

Canada Labour Code
Part II
Occupational Health and Safety

George Smith Trucking Ltd
Applicant

and

Carey Sanderson
employer

Decision No. 04-024
July 30, 2004

This case was heard by Richard Lafrance, in Winnipeg, Manitoba, on July 13, 2004.

Appearances

For George Smith Trucking Ltd.

George Smith

For the employees

Carey Sanderson

Health and Safety Officers

Andrew McKechnie, Human Resources and Skills Development Canada (HRSDC), Winnipeg, Manitoba

Alex Kozubal, HRSDC, Winnipeg, Manitoba

Witness

Wes Dyck, Service Manager, WAJAX Industries Limited, Winnipeg, Manitoba

- [1] This case concerns an appeal made by George Smith Trucking Ltd. under subsection 146(1) of the *Canada Labour Code*, Part II (the *Code*), against two directions (Appendices A and B) issued by health and safety officer Andrew McKechnie.

- [2] The directions were issued under subsection 145(2)(a) and (b) of the *Code*, relatively to two forklifts (Yale and White) used in the work place that the health and safety officer considered a danger. Therefore, he ordered the employer, George Smith, owner and director of George Smith Trucking Ltd., to take immediate measures to protect the health and safety of any person against that danger.

- [3] I retain the following from health and safety officer McKechnie's testimony at the hearing and from the investigation report that he submitted to the appeals officer and the parties prior to the hearing.
- [4] On June 17th 2004, health and safety officer McKechnie conducted an inspection of Mr. Smith's work place. He was accompanied by Wes Dyck, Service Manager at WAJAX Industries Limited, whom health and safety officer McKechnie considered qualified to conduct mechanical inspections of forklifts because of his knowledge, training and experience.
- [5] Following the inspection of the two Yale and White forklifts, Wes Dyck indicated verbally that both the Yale and White forklifts were not safe for use. He later confirmed this opinion in a written report that he sent to the health and safety officer.
- [6] The report in question is divided in two parts, in relation to the two forklifts that were inspected. The itemized list of defects that Wes Dyck noted is also split into two sections for each forklift, that is: one section dealing with safety related items and the other section dealing with other needed repairs.
- [7] After obtaining Wes Dyck's inspection report of the two forklifts, health and safety officer McKechnie decided that the two forklifts constituted a danger and issued two directions to Mr. Smith, specifying that the forklifts were in contravention of paragraph 125.(1)(k) of the *Code* and paragraph 14.29(1) of the *Canada Health and Safety Regulations* (COHSR).
- [8] The directions also ordered Mr. Smith, in accordance with paragraph 145.2(a) of the *Code*, to take measures to protect any person from the danger. Furthermore, the direction directed Mr. Smith, under paragraph 145.2(b) of the *Code*, not to use or operate the machine until the health and safety officer's directions were complied with.
- [9] Mr. Smith, who testified at the hearing, did not dispute any of the findings or the safety issues raised by Wes Dyck or health and safety officer McKechnie. However, Mr. Smith attempted to establish that some of the items listed in Mr. Dyck's report were either not required by law nor safety related items.
- [10] Mr. Smith did not dispute Mr. Dyck's qualifications. He did try however to dispute the health and safety officer's allegations that he personally was not as qualified, because he considered that he also had the knowledge and experience required to determine if the two lifts trucks were safe for use in his work place.
- [11] Mr. Smith conceded in his closing arguments that there may have been some safety related problems with the two forklifts, such as the defective steering and load chains and missing nuts on wheels noted in Wes Dyck's report.
- [12] He confirmed that those items could and would be repaired. He also indicated that he wanted to know what other items needed to be repaired to be in compliance with the *Code*.

- [13] Carey Sanderson, the employee representative, did not dispute any of the findings of health and safety officer McKechnie.

- [14] In accordance with subsection 146.1(1) of the *Code*, the appeals officer must investigate the circumstances that cause a health and safety officer to issue directions to an employer. Upon completion of the investigation, the appeals officer may, depending on the case, vary, confirm or rescind the directions concerned.
- [15] In the present case, health and safety officer McKechnie issued two directions under section 145(2)(a) and (b) of the *Code* because he considered that the two forklifts constituted a danger to any person who would use them.
- [16] The two directions issued by health and safety officer McKechnie cited section 125.(1)(k) of the *Code* and 14.29(1) of the COHS regulations. These provisions read as follows:

Canada Labour Code

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:

(k) ensure that the vehicles and mobile equipment used by the employees in the course of their employment meet prescribed standards;

Canada Occupational Health and Safety Regulations

Repairs

14.29 (1) Motorized or manual materials handling equipment that creates a health or safety hazard owing to a defect in the materials handling equipment shall be taken out of service until it has been repaired or modified by a qualified person.

- [17] The term danger is to be interpreted in light of the definition given in subsection 122 (1) of the *Code*, which reads:

“danger” means any existing or potential hazard or condition or any current or future activity that could reasonably be expected to cause injury or illness to a person exposed to it before the hazard or condition can be corrected, or the activity altered, whether or not the injury or illness occurs immediately after the exposure to the hazard, condition or activity, and includes any exposure to a hazardous substance that is likely to result in a chronic illness, in disease or in damage to the reproductive system[.]

- [18] To find that a danger existed, I must be satisfied that the state of disrepair of the forklifts was such that, given the circumstances and their use at the work place, it was reasonable to expect that any person using them could be injured if the lift trucks were not immediately repaired and made safe.

- [19] Mr. Smith did not give me any arguments nor convince me that the lift trucks were safe enough to continue to be used given their condition when the directions were issued and he was ordered to cease using them.
- [20] On the other hand, the health and safety officer's testimony and report, as well as those of Wes Dyck, convinced me that both lift trucks constituted real safety hazards to any person who would use them. It is to be noted also that Mr. Smith did not dispute these safety hazards.
- [21] According to the testimonies concerning the deficiencies noted on both forklifts, such as defective brakes, damaged lift chains, forks worn beyond allowable limits, upright trunion mount worn out, to name but a few – it was reasonable to expect that they constituted a hazard that could reasonably be expected to cause injury to an employee.
- [22] Therefore, for the above-mentioned reasons, I confirm the two directions issued to Mr. George Smith by health and safety officer McKechnie on June 17, 2004.

Richard Lafrance
Appeals Officer

Summary of Appeals Officer's Decision

Decision No.: 04-024

Applicant: George Smith Trucking Ltd.

Employer: Carey Sanderson

Key Words: Forks lift truck

Provisions: *Code* 1221(1), 125(1)(k), 145(2)(a)(b)
Regulations 14.29(1)

Summary

On June 17, 2004, a health and safety officer issued two directions to the employer pursuant to subsection 145.(2)(a) and (b) of the *Code*. The two directions concerned two forklifts that a qualified person had determined to be unsafe and pose a danger to any employees that could have had to use these forklifts. The directions directed the employer to immediately take measures to protect any person from that danger and not to use or operate the equipment until the directions was complied with.

The appeals officer confirmed both directions issued by the health and safety officer.