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

CANADA LABOUR CODE
PART II
OCCUPATIONAL HEALTH AND SAFETY

Canadian Freightways Limited.
applicant

and

Teamsters Local 31

and

Diana Smith
health and safety officer

Decision No. 01-025
November 27, 2001

This case was heard by Douglas Malanka, appeals officer, in Vancouver, British Columbia on September 18, 2001.

Appearances

Mr. B. R. Grist, Counsel

Mr. D. Pettit, Advisor, Safety and Loss Prevention

Mr. J. Jeffery, Business Agent, Teamsters Local 31

[1] This case concerns an appeal of a direction made on December 18, 2000, pursuant to subsection 146.(1) of the *Canada Labour Code*, Part II (hereto referred to as the Code or Part II) by Canadian Freightways Limited (CF). The appeal further requested that an appeals officer stay the direction pending its review.

[2] The role of an appeals officer following an appeal of a direction of a health and safety officer is stated in subsection 146.1(1) of the Code. Subsection 146.1(1) reads:

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

(a) vary, rescind or confirm the decision or direction; and...
[My underline.]

[3] On May 29, 2000, health and safety officer Diana Smith conducted an inspection of the CF work place located at 3851 - 22nd Avenue, Prince George, British Columbia. She completed an Assurance of Voluntary Compliance¹ (AVC) form and noted 22 items² requiring action. CF agreed to correct the items within the time frames specified therein by health and safety officer Smith and signed the AVC. Item # 22 of the AVC specified:

High visibility vests not worn by employees regularly exposed to contact with moving vehicles.

According to the signed AVC, CF promised to correct item # 22 by June 16, 2000.

[4] CF later advised health and safety officer Smith on August 31, 2000 that they had complied with the AVC except in respect of items # 12 and 22. With regard to item # 22, CF held that the legislation requiring employees to wear high visibility vests does not apply in respect of inside warehouse and dock operations where motorized materials handling equipment operate.

[5] On November 22, 2000, health and safety officer Smith issued a direction to CF pursuant to subsection 145.(1) of the Code. The direction cited CF for contravening paragraphs 125.(1)(l) and (w) of the Code and paragraph 12.13(a) of the *Canada Occupational Health and Safety (COSH) Regulations* entitled, "Part XII, *Safety Materials, Equipment, Devices and Clothing Regulations.*" Paragraphs

¹ A non legislated compliance instrument used by health and safety officers to ensure compliance with Part II and pursuant regulations.

² Unspecified contraventions of Part II and/or of the Canada Occupational Health and Safety Regulations.

125.(1) and (w) of the Code, and 12.13(a) of the COHS Regulations read:

125.(1) Without restricting the generality of section 124, every employer shall, in respect of every work place controlled by the employer and, in respect of every work activity carried out by an employee in a work place that is not controlled by the employer, to the extent that the employer controls the activity,

125.(w) ensure that every person granted access to the work place by the employer is familiar with and uses in the prescribed circumstances and manner all prescribed safety materials, equipment, devices and clothing;

12.13(a) Where an employee is regularly exposed to contact with moving vehicles during his work, he shall

(a) wear a high-visibility vest or other similar clothing, or ...

that is readily visible under all conditions of use. [My underline.]

The direction ordered CF to cease the contravention by December 20, 2000 and to take steps to ensure that the contravention does not continue or reoccur. See appendix for a copy of the direction.

- [6] Health and safety officer Smith submitted a copy of her report and testified at the hearing. I retain the following from her report and testimony.
- [7] CF responded promptly to all of the items in the AVC except for items # 12 and 22. Health and safety officer Smith disagreed with CF that paragraph 12.13(a) of the COHS Regulations does not apply to their operations.
- [8] Health and safety officer Smith agreed that this was probably the first direction issued in Canada requiring the use of high visibility vests in an inside warehouse and dock operations where only motorized materials handling equipment operate. She confirmed that Human Resources Development Canada (HRDC) is awaiting the outcome of this review before considering further enforcement action related to a similar direction issued in Vancouver recently.
- [9] Mr. Dennis Pettit, Safety and Loss Prevention Advisor, submitted a report on December 18, 2000 regarding the CF appeal and testified at the hearing. I retain the following from his letter and his testimony.
- [10] The facility at Prince George measures approximately 70 feet wide by 175 feet long and there are approximately 15 loading doors on each side of the building and one at each end. Depending on the weather, the loading doors may be opened or closed during the day. Goods transported between CF service centres are loaded and unloaded on one side of the dock. Goods transported within a CF service centre are unloaded or loaded on the opposite side of the dock. This type of operation, where

goods move across the warehouse for transportation between service centres or within a service is commonly referred in the trucking industry as a “cross-dock” operation.

