because it did not specify to which type of flat cars it applied. He wrote:

When the Direction was issued, CN did not file an appeal as it was of the view that the Direction applied to situation which CN already forbids namely riding a flat car near the edge of the car... Following discussion with Safety Officer Harris, it became obvious that the Direction was intended to address all cars which are identified as flat cars. This, to CN, became the turning point. To the extent that the Direction was believed to be asking to essentially enforce its own instructions, it was not felt that the Direction had to be appealed. Once it was understood that the

Direction was much broader, then the October 18, 2000 letter became, for CN, the starting point for launching the appeal.

[8] In other words, CN considered that the time limit to request a review of the direction started on October 18, 2000. That is when CN understood the direction's broader application and that is when CN felt aggrieved by the direction to the point of requesting a review.

[9] Safety officer Harris clearly issued her direction on September 5, 2000, in writing. She also clearly confirmed the scope of her direction in two letters to CN dated September 12 and October 18, 2000. She wrote:

(September 12) ... I am of the opinion that the practice of riding on the deck of flat cars exposes employees to potential risks as the decks of flat cars are not designed for the transportation or positioning of employees.

(October 18) ... However, as indicated in my Direction of September 5, 2000 the practice of riding on the deck of flat cars is an unsafe practice and exposes employees to potential risks.

[10] Having been issued on September 5, 2000, the direction was therefore governed by the "old" *Canada Labour Code*, Part II, in application before the "new" *Canada Labour Code*, Part II, came into force on September 30.

[11] Subsection 146(1) of the "old" *Canada Labour Code*, Part II, establishes the time limit to request a review of a direction at fourteen days. It reads:

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.

[12] This time limit is statutory, and there are no provisions in the Code to allow me to modify this statutory time limit. Neither does the Code provide for differences of opinion as to the date that the direction was issued, and it was clearly issued to CN, in writing, on September 5, 2000.

[13] I have not been convinced by the employer's arguments on the timeliness of his request. Safety officer Harris' direction was issued, in writing, on September 5, 2000, and the fourteen-day time limit set by the *Canada Labour Code*, Part II, in effect on that date had elapsed at the time of his request.

[14] Therefore, I do not have the legal capacity to review the direction. The request for review is dismissed.

Michèle Beauchamp
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 August 22, 2000, the undersigned safety officer conducted an inspection in the work place operated by Canadian National., being an employer subject to the Canada Labour Code, Part II, at Winnipeg, Manitoba, the said workplace being sometimes known as Fort Rouge, Letellier Sub.

The said safety officer is of the opinion that the following provision of the Canada Labour Code, Part II, are being contravened:

Subsection 124(p) of the Canada Labour Code, Part II and section 10.15 of the On-Board Trains Occupational Safety and Health Regulations.

A yard employee was observed riding on the outer edge of the deck of a flat car, while in motion. The practice of riding flat cars exposes the employee to the potential risks as flat cars are not designed for the transportation or positioning of employees.

Therefore, you are HEREBY DIRECTED, pursuant to subsection 145(1) of the Canada Labour Code, Part II, to cease the contravention no later than September 12, 2000.

Issued at Winnipeg, this 5th day of September, 2000.

Judith Harris
Safety Officer
MB3905

To: CANADIAN NATIONAL
601-234 Donald Street, Eaton Place
Winnipeg, Manitoba R3C 4B4

SUMMARY OF THE REGIONAL SAFETY OFFICER'S DECISION

Applicant: Canadian National
Represented by: Michel Huard

Union: United Transportation Union

Safety officer: Judith Harris
Transport Canada
Surface Branch

Before: Michèle Beauchamp
Regional Safety Officer
Human Resources Development Canada

KEYWORDS

Time limit

PROVISIONS

Code: 146(1)

SUMMARY

Following an inspection, a safety officer issued to Canadian National a direction under subsection 145(1) of the "old" *Canada Labour Code*, Part II, on September 5, 2000, before the coming into force of the amended *Canada Labour Code*, Part II, on September 30, 2000. The employer requested a review of the direction on November 8, 2000, stating that confusion existed as to the scope of the written direction, which only became clear to him on October 18, 2000.

The regional safety officer dismissed the request. The regional safety officer did not have the legal capacity to review the direction because the statutory fourteen-day time limit set by the Code to request a review had elapsed when the employer made his request.