

Canada Labour Code
Part II
Occupational Health and Safety

Fraser Surrey Docks Ltd.

and

Tony Gutenberg
applicant

Decision No. 04-031
September 1, 2004

This case was decided by appeals officer Richard Lafrance.

For the applicant

Tony Gutenberg, Manager, Quality Assurance, OHS, Security and Risk

Health and Safety Officer

Allen S. Williams, Labour Program, Human Resources and Skills Development
Canada, [No. NH0871]

- [1] This case concerns an appeal made on March 16, 2004 by Tony Gutenberg, Manager, Quality Assurance, OHS and Risk, Fraser Surrey Docks, (the employer), under subsection 146(1) of the *Canada Labour Code* (the *Code*), Part II.
- [2] The appeal was made as a result of a direction issued to the employer on February 25, 2004 by health and safety officer Allen Williams, following an investigation of a hazardous occurrence. The direction, issued under subsection 145(2)(a) of the *Code*, describes the employer's contravention as follows:

“The Safety Officer considers that the employer, in violation of Section 124 failed to ensure that safety at work of the employees was protected.

The Safety Officer Further considers that the employer failed to comply with the following provisions under the *Canada Labour Code* Part II and the Marine Occupational Safety and Health Regulations:

- (1) *Canada Labour Code* Part II paragraph 125(1)(p) and the Marine Occupational Safety and Health Regulations, Section 12.35

The employer failed to ensure that employees were provided with safe entry to, and exit from and occupancy of the work place by ensuring that employees were not permitted to the materials handling area during the unloading of containers or that the movement of the containers was halted until the employees evacuated the area to a safe position.

(2) *Canada Labour Code*, Part II, Paragraphe 125(1)(q)

The employer failed to ensure that each employee was provided with the information, instructions, training and supervision necessary to ensure their health and safety while working in a materials handling area, and location of safe areas of movement of cargo during unloading and loading.

(3) *Canada Labour Code* Part II, paragraph 125(1)(s)

The employer failed to provide training on safety and potential hazards of working around materials handling equipment during loading and unloading of containers.

(4) *Canada Labour Code* Part II, paragraph 125 (1)(z)

Employer failed to provide employees who have supervisory or managerial responsibilities training in health and safety and their responsibilities under health and safety as part of their duties.”

[3] On August 25, 2004, Tony Gutenberg informed the appeals officer that Fraser Surrey Docks was withdrawing its appeal into health and safety officer’s Williams direction.

[4] As the appeals officer responsible for the case, I confirm that Fraser Surrey Docks has withdrawn its appeal. After reviewing the file, the case is closed.

Richard Lafrance
Appeals Officer

Summary of Decision

Decision No.: 04-031

Applicant: Fraser Surrey Docks Ltd.

Key Words: Direction, appeal

Provisions: *Code* 146(1), 145(2)(a),
Regulations: Marine Regs: 12.35,

Summary:

The applicant appealed a direction issued under subsection 146.(1) of the *Canada Labour Code*, Part II, then withdrew his appeal. After reviewing the file, the case is closed.