

**Canada Labour Code**  
**Part II**  
**Occupational Health and Safety**

Maritime Employers Association  
*applicant*

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Decision No. 04-046  
December 6, 2004

This case was decided by appeals officer Pierre Guénette on the basis of written documents submitted by the Maritime Employers Association (MEA) and the report prepared by health and safety officer Steve Sirois.

The *Syndicat des débardeurs* [stevedores' union], which represents stevedores at the Port of Montreal, did not submit any written documents.

**For the employer**

Gérard Rochon, legal counsel

**Health and safety officer**

Steve Sirois, Human Resources and Skills Development Canada, Labour Program, Prevention Services Directorate, Montreal

- [1] This case concerns an appeal filed on March 17, 2003 under subsection 146(1) of the *Canada Labour Code* (the Code) Part II by Stéphane Saucier, Health and Safety Coordinator for the MEA. This appeal stemmed from a direction issued to the MEA on February 17, 2003 under paragraph 145(2)(a) of the Code.
- [2] On February 17, 2003, health and safety officer Steve Sirois (officer Sirois) was investigating a work-related accident that resulted in the death of a Montreal Port Authority (MPA) employee. This employee was working at the Port of Montreal's Racine Terminal at the time of the accident.
- [3] Officer Sirois filed his investigation report for the purpose of the appeal. I used the following points from his report.
- [4] At the time of the accident, the MPA employee was inspecting uranium hexafluoride (UF<sub>6</sub>) cylinders, while the stevedores were loading a UF<sub>6</sub> cylinder in a container. The container slid against another container and the employee was crushed between the two containers.

[5] During his investigation, officer Sirois found that there was a danger at the work site and issued a direction to the following three employers:

- a) **The Montreal Port Authority**, because its employees work around containers while storing UF6 cylinders;
- b) **Racine Terminal**, because employees sometimes find themselves around containers while loading cylinders in the containers;
- c) **The MEA**, because the officer found that there was a danger in the workplace.

[6] Only the MEA appealed the direction.

[7] The direction issued to the MEA addressed a dangerous situation, which it was ordered to terminate by introducing measures to protect workers against the danger. Officer Sirois identified the following dangerous situation:

The presence of workers between the containers while these containers are being moved or shipped is a dangerous situation that leaves the workers at risk of being crushed.

[8] According to the information obtained at the beginning of his investigation, officer Sirois determined that the stevedores were under the MEA's authority.

[9] Following up on the direction, the MEA's health and safety coordinator, Stéphane Saucier, verbally informed officer Sirois on February 28, 2003, that the work done by the Racine Terminal stevedores came entirely under the responsibility of the Racine Terminal employer, that the MEA did not supervise the stevedores, that they were not compensated by the MEA, and that the MEA did not operate the workplace that was the subject of the dangerous situation.

[10] Over the following days, officer Sirois received the MEA's written reply to the direction in which Stéphane Saucier indicated that the MEA did not operate the workplace described in the direction and, therefore, could not comply with the direction and notice of danger that was issued on February 17, 2003.

[11] On March 5, 2003, officer Sirois wrote to Stéphane Saucier that he accepted the reply to the direction, and that the MEA could remove the direction and notice of danger that it had posted.

[12] Officer Sirois ended his report to the appeals officer as follows:

As a result of our follow-up on the investigation, we concluded that the stevedores are employed and compensated by the Maritime Employers' Association. Moreover, any required disciplinary measures are taken by the Maritime Employers' Association.

- [13] In terms of the employer's position, Stéphane Saucier alleged in his letter of appeal sent on March 17, 2003, that the direction issued by officer Sirois on February 17, 2003 contained information on the company's status that erred in fact and in law. Consequently, the MEA did not contest the dangerous situation but only the fact that the MEA was not the supervisor or operator of the stevedoring activities, and asking that the direction be withdrawn.
- [14] The MEA's lawyer, Gérard Rochon, provided me with the reasons for the appeal of the direction. In his written arguments, Mr. Rochon included the collective agreement between the MEA and the stevedores' union, CUPE Local 375, which was set to expire on December 31, 2003.
- [15] Mr. Rochon alleged that the MEA was deemed to be an employer only for the purposes of the *Canada Labour Code* Part I.
- [16] Mr. Rochon maintained that the MEA was not involved in the loading and unloading of ships, and had no authority to do so. The procedures that should be followed for stevedoring operations came from the different employers in charge of the labour force, and are specific to each terminal. The various stevedoring employers are the only ones controlling the work to be done at each terminal.
- [17] According to Mr. Rochon, the MEA does not have a workplace where stevedoring operations are carried out, and it does not control the tasks to be performed at the work sites where the stevedoring is done.
- [18] Mr. Rochon specified that, given these facts, the MEA could not be considered an employer for the purposes of sections 124, 125 and following of the Code, and cannot, therefore, be the subject of a direction aimed at protecting workers performing tasks around containers in the Port of Montreal.
- [19] In support of the MEA's position, Mr. Rochon sent me two more statements contained in officer Sirois' investigation report. The first one, prepared by a Racine Terminal representative, specifies that this employer is responsible for the stevedores when they are working on the Racine Terminal grounds at the Port of Montreal. The second statement is the one by officer Sirois, who accepted the MEA's position that it had no responsibility for either the workplace or the tasks performed. According to Mr. Rochon, the fact that the officer did not have the authority under the Code to vary or rescind the direction is the only reason why the direction was retained.
- [20] Mr. Rochon reiterated the MEA's position regarding the fact that the association did not pay the stevedores, who are paid by the company that uses them. In this regard, the stevedoring companies had set up an association, the *Centre de données maritimes* [maritime data centre], which acts as the payroll agent and receives money from the various stevedoring companies, which it then uses to pay the workers.

