

Case No. 2006-03
Decision No. CAO-07-022

Canada Labour Code
Part II
Occupational Health and Safety

TransForce Income Fund
appellant

and

Jean-Marc Gagné
respondent

Decision No.: CAO-07-022
June 19, 2007

This case was heard by Appeals Officer Katia Néron in Montreal, Quebec on January 18, 2007.

For the appellant

Carl Lessard, Counsel, Lavery, de Billy

For the respondent

Jean-Marc Gagné, employee representative, Health and Safety Committee, Division
TFI Transport 12 L.P. (12) (Transbord)

- [1] This case arises out of an appeal filed on January 13, 2006 under subsection 146(1) of Part II of the *Canada Labour Code* (the *Code*) by Carl Lessard as counsel for TransForce Income Fund (TransForce Inc.).
- [2] In his request, Mr. Lessard submits that Health and Safety Officer (HSO) Steve Sirois erred in designating TransForce as the employer in the direction he issued under paragraphs 145(1)(a) and (b) of the *Code* on December 16, 2005 following his investigation into a work accident that caused an employee's death.
- [3] The facts stated by HSO Sirois in his investigation report and his testimony are as follows.
- [4] On December 7, 2005, Léo Lebrun, a truck driver employed by Transbord Inc., a business purchased by TransForce Inc. and operated as Division TFI Transport 12 L.P.

(12) (Transbord),¹ went to Lacaille International in Carignan, Quebec, also owned by TransForce Inc. and operating as Division Papineau Int. L.P. (10),¹ to get help setting up the tarpaulins that were to cover the load on his truck's platform semi-trailer. To perform this activity, the employee climbed onto the trailer and, while walking on the load, fell from a height of about 3.45 metres and was killed.

- [5] During his investigation, HSO Sirois found that no fall-protection system or structure had been provided to the employee, contrary to paragraph 12.10(1)(a) of the *Canada Occupational Health and Safety Regulations (COHSR)*. Moreover, contrary to paragraphs 12.10(1.1)(a) and (b) of the *COHSR*, the regional health and safety officer had not received a report in writing setting out the reasons why it was not reasonably practicable to provide a fall-protection system and including a job safety analysis and a description of the training and instruction provided to the employee on the safe method of climbing onto and working on the vehicle or its load without such a safety system.

- [6] Paragraph 12.10(1)(a) of the *COHSR* reads as follows:

Subject to subsection (1.1), every employer shall provide a fall-protection system to any person, other than an employee who is installing or removing a fall-protection system in accordance with the instructions referred to in subsection (5), who works

- (a) from an unguarded structure or on a vehicle, at a height of more than 2.4 m above the nearest permanent safe level or above any moving parts of machinery or any other surface or thing that could cause injury to a person on contact[.]

- [7] Subsection 12.10(1.1) reads as follows:

Where an employee is required to work on a vehicle on which it is not reasonably practicable to provide a fall-protection system, the employer shall

- (a) in consultation with the policy committee or, if there is no policy committee, the work place committee or the health and safety representative,
 - (i) perform a job safety analysis to eliminate or minimize the need for the employee to climb onto the vehicle or its load, and
 - (ii) provide every employee who is likely to climb onto the vehicle or its load with training and instruction on the safe method of climbing onto and working on the vehicle or its load;
- (b) make a report in writing to the regional health and safety officer setting out the reasons why it is not reasonably practicable to provide a fall-protection system and include the job safety analysis and a description of the training and instruction referred to in paragraph (a); and

¹ According to the organization chart dated February 8, 2006 describing the structure of TransForce Income Fund (Fonds de revenu TransForce), which is appended to the report prepared by HSO Sirois.

- (c) provide a copy of the report referred to in paragraph (b) to the policy committee or, if there is no policy committee, the work place committee or the health and safety representative.

[8] On December 15, 2005, based on these provisions, HSO Sirois issued a direction for danger to Transbord under paragraphs 145(2)(a) and (b) of the *Code*. The direction reads in part as follows:

[Translation]

The said Health and Safety Officer considers that the performance of an activity (tarping) constitutes a danger to an employee while at work:

the fact that an employee walks at a height of more than 2.4 metres on a load on a trailer without being provided with a fall-protection system as required by section 12.10 of the Canada Occupational Health and Safety Regulations constitutes a danger of falling.