- [11] Activities in the Prince George warehouse peak twice every day between the hours of 6:00 a.m. and 10:00 a.m. and later between 5:00 p.m. and 9:00 p.m.. During these peak periods of activity, approximately 10 -12 employees consisting of city drivers, line or highway drivers and dock workers are employed in the warehouse. During the off-peak hours between 10:00 a.m. and 5:00 p.m., there may only be 3-4 CF employees working in the warehouse. From time to time, billing employees employed in the office may enter the warehouse area.

- [12] There are 4 fork lift trucks at the Prince George location having a capacity of 4,500 pounds. Truck drivers and warehouse and dock workers use the fork lift trucks for loading and unloading goods from the trucks and for moving goods across the warehouse. All employees who operate the fork lift trucks receive in-house training delivered by front line lift truck operators.

- [13] CF has 26 freight warehouses from Quebec to British Columbia and has been in operation since the 1960’s. All operations are similar, but some locations are larger or smaller. For this, CF employs approximately 500 to 600 employees. During his approximate 30 years of employment at CF, Mr. Pettit could not recall a single injury across Canada involving a fork lift truck and a warehouse employee. He insisted that there is no hazard related to accidental contact between an employee and a fork lift truck because the warehouses are well lit and the fork lift trucks are visible.

- [14] Mr. Pettit held that Part XIV of the COHS Regulations entitled “Material Handling” regulates the design, construction and operation of fork lift trucks. For example, section 14.16 of the COHS Regulations requires that forklift truck be equipped with flashing strobe lights and horns in certain situations, section 14.38 sets out requirements in respect of “material handling areas.” and section 14.44 sets out requirements in respect of “aisles and corridors.” He insisted that these regulations do not refer to fork lift trucks as “vehicles”, or require the use of “high visibility vests.” He further argued that the term “motorized hand rider truck” is also defined in section 14.1 of the regulations and is a subset of the definition of “materials handling equipment”. He held that it would not make sense if paragraph 12.13(a) applied to a "motorized hand-rider trucks", and by logical extension, to “material handling equipment"

- [15] Following the direction, CF consulted with the Canadian Trucking Alliance, the Alberta Trucking Association and the Manitoba Trucking Association. These associations were not aware of any situation where section 12.13 of the COHS Regulations had been applied to inside warehouse operations that use material handling equipment. The Canadian Trucking Alliance told him that a technical advisor at HRDC headquarters had advised the Alliance that section 12.13 of the

COHS Regulations does not apply to warehouse operations using material handling equipment. Mr. Pettit also spoke to regional safety officer, Mr. Terrence Baker, located in Calgary, Alberta. He alleged that Mr. Baker advised him that section 12.13 does not apply in respect of a well illuminated facility.

- [16] CF consulted with its health and safety committee at Prince George and its Vancouver health and safety committee following health and safety officer Smith's direction. The committees concluded that high visibility vests would not be beneficial and may even create a hazard.
- [17] The safety record at CF is exemplary. For the last two years, CF won a national fleet safety award which consider both fleet safety and the company's health and safety program. In addition, CF pays near the maximum discounted workers compensation rates in the provinces of Alberta, Saskatchewan, and Manitoba.
- [18] A decision to confirm the direction would have a major impact on CF and hundreds of other federally regulated companies across Canada. Mr. Pettit estimated that cost to companies would be in the hundreds of thousands of dollars range and would adversely impact on the competitiveness of Canadian trucking companies.
- [19] Mr. Grist submitted into evidence a statutory declaration from Mr. Curtis Cooke, member of the Teamsters Local Union No. 31 and co-chairperson of Joint Workplace Health and Safety Committee at Prince George. Mr. Cooke was unable to attend the hearing. His affidavit is paraphrased below.
 - He has been employed at CF since 1979;
 - The warehouse operations of CF are indoors and well lit. There are aisles and designated areas for the storage of freight which may be stored at the warehouse for short periods of time;
 - In addition to operating a fork lift truck, employees employed at the warehouse check, palletize or manually handle freight. Normally, an employee does not remain on the fork lift truck for more than 5 minutes at a time;
 - The fork lift trucks at CF are equipped with and use a strobe light or warning horn to warn employees that a fork lift truck is operating in reverse;
 - High visibility vests do not make employees more visible in the well lit warehouse. The vests are not liked by employees and are regarded as unnecessary and potentially create a risk to employees. For example, the vests can snag on freight, the inside of the truck or trailer units, sheets of plywood and other dunnage used every day to move freight; and,
 - During his 22 years with CF, he is not aware of any one being struck by a fork lift truck, or of any health and safety officer issuing a similar direction to CF.
- [20] Mr. Jeffrey confirmed that he was in agreement with CF's position that the direction should be rescinded.