[21] Mr. Rochon also pointed out that, under the collective agreement, the MEA serves as the port employers' agent in regard to decisions on disciplinary measures and their application. Nonetheless, Mr. Rochon wanted to point out that this did not mean that the MEA was designated as the employer and must therefore comply with the requirements of sections 124, 125 and following of the Code.

[22] Hence, Mr. Rochon invoked all of these arguments to ask the appeals officer to cancel the direction issued to the MEA on February 17, 2003 by officer Sirois.

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[23] In this case, Mr. Rochon contested the fact that the MEA had been designated as the stevedores' employer and the operator of the workplace.

[24] Thus, there are two issues in dispute that I must address: first, whether the MEA is the stevedores' employer and second, whether the MEA operates the workplace at the Port of Montreal that is identified in the direction.

[25] With respect to the first point, officer Sirois indicated in the direction that the MEA was an employer subject to Part II of the Code, whose workplace was located at sections 57-64 of the Port of Montreal.

[26] Officer Sirois also determined that the stevedores who, because of their functions, find themselves around containers, come under the authority of the MEA. In conclusion, in his report to the appeals officer, officer Sirois determined that the stevedores were employed and paid by the MEA and that this organization implemented any required disciplinary measures.

[27] Moreover, following the letter from Stéphane Saucier specifying that the MEA was not the employer and did not operate the workplace in question, officer Sirois informed the MEA that he accepted these arguments and that it could remove the direction and notice of danger that had been posted. This reply to the MEA from the officer represented a confirmation of the fact that the MEA was not required to comply with the direction.

[28] However, a health and safety officer does not have the authority to withdraw a direction because under subsection 146(2) of the Code; only an appeals officer has such authority.

[29] This statement by officer Sirois appears to contradict the conclusions reached in his report. Officer Sirois indicated, on the one hand, that the MEA was effectively the stevedores' employer and, on the other, that he agreed with the MEA's position that it was not the stevedores' employer.

[30] For his part, Mr. Rochon alleged that the MEA was an employer representative only for the purposes of the *Canada Labour Code* Part I.

- [31] Unlike Mr. Rochon, I believe that the MEA, as the employers' representative for the stevedoring companies at the Port of Montreal, carries all the responsibilities of an employer, regardless of which part of the Code is in question.
- [32] According to Mr. Rochon, the MEA does not have any authority over the stevedoring operations since the procedures that must be followed are dictated by each stevedoring company and the latter completely control the operations they manage.
- [33] Aside from the working procedures to be followed, the stevedoring activities and tasks imply the following:
- a. Health and safety are closely associated with all of the tasks performed by stevedores during stevedoring operations. In this regard, the collective agreement between the MEA and the stevedores' union states that the MEA is responsible for providing workplace health and safety training to the employees.
  - b. A clause in the collective agreement requires employees to use the prescribed safety materials, equipment, instruments and clothing provided by the MEA as the employer. Thus, the MEA, as the employer, is required to ensure that employees comply with this provision when performing their tasks.
- [34] The above points show that the MEA has a part to play in terms of authority and responsibility for activities and tasks performed by stevedores.
- [35] After reviewing the stevedores' collective agreement, I find that I must take into consideration the following key points:
- a. The term "employer" applies to the MEA.
  - b. Clause 1.02 identifies the MEA as the only bargaining agent and the only representative of the stevedoring companies at the Port of Montreal. Thus, the MEA is effectively the employer.
  - c. Clause 1.09 a) 24) specifies that the employer, the MEA, owns certain pieces of equipment, which it rents to its members, the stevedoring companies that are the subject of the collective agreement. Under the Code, the MEA must ensure that the equipment that belongs to it and is used by its employees complies with the prescribed standards. The MEA provides equipment that is used by the stevedores in the different Port of Montreal terminals, which shows that the MEA must comply with this requirement placed on the employer.