[9] On December 16, 2005, HSO Sirois also issued a direction under paragraphs 145(1)(a) and (b) of the *Code*, this time to TransForce, stating that he was of the opinion that TransForce had contravened paragraph 125(1)(l) of the *Code* and paragraphs 12.10(1)(a) and (1.1)(b) of the *COHSR*. That direction reads in part as follows:

[Translation]

The said Health and Safety Officer is of the opinion that the following provision of Part II of the *Canada Labour Code* has been contravened:

Paragraph 125(1)(l) of the *Canada Labour Code* and paragraph 12.10(1)(a) of the Canada Occupational Health and Safety Regulations.

The employer has not provided a fall-protection system to workers working on a vehicle at a height of more than 2.4 metres above the nearest permanent safe level, without making the report provided for in paragraph 12.10(1.1)(b) of the Canada Occupational Health and Safety Regulations to the regional health and safety officer.

[10] I retain the following from the reasons given in support of the decision of Health and Safety Officer Sirois to designate TransForce as the employer in his direction of December 16, 2005.

[11] After examining the intervention reports written by other health and safety officers from the Montreal office of Human Resources and Skills Development Canada (HRSDC), Labour Program, HSO Sirois concluded that the officers of the businesses acquired or divisions owned by TransForce had had very little to do with the intervention at those businesses or divisions. He noted, *inter alia*, that his colleagues had been referred to TransForce's human resources advisors for the planning and conduct of their intervention. He also realized that the same advisors had signed the assurances of voluntary compliance (AVCs) received by his colleagues and the replies to those AVCs, including the remedial plans describing the steps taken to correct the observed contraventions.

- [12] In his investigation report, HSO Sirois included a letter written in reply to an AVC received on March 23, 2004 by HSO Marie-Ève Fortier. The letter was signed by Maude Pelletier, a human resources advisor at TransForce Inc., and attached to it was a memorandum by Sylvain Bédard, also from TransForce Inc. In that memorandum to the terminal managers for Kingsway, Daily and Sélect, operating as Division TFI Transport 5 L.P. (5),² and the terminal manager for Papineau, operating as Division Papineau Int. L.P. (10),² Sylvain Bédard described the maintenance procedure for the lift trucks used by employees.
- [13] HSO Sirois also noticed that, in the employer's investigation report dated December 15, 2005, which was required under subsection 15.8(1) of the *COHSR*, the employer's name was given as TFI Transport 12 L.P. (Transbord). Geneviève Chevrier, a human resources advisor at TransForce Inc., had signed that report as if she were the one who had conducted the investigation on behalf of TFI Transport 12 L.P. (Transbord).
- [14] Based on these findings, HSO Sirois concluded that TransForce Inc. was not merely providing a consulting service to the various businesses it owned but was also exercising real management authority with regard to occupational health and safety decisions, including by requiring compliance with or the application of health and safety procedures, conducting work place inspections, investigating accidents and writing the associated reports.
- [15] HSO Sirois also noted that, in 2005, after TransForce Inc. purchased Transbord Inc. and Transport F. Audet Inc., Léo Lebrun, who worked for Transport F. Audet Inc. at the time, was transferred to Transbord. HSO Sirois concluded from this that TransForce Inc. had the power to transfer employees in the various businesses it purchased.
- [16] HSO Sirois also realized that Transbord Inc. was listed with the Enterprise Registrar of Quebec as being inactive and that, according to the TransForce Income Fund organization chart, it was operating as Division TFI Transport 12 L.P. (12) (Transbord). The same organization chart showed that that business was under TFI Holdings Limited Partnership and TransForce Administration Inc., both of which were under TFI Holdings Inc. and TFI Operating Trust, which were both directly under TransForce Income Fund.
- [17] Referring to the documents from the Enterprise Registrar of Quebec concerning TransForce Income Fund, TFI Operating Trust, TFI Holdings Inc., TransForce Administration Inc., TFI Holdings Limited Partnership, TFI Transport 2 L.P. and TFI Transport 12 L.P., among others, HSO Sirois also noted that all these businesses had the same address and were tied together through certain members of the boards of trustees or directors shown under TransForce Income Fund, TFI Holdings Inc. and TFI Operating Trust (Fiducie d'exploitation TFI).
- [18] HSO Sirois concluded that Transbord was managed as an integral part of TransForce Inc. and that, although each of the TFI divisions had its own corporate identity, all of the businesses acquired by TransForce Inc. and its TFI divisions were, in fact, merely a single business.

² According to the organization chart of February 8, 2006.