- [21] The issue to be decided in this case is whether or not paragraph 12.13(a) of the COHS Regulations applies in respect of CF employees employed in the warehouse at Prince George such that the warehouse and dock employees must wear high visibility vests or other similar clothing while carrying out their work.
- [22] Mr. Grist argued that the direction should be rescinded for several reasons. I will respond to each before proceeding with the next.
- [23] First, he insisted that a fork lift truck does not constitute a “moving vehicle” mentioned in paragraph 12.13(a) of the COHS Regulations. In support of his argument, Mr. Grist referred me to paragraph 125.(k) of the Code and pointed out that this paragraph distinguishes between “vehicles” and “mobile equipment.” He further pointed out that the definition of “material handling equipment” in section 14.1 of the COHS Regulations entitled, “Material Handling”, includes the term, “mobile equipment.” He held that the term “mobile equipment” includes a fork lift truck, and so a fork lift truck cannot also be a “vehicle.” He further held that Part XIV prescribes an all encompassing set of requirements for materials handling equipment and there is no reference to the need of high visibility vests there.
- [24] I would agree with Mr. Grist that the definition of “material handling equipment” in Part XIV COHS Regulations refers to “mobile equipment”, which would include a fork lift truck. However, I disagree that this fact confirms that Parliament did not intend for paragraph 125.(k) or paragraph 12.13(a) of the COHS Regulations to apply in respect of fork lift trucks. The term “material handling equipment” is defined within Part XIV of the COHS Regulations. Thus, its specialized meaning is only significant for that Part. If, Parliament had intended for the definition of the term “materials handling equipment” to apply throughout the COHS Regulations, the term would have been defined in the Code itself, or in Part I of the COHS Regulations entitled, “Interpretation”. This “Interpretation” part of the COHS Regulations applies throughout the regulations.
- [25] The term “vehicle” in paragraph 125.(k) of the Code is not defined. Where a term used in the Code is not defined in the statute, it is necessary to take its dictionary meaning. According to Merriam-Webster’s Collegiate Dictionary, Tenth Edition, “vehicle is defined as follows:
- “vehicle” means: 1. an agent of transmission: 2. a means of carrying or transporting something.
- [26] Since the Code is preventative in nature, the broadest interpretation must be assigned to a term that is consistent with the facts of the case and the purpose clause of Part II specified in section 122.1 of the Code. Section 122.1 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.

Given section 122.1, and the broad dictionary definition for “vehicle”, I must conclude that the term “vehicle” in paragraph 125.(k) and in paragraph 12.13(a) includes a fork lift truck.

[27] I agree with Mr. Grist that Part XIV of the COHS Regulations addresses the design, construction, maintenance, use and operation of material handling equipment , but does not require the use of high visibility vests. However, nothing in Part XIV or the Code precludes the application of Part XII in respect of material handling equipment, and I agree with health and safety officer Smith’s testimony that Part XII applies broadly where the use of personal protection equipment is required. In my opinion, section 12.13 applies in respect of this case.

[28] However paragraph 12.13(a) must be applied in context of sections 12.1 and 12.2 of Part XII Regulations. Sections 12.1 and 12.2 respectively read:

12.1 Where

- (a) it is not reasonably practicable to eliminate or control a health or safety hazard in a work place within safe limits, and
- (b) the use of protection equipment may prevent or reduce injury from that hazard,

every person granted access to the work place who is exposed to that hazard shall use the protection equipment prescribed by this Part.

12.2 All protection equipment referred to in section 12.1

- (a) shall be designed to protect the person from the hazard for which it is provided; and
- (b) shall not in itself create a hazard. [My underline.]

[29] These provisions reflect the hierarchy of control of occupational hazards that is specified in section 122.2 of the Code. Section 122.2 reads:

122.2 Preventive measures should consist first of the elimination of hazards, then the reduction of hazards and finally, the provision of personal protective equipment, clothing, devices or materials, all with the goal of ensuring the health and safety of employees. [My underline.]

[30] Thus, section 12.1 of the COHS Regulations establishes that, to the extent reasonably practicable, the employer must eliminate or control hazards in the work place within safe limits. If it is not reasonably practicable to do so and the use of protective equipment may prevent or reduce injury from the hazard, then the employer must ensure that the employees exposed to the health or safety hazard use the protection equipment specified in Part XII. Section 12.2 of the COHS Regulations further prescribes that the protective equipment must be designed to protect the person from the hazard and must not, in itself, create a hazard.

[31] Again, paragraph 12.1(a) reads:

12.1 Where

(a) it is not reasonably practicable to eliminate or control a health or safety hazard in a work place within safe limits, and

every person granted access to the work place who is exposed to that hazard shall use the protection equipment prescribed by this Part. [My underline.]

[32] In this regard, Merriam-Webster's Collegiate Dictionary, tenth edition defines the terms, "hazard" and "safe" as follows:

"hazard" **2:** a source of danger; **3:** a chance, risk

"safe" **1:** free from harm; **3:** affording safety or security from danger, risk or difficulty.

[33] Thus I interpret paragraph (a) to mean that, where it is not reasonably practicable³ to eliminate or control a health or safety hazard within safe limits, were the hazard poses no risk of harm, every person granted access to the work place who is exposed to that hazard must use the protection equipment prescribed by this Part. This interpretation is essentially reiterated in the various sections that follow. For example, the opening wording in sections 12.4, 12.5, 12.6, 12.7 read as follows:

12.4 Where there is a hazard of head injury in a work place, protective headwear...;

12.5 Where there is a hazard of a foot injury or electric shock through footwear in a work place, protective footwear...;

12.6 Where there is a hazard of injury to the eyes, face, ears or front of the neck of an employee in a work place, the employer shall provide eye or face protectors...; and,

12.7 Where there is a hazard of an airborne hazardous substance or an oxygen deficient atmosphere in a work place, the employer shall provide a respiratory protective device.... [My underline.]

³ The term reasonably practicable has been interpreted in the unreported decision of Regional Safety Officer Serge (RSO) Cadieux, RSO Decision No. 92-002 between P.D. Kroli, Alberta Wheat Pool and R.G. Grundie, Safety Officer heard on February 4, 1992. Reference is made to pages 3 and 4 of the decision. In that Decision, RSO Cadieux also indicated that 4 points must be considered when assessing the "reasonably practicable" condition. These four points with some minor paraphrasing, are:

1. A determination should be made in each case where the duty applies, as to whether it is "reasonably practicable" to comply with the duty.
2. In this case, the onus to demonstrate that it is not reasonably practicable to comply with the duty falls on the employer because the duty is specified under section 125 of the Code and the COSH Regulations.
3. The above determination should take into consideration the benefit of the duty for protecting the occupational health and safety of employees versus the cost, in time, trouble, and money to secure the duty.
4. A computation should be made as to whether there is a gross disproportion between the benefit of the duty for employees and the effort and cost. If such a disproportion exists, then a conclusion that it is not reasonably practicable should be reached. [My underline.]

Thus unless a hazard is eliminated or controlled, the provisions in Part XII apply.

- [34] Moreover, the wording in section 12.13 does not refer to a hazard but specifies that the section applies, “Where an employee is regularly exposed to contact with moving vehicles during his work...” This wording is at least as onerous, and arguably more onerous, than the wording in sections 12.(4) to 12.(7).

- [35] In my opinion, to eliminate or reduce within safe limits the risk of accidental contact between employees and vehicles operating in close proximity to employees, as referred to in paragraph 12.1(a), the employer must ensure a high level of organization and control of pedestrian and vehicular traffic having the objective of preventing accidental contact. This can be achieved in many ways, but as a minimum, employers must comply with Part XIV of the COHS Regulations entitled, “Materials Handling,” which prescribes requirements respecting the design and construction, maintenance, use and operation of materials handling equipment. For example, Part XIV specifies that material handling equipment be fitted with proper controls, lighting, warning devices and mirrors, and requires that operators be instructed and trained on the safe and proper use of materials handling equipment to name a few.

- [36] Mr. Grist argued that the risk of accidental contact between employees and vehicles operating in close proximity to employees is minimal and within safe limits because the amount of pedestrian traffic in the warehouse is slight, and because the warehouse is well illuminated. He said that pedestrian traffic is slight because normally the employees are busy operating their fork lift trucks or loading and unloading trucks. He added that the forklift trucks at CF are equipped with and use strobe lights or a warning horn to ensure that fork lift trucks are seen by employees working in the area. To show there is no risk, Mr. Grist reminded me of the absence of accidents at CF, the opinions of CF health and safety committees, the absence of directions to any other such company and the opinion of various HRDC officials regarding the application of section 12.13 . Finally, he referred to CF’s exemplary health and safety program.

- [37] I have difficulty with Mr. Grist’s argument that pedestrian traffic is slight because each employee is either operating a fork lift truck or involved with loading operations. During the peak hours in a normal day, some 10 to 12 employees are employed in the warehouse. Since there are only 4 fork lift trucks, that means 6 to 8 employees are otherwise working in the warehouse and dock facility during peak hours. Thus, I am persuaded that employees not operating the fork lift trucks are regularly exposed to contact with a moving vehicle.

- [38] With regard to lighting levels, it is my view that illumination is but one factor related to the organization and control of traffic. However, there is nothing in paragraphs 12.1 or 12.13(a) to indicate that the level of illumination in a work

place is a determinant relative to the application of paragraph 12.13(a) in a work place. To the contrary, the last line in paragraph 12.13 specifies that the high visibility vests or other similar clothing used must be “readily visible under all conditions of use.” [underlined for emphasis] I would interpret “all conditions” to include the level of lighting in a work place. Paragraph 12.13(a) of the COHS Regulations reads:

12.13(a) Where an employee is regularly exposed to contact with moving vehicles during his work, he shall

(a) wear a high-visibility vest or other similar clothing, or ...

that is readily visible under all conditions of use. [My underline.]

- [39] Moreover, Mr. Pettit testified that the facility has approximately 30 warehouse doors which may be left open during sunny days. In my opinion, sunlight entering these doors could create shadows of uneven illumination or cause glare that could interfere with the ability of an operator or other employees to see each other and avoid accidental contact. Regarding Mr. Pettit’s argument that the lights and warning horn on the forklift trucks to ensure that the fork lift trucks are seen by others, it follows that the use of high visibility vests or other similar clothing ensures that employee are seen by the forklift truck operators.
- [40] Mr. Pettit testified that there has not been an injury at CF involving a forklift truck and a warehouse employee during the past 10 years. While I agree that the absence of accidents in a work place can be important for determining if a hazard is controlled within safe limits, to be considered, the hazardous occurrence investigation, recording and reporting system in a work place used to capture the statistics must be reliable and comprehensive, and include near misses. Reference is made here to Part XV of the COHS Regulations entitled, “*Hazardous Occurrence Investigation, Recording and Reporting Regulations*” and the “*Health and Safety Committees and Representatives Regulations*” Both regulate the investigation, recording, and reporting of hazardous occurrences. I was not given evidence regarding the system used at CF to capture and report hazardous occurrence statistics and found the testimony heard to be anecdotal in nature. Therefore, I am reluctant to give it a lot of weight.
- [41] I am similarly reluctant to give much weight to the statements that there has not been any past AVCs or directions that required employees employed in an well illuminated warehouse to wear high visibility vests where fork lift truck operate. Health and safety officer Smith testified that she was not surprised that there is a statistical absence of directions, because health and safety officers at HRDC overwhelmingly use AVCs to achieve compliance as opposed to directions. I also give little weight to CF’s allegations that various HRDC officials have indicated that section 12.13 does not apply in respect of transport industry cross dock warehouse operations. In my opinion, the application of sections 12.1 and 12.13 of the COHS Regulations is based on the specific facts related to each case.

- [42] Mr. Grist argued that high visibility vests will not be beneficial and may even create a hazard for employees. He referred to the recommendations of the CF health and safety committees, and the testimony of Mr. Pettit and Mr. Cooke. While I am cognizant of the importance of work place health and safety committees relative to work place health and safety, I am reluctant in this case to ascribe a lot of weight to their conclusions that high visibility vests would not be beneficial for preventing injury and might even create a hazard. The evidence provided to me suggests that the committees based their conclusions on anecdotal experience rather than study, and that they were influenced by an overall worker preference not to use personal protective equipment. It is not surprising to find that employees are not in favour of wearing personal protective equipment because they may not regard the equipment as being comfortable or comforting to use. I also note that the committees do not appear to have considered in their deliberations alternative high visibility clothing, as permitted by paragraph 12.13(a). Paragraph 12.13(a) of the COHS Regulations reads:

12.13(a) Where an employee is regularly exposed to contact with moving vehicles during his work, he shall

(a) wear a high visibility vest or other similar clothing, or ...

that is readily visible under all conditions of use. [My underline.]

- [43] I was also impressed that the health and safety program at CF has won industry health and safety awards for the last two years, and that CF pays near the maximum discounted workers compensation rates in the provinces of Alberta, Saskatchewan, and Manitoba. However, CF did not offer evidence of any specific safety measures instituted and enforced at the warehouse to control the hazard of accidental contact between a fork lift truck and an employee. Nothing in the photos that CF submitted during the hearing suggests a high degree of organization and control of pedestrian and vehicular traffic in their warehouse.

- [44] Finally, Mr. Grist argued that paragraph 12.1(b) of the COHS Regulations requires a health and safety officer to substantiate that the use of a protection equipment may prevent or reduce injury from the hazard, which, he said, health and safety officer Smith had not done. However, I remind Mr. Grist of subsection 148.(5) of the Code which reads:

148.(5) On a prosecution of a person for a contravention of any provision of this Part, except paragraphs 125(1)(c) and (z.10) and (z.11), it is a defence for the person to prove that the person exercised due care and diligence to avoid the contravention. However, no person is liable to imprisonment on conviction for an offence under any of paragraphs 125(1)(c) and (z.10) and (z.11). [My underline.]

While a direction does not constitute a prosecution, I would say that the same principle of due diligence applies in respect of an appeal of a direction and the applicant has the burden to prove that the contravention did not occur.

- [45] For all the above reasons, CF failed to establish to my satisfaction that their employees employed at the CF warehouse at Prince George, British Columbia were not regularly exposed to contact with moving fork lift trucks during their work and that the risk created by that exposure was controlled within safe limits. I thereby confirm the direction that health and safety officer Smith issued pursuant to section 145.(1) of the Code to CF on November 22, 2000 ordering CF to comply with section 12.13(a) of the COHS Regulations.

Douglas Malanka

APPENDIX**IN THE MATTER OF THE CANADA LABOUR CODE**
PART II - OCCUPATIONAL HEALTH AND SAFETY**DIRECTION TO THE EMPLOYER UNDER SUBSECTION 145(1)**

On May 29th, 2000, the undersigned health and safety officer conducted an inspection in the work place operated by CANADIAN FREIGHTWAYS LIMITED, being an employer subject to the *Canada Labour Code*, Part II, at 3851 - 22ND AVENUE, PRINCE GEORGE, B.C.

The said health and safety officer is of the opinion that the following provisions of the *Canada Labour Code*, Part II, are being contravened.

1. 125(1) (I) and (w) and *Canada Occupational Health & Safety Regulation* 12.13(a)

Employees who are regularly exposed to contact with motorised materials handling equipment in the warehouse and freight dock are not provided with or required to wear a high visibility vest or other similar clothing.

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 continue to reoccur.

Issued at Surrey, this 22nd day of November 2000.

Diana Smith
Health and Safety Officer

To: CANADIAN FREIGHTWAYS
Safety Department
4041A - 6th Street S.E.
Calgary, Alberta T2H 2J1

SUMMARY OF APPEALS OFFICER DECISION

Decision No.: 01-025

Applicant: Canadian Freightways Limited

KEY WORDS: fork lift truck; accidental contact; high visibility vests; high visibility clothing; illumination levels; strobe light, horn; vehicle; materials handling equipment; mobile equipment; health and safety committee; accident statistics

PROVISIONS:

Code: 122.1, 122.2, 125.(1)(l) and (w), 125.(1)(k), 145(1), 146.1, 146.1(1), 148.(5).

Regulations 12.1, 12.2, 12.4, 12.5, 12.5, 12.7, 12.13(a), 14.1, 14.16, 14.38, 14.44

SUMMARY: On May 29, 2000, health and safety officer Diana Smith conducted an inspection of the CF work place located at 3851 - 22nd Avenue, Prince George, British Columbia. She accepted an Assurance of Voluntary Compliance wherein CF agreed to ensure that employees regularly exposed to contact with moving vehicles wear high visibility vests. Health and safety officer Smith issued a direction to CF pursuant to subsection 145.(1) of the Code on November 22, 2000, when the company disagreed that employees employed in their warehouse must wear high visibility vests. The direction ordered CF to comply with paragraphs 125.(1)(l) and (w) of the Code and paragraph 12.13(a) of the *Canada Occupational Health and Safety (COHS) Regulations* entitled, "Part XII, Safety Materials, Equipment, Devices and Clothing Regulations."

The Appeals officer confirmed the direction because CF failed to establish that their employees were not regularly exposed to contact with moving fork lift trucks during their work and that risk was controlled within safe limits.