- d. The organization of the work is shared between the MEA and the different stevedoring companies at the Port of Montreal. Under the collective agreement, they have the authority to direct and operate their facilities, machines, tools and operations and the MEA has the right and authority to maintain order and discipline. Notwithstanding this distribution of responsibilities, the MEA nonetheless remains the employer organization that represents the stevedoring companies and is recognized as the only employer in the collective agreement.
- e. Clause 4.03 specifies that the MEA must decide all disciplinary sanctions. As a rule, this is an employer's responsibility.
- f. Clause 5.02 indicates that a grievance committee comprises MEA and union representatives. In the area of labour relations, the MEA fully assumes the employer's role. A stevedoring company would not have the authority to open and amend the collective agreement.
- g. Management, represented by the MEA, is the only one to decide on what staff are required in terms of classifications. Management of the classification process is part of the deployment process in clause 8.
- h. Under clause 9.07, senior supervisors, supervisors and group chiefs are unionized stevedores with responsibilities for issuing orders and directives to the stevedores. This responsibility was delegated to them by the MEA under the collective agreement.
- i. Under clause 11.05 k), one of the functions of local health and safety committees is to obtain from the MEA information that they deem necessary to enable them to identify current or potential risks in the workplace. The Code specifies that a local committee may require that the employer provide any information on health and safety in the workplace that it deems necessary. This clause in the collective agreement shows that the MEA also has this responsibility as an employer.
- j. Clause 11.13 states that the MEA provides employees with health and safety training. This is another responsibility that is normally assumed by employers.
- k. Under clause 11.15, the workplace health and safety committee comprises three representatives of both the union and MEA. This makes the MEA the employer representative on this committee.
- l. Clause 11.20 provides that the provision of protective clothing and equipment is a shared responsibility among the stevedoring companies and the MEA.
- m. Clause 13.07 states that the employer, the MEA, is the only one responsible for hiring new employees, including the responsibility for and administration of the hiring process and programs. In the organization of work, the employer is responsible for hiring, as is the case here for the MEA.

n. According to clause 30, management, which is to say the MEA, is responsible for assigning employees. The MEA controls employee assignments.

[36] Subsection 122(1) of the Code defines the term employer as follows:

A person who employs one or more employees and includes an employers' organization and any person who acts on behalf of an employer.

[37] The MEA employs employees who are governed by a collective agreement signed by two parties, the MEA and the stevedores' union. Moreover, the MEA represents several stevedoring companies at the Port of Montreal, and can thereby be deemed to be an employers' organization. This term figures in the definition of employer provided in the Code. However, Part II of the Code does not define "employers' organization". But, Part I of the Code provides the following definition: "any organization of employers the purposes of which include the regulation of relations between employers and employees". The MEA, by virtue of its constitution, brings together employers at the Port of Montreal and plays the role of an employers' organization.

[38] The MEA is deemed to be the only one responsible for hiring new employees [clause 13.07 b) of the collective agreement]. The MEA is responsible for planning employee assignments to the different stevedoring companies at the Port of Montreal.

[39] As indicated in the collective agreement, as the employer representative, the MEA signed an agreement with the stevedores' union defining the stevedores' terms and conditions of work.

[40] As the employer, the MEA is responsible for raising any issue pertaining to working relations and conditions with the joint labour relations committee.

[41] The collective agreement provides that, if the MEA introduces technological changes, a new operation or new work methods, the union must be notified. This provision in the collective agreement proves that the MEA sets the stevedores' working conditions.

[42] Finally, the MEA, by assigning stevedores to the different stevedoring companies, specifies to the stevedores what work they must perform based on their respective classifications.

[43] Indeed, it cannot be presumed that the stevedores, who are assigned to different companies every day, automatically become employees of these companies merely for the time it takes them to do the work, since they are assigned on the basis of their classifications.

[44] In light of the different factors mentioned above and the documents that were sent to me, I conclude that the MEA, pursuant to the authority it carries at the Port of Montreal, has all the characteristics of an employer under the meaning of the Code, and, as a consequence, the Code applies to the MEA.

- [45] Moreover, I am convinced that there is in fact an employer-employee relationship between the MEA and the stevedores. The MEA, as an employer subject to the Code, may therefore be subject to a direction regarding the work performed by employees covered by the collective agreement that governs them.
- [46] The second issue to be addressed is whether or not the MEA operates the workplace at the Port of Montreal and, as a result, is responsible for the sector where the stevedores work.
- [47] In its written arguments, the MEA indicated that it did not operate the workplace described in officer Sirois' direction. In this regard, clause 3 of the collective agreement defines management's rights as follows:
- the union recognizes the right of the companies to manage and operate their facilities, machines and tools, and to direct their operations (...).
- [48] Thus, this provision appears to clarify that the different stevedoring companies at the Port of Montreal operate and control the workplace.
- [48] Based on the documents filed by the MEA and officer Sirois for the appeal, I conclude that the MEA is deemed to be the employer responsible for the stevedores at the Port of Montreal and, as a result, is responsible for the work performed by the stevedores. Since the MEA is identified as the employer, the Code automatically applies to it. However, the documents that were filed show that the MEA does not operate the Port of Montreal as such. In conclusion, the MEA controls the work performed by the stevedores but does not control the workplace of each stevedoring operation at the Port of Montreal.
- [49] In his written arguments, Mr. Rochon indicated that the MEA is not the employer subject to the provisions of sections 124, 125 and following of the Code because the MEA does not have a workplace where stevedoring operations are conducted.
- [50] Pursuant to section 124 of the Code, the employer must ensure the protection of its employees. Because I have determined that the MEA is the stevedores' employer, it must provide protection for this group of workers at the Port of Montreal, and therefore comply with this general requirement imposed on the employer under the Code.
- [51] With respect to Mr. Rochon's reference to the provisions in sections 125 and following of the Code, it is clear that the employer must comply with the specific requirements pertaining to any workplace under its full authority, and in the event that the employer does not control the workplace, any work done by the employees to the extent that the employer controls that work. I have determined that the MEA controls the work done by the stevedores, without controlling the workplace. Thus, the MEA is subject to the provisions in sections 125 and following of the Code.
- [52] As a consequence, a direction may be issued to the MEA.



- [53] In view of the facts established by officer Sirois, it is clear that there was a dangerous situation at the Port of Montreal on February 17, 2003. Moreover, employees (including stevedores) who come under the MEA and stevedores' union collective agreements were around the container at the time of the accident. Therefore, officer Sirois was required to issue a direction to the MEA as these workers' employer, but not as the operator of the workplace.
- [54] For these reasons, under the authority vested in me by section 146.1 of the Code, I am varying the direction on the dangerous situation issued to the MEA on February 17, 2003 under paragraph 145(2)(a) of the Code. This amendment takes into consideration the fact that the MEA does not control the workplace strictly speaking, it only controls tasks performed by the stevedores in the workplaces, to the extent that it controls the assignment of stevedores based on their classifications and the tasks that need to be performed. As a consequence, the amended direction is appended.

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Pierre Guénette

**Appendix**

**In the Matter of the *Canada Labour Code*  
Part II – Occupational Health and Safety**

**Direction Pursuant to Paragraph 145(2)(a)**

On February 17, 2003, the health and safety officer conducted an investigation into the death of André Lacoste in the workplace operated by Racine Terminal, an MEA member to which the MEA assigned stevedores under its authority. The workplace is located in sections 57-64 of the Port of Montreal, sometimes known as Port of Montreal Racine Terminal.

The health and safety officer considers that the presence of workers among the containers when these containers are being moved or when these containers are being loaded presents a danger that workers may be crushed.

In consequence, you are HEREBY ORDERED, pursuant to *Canada Labour Code* Part II paragraph 145(2)(a), to take measures to protect your employees against this danger.

Prepared in Montreal on February 17, 2003.

Health and safety officer (signature & number): Steve Sirois

Direction issued to Stéphane Saucier, Health and Safety Coordinator, Marine Employers' Association.

## **Summary of Appeals Officer's Decision**

**Decision No.:** 04-046

**Applicant:** Maritime Employers Association (employer)

**Union:** *Syndicat des débardeurs*, CUPE Local 375

**Key Words:** Direction, employer, employers' organization

**Provisions:** *Code* 122(1), 124, 125, 145(2)a), 146(1), 146.1(1)  
Regulations

### **Summary:**

The appeal stems from a direction issued under paragraph 145(2)(a) of the Code to the Maritime Employers Association following an investigation conducted by a health and safety officer into the causes a work-related accident at the Port of Montreal that resulted in the death of a Montreal Port Authority Employee on February 17, 2003. The direction referred to a dangerous situation at the Port of Montreal, and ordered the MEA to terminate this situation by taking measures to protect the workers against the danger. The direction identified the MEA as the employer and operator of the workplace at sections 57-64 of the Port of Montreal. Pursuant to subsection 146(1) of the Code, the MEA appealed the direction issued on February 17, 2003. The appeals officer based his decision on the written submissions in this case.

On November 22, 2004, appeals officer Guénette issued a written decision amending the health and safety officer's direction by recognizing the MEA as being responsible for protecting the health and safety of its employees.