Appellant's evidence

- [19] Mr. Lessard called Josiane-Mélanie Langlois, Vice-President, Legal Affairs, TransForce Income Fund, Division TFI Transport 2 L.P. (2), Gestion TransForce; Annie Blanchard, Property Coordinator, TransForce Income Fund, Division TFI Transport 2 L.P. (2), TransForce Properties (Immeubles TransForce); and Sylvain Desaulniers, Vice-President, Human Resources, TransForce Income Fund, Division TFI Transport 2 L.P. (2), Gestion TransForce. I retain the following from their testimony.
- [20] Josiane-Mélanie Langlois has been the Vice-President, Legal Affairs, since 2005. Among other things, she is responsible for corporate affairs and legal affairs relating to the acquisition of businesses. She is also the general secretary of the company's board of trustees.
- [21] Ms. Langlois stated that the name TransForce, although used as a trademark, does not designate the legal person or entity. Prior to September 2002, the entity that headed up the entire group was called TransForce Inc., but after that date it was wound up and became a public income fund structure owned by public shareholders, that is, institutions and individuals. At that time, it adopted the name TransForce Income Fund, which is the public entity listed on the stock exchange. Ms. Langlois presented the organization chart for the TransForce Income Fund trust, from whose name the acronym TFI is derived. That structure was in effect at the time of Mr. Lebrun's accident.
- [22] Referring to that organization chart, Ms. Langlois stated that TransForce Income Fund has no employees but that there is a second trust under it, TFI Operating Trust, which has a nine-member board of trustees that manages the entire group. The new company's organizational structure thus corresponds to that of an income trust consisting of two trusts created for tax purposes.
- [23] Under TFI Operating Trust is TFI Holdings Inc. (Gestion TFI Inc.), which was also created for tax purposes. It is the entity that purchases businesses. It has a board of directors that also oversees the entire group but whose decisions are subject to limits based on the amounts of money involved. This entity is partly owned by shareholders.
- [24] According to Ms. Langlois, all the businesses purchased by TFI Holdings Inc., commonly called "subsidiaries", that are shown on the organization chart as being directly under TFI Holdings Inc. may ultimately be wound up and then transferred to the TFI divisions.
- [25] Furthermore, the TFI divisions are limited partnerships and are thus owned by a general partner, TransForce Administration Inc., and a limited partner, TFI Holdings Limited Partnership, which acts as a consolidator and financial agent for all the TFI divisions. Each TFI division must meet financial objectives.
- [26] Ms. Langlois stated that decisions to merge businesses already acquired by TFI Holdings Inc. may be made by the boards overseeing the group, namely the board of directors of TFI Holdings Inc. up to a certain monetary level and the board of trustees of TFI Operating Trust. The purpose of such mergers may be, for example, to avoid having to

apply for new operating licences for a given business when such licences exist for one of the TFI divisions that is already operating.

- [27] TFI Holdings Inc. also purchases businesses and then does not merge them but, again for tax reasons, transfers their assets, officers, employees and activities. Although legal ownership of each business purchased by TFI Holdings Inc. changes, since the business becomes part of a new entity, each business remains a separate entity from both a legal and an operational standpoint, since it keeps its own budget, financial statements, officers, employees and activities.
- [28] Ms. Langlois thus explained that Transbord Inc. was a family business involved in road transport before being acquired by TFI Holdings Inc. in April 2005. It continued its activities as the subsidiary Transbord Inc. until June 16, 2005. On that date, it was wound up and its assets, officers, employees and activities were transferred to the limited partnership TFI Transport 12 L.P. (12) (Transbord). It then became a TFI division with TFI Holdings Limited Partnership as its main limited partner, consolidator and financial agent. Since then, its bank accounts and the cheques from its customers have been opened and written in the name of Division TFI Transport 12 L.P. (12) (Transbord).
- [29] Ms. Langlois added that Transport F. Audet Inc. was purchased by TFI Holdings Inc. on May 1, 2004, before Transbord Inc. was purchased. On October 6, 2004, the business was wound up and its assets, officers, employees and activities were transferred to Division TFI Transport 12 L.P. (12). However, on October 1, 2005, further to a decision by the board of directors of TFI Holdings Inc., the assets and activities of Transport F. Audet Inc. were merged with those of Transbord Inc. after the latter was itself wound up and transferred to TFI Transport 12 L.P. (12) (Transbord). Transport F. Audet Inc. was then dissolved and some of its employees transferred to other TFI divisions. That was how Mr. Lebrun ended up as a truck driver working under the former operations manager for Transbord Inc., who at the time was Annie Blanchard.
- [30] Ms. Langlois further testified that Division TFI Transport 2 L.P. (2) includes TransForce Properties, Locations TransForce and Gestion TransForce.
- [31] TransForce Properties owns all the leases and properties used for all the TFI divisions throughout Canada. Locations TransForce owns the rolling stock, including the trucks and trailers leased by the TFI divisions for their transport activities.
- [32] Gestion TransForce is the entity that provides management consulting services to all the TFI divisions. It is located at the company's headquarters and has only about 15 employees. Its services relate to human resources, legal matters and statutory compliance. It bills each division for its services. Maude Pelletier and Geneviève Chevrier, the advisor designated at the time of the accident to deal with TFI Transport 12 L.P. (12) (Transbord), work in this division under Sylvain Desaulniers, the Vice-President, Human Resources. As well, TFI Transport 2 L.P. (2) Gestion TransForce does not engage in any transport activities, and its employees are not employees of TFI Transport 12 L.P. (12) (Transbord).

- [33] According to Ms. Langlois, there have been cases in which one of the boards overseeing the company decided that a business purchased by TFI Holdings Inc. and transferred to one of the TFI divisions should be resold. TFI Transport 9 L.P. (9) was one such example.
- [34] Ms. Langlois stated that TransForce Income Fund's philosophy is to buy businesses that function well and keep their officers.
- [35] Annie Blanchard has worked for TransForce Properties, Division TFI Transport 2 L.P. (2), since September 2006. At the time of Mr. Lebrun's accident, she was the president of TFI Transport 12 L.P. (12) (Transbord).
- [36] According to Ms. Blanchard, Transbord Inc. was a transport business that had existed since 1972 and whose principal shareholder was her father, Louis Blanchard. In November 1999, she took over the reins, assuming full responsibility for activities, human resources and the management of occupational health and safety records.
- [37] At that time, although it was the role of the foreman and head dispatcher to conduct interviews and take note of employees' initial misconduct, she was the one who made hiring and dismissal decisions and who managed all occupational health and safety records. To validate her decisions or ensure that she was making good decisions in these areas, Ms. Blanchard relied on independent consultants, including a mutual company working in the field of occupational health and safety, which billed her every month. She also did business with a law firm for unjust dismissal cases, and she was a member of the trucking association to ensure that the business complied with road transport legislation.
- [38] Transbord Inc. owned its rolling stock, including the tractors, platform trailers, tank trailers and lift trucks used by employees.
- [39] Transbord Inc.'s employees were not unionized, and no union was formed even after the business was acquired by TFI Holdings Inc.
- [40] In June 2005, once Transbord Inc. became Division TFI Transport 12 L.P. (12) (Transbord), everything continued as before, although the rolling stock used by the employees became the property of Locations TransForce, which leased it to TFI Transport 12 L.P. (12) (Transbord) on a weekly basis. In other words, Ms. Blanchard remained responsible for managing the employees and activities. The business also continued its extraprovincial transport activities in other Canadian provinces and the United States. The only change was that the employees' pay stubs now had the name TFI Transport 12 L.P. (12) (Transbord) on them and that consulting services relating to human resources, statutory compliance and occupational health and safety, which had previously been obtained from independent businesses and the trucking association, were now provided by TFI Transport 2 L.P. (2) Gestion TransForce. That division billed TFI Transport 12 L.P. (12) (Transbord) for the consulting services it provided, as the mutual company, law firm and trucking association had done previously.

- [41] According to Ms. Blanchard, hiring decisions were still made by the foreman and head dispatcher of her division and ultimately by her, since they and not the employees of TFI Transport 2 L.P. (2) Gestion TransForce had the necessary qualifications to assess candidates who might be good truck drivers or lift truck operators.
- [42] To give an example of the services provided by TFI Transport 2 L.P. (2) Gestion TransForce with regard to statutory compliance, Ms. Blanchard also submitted a document dated October 25, 2005 entitled [TRANSLATION] *TransForce - Report - Compliance Audit - For the Transbord Division*. It was written by Nathalie Blanchet from TFI Transport 2 L.P. (2) Gestion TransForce for Chantal Martel, that company's compliance manager at the time. The purpose of the audit was to provide an overview of TFI Transport 12 L.P. (12) (Transbord) by assessing its procedures, records management, training, handling of contraventions and accidents and control methods so that Ms. Blanchard would have tools to help her ensure that the division met the requirements of transport legislation.
- [43] Ms. Blanchard testified that, as the president of TFI Transport 12 L.P. (12) (Transbord), she had agreed to such an inspection of her division; she did not see why she would have refused, since, like Transbord Inc. before it, the division was inspected by the American Department of Transportation and Contrôle routier Québec. This type of service provided by TFI Transport 2 L.P. (2) Gestion TransForce, which she had previously obtained from the trucking association, gave her work tools and advice to help her comply with transport legislation. Indeed, this was an important aspect of the business' activities, since the business could have lost its operating licences if the authorities had found it non-compliant.
- [44] Ms. Blanchard also testified that she gave TFI Transport 2 L.P. (2) Gestion TransForce the employees' occupational health and safety records, but she specified that she was not required to follow its advice. However, since her division paid to get advice from TFI Transport 2 L.P. (2) Gestion TransForce, she had every reason to follow that advice if it enabled her to reduce her business' costs.
- [45] In September 2005, the board of directors of TFI Holdings Inc. began considering merging the assets, employees and activities of two other businesses, Transport F. Audet Inc. and Transrive, with those of Transbord. Ms. Blanchard then became the president of all these operations, which were grouped together under Division TFI Transport 12 L.P. (12) (Transbord). In October 2005, Mr. Lebrun came under her authority.
- [46] When Mr. Lebrun had his accident, Stéphane Galluri, a dispatcher at TFI Transport 12 L.P. (12) (Transbord), was the first person called to the scene, and Ms. Blanchard was then contacted. Once she arrived, she contacted TFI Transport 2 L.P. (2) Gestion TransForce for advice. She took an active part in the investigation from start to finish. She, the drivers and the members of the work place health and safety committee, with the help of the advisors from TFI Transport 2 L.P. (2) Gestion TransForce, saw to it that a technical device was installed on the trucks' platform semi-trailers to comply with the first direction issued to Transbord by Health and Safety Officer Sirois on December 15, 2005.

- [47] As well, to explain how human resources management for TFI Transport 12 L.P. (12) (Transbord) remained unchanged even after Transbord Inc. was acquired by TFI Holdings Inc., Ms. Blanchard provided a document entitled [TRANSLATION] *Work Place Policy - Employee Handbook*, which she developed with her team before the acquisition of Transbord Inc. and which continues to be used. When the activities of Transport F. Audet Inc. and Transrive were merged with those of Transbord under TFI Transport 12 L.P. (12) (Transbord), the policy was reprinted with TransForce's logo on it and then redistributed to the employees. It sets out all the business' rules, including the procedures and policies governing the employees' work, such as: the *code* of ethics, speed limits, the tracking of documents or manifests, timecards, the assignment of work, the rules for using tractors and equipment, loading and tarping procedures, occupational health and safety, alcohol and drugs, lateness and absences, harassment, hiring, collective insurance and disciplinary penalties.
- [48] In his testimony, Sylvain Desaulniers stated that he has been the Vice-President, Human Resources, TransForce Income Fund, Division TFI Transport 2 L.P. (2) Gestion TransForce, since September 2000.
- [49] Mr. Desaulniers stated that the company has nearly 11,000 employees in Canada working in about 60 TFI divisions and subsidiaries. When TFI Holdings Inc. acquires businesses, his role is to verify whether they comply with human resources legislation and to examine records relating to occupational health and safety. For example, he reviews policies and procedures, wage scales and work accident records. His purpose in doing so is to ensure that each new business acts as a good corporate citizen. He then submits a report to the board.
- [50] TFI Transport 2 L.P. (2) Gestion TransForce has four general and specialized occupational health and safety advisors and one compensation manager. To help them better understand the businesses they have to serve, Mr. Desaulniers has assigned them to specific divisions.
- [51] TFI Transport 2 L.P. (2) Gestion TransForce, along with the businesses acquired and the TFI divisions, is also responsible for assessing whether the wages paid to employees are comparable to market wages.
- [52] According to Mr. Desaulniers, helping the TFI divisions run themselves better improves their human resources management, since the officers of the businesses acquired are often good operators but have certain weaknesses in management.
- [53] Moreover, Mr. Desaulniers testified that the reason his division exists is to ensure that each TFI division is as financially profitable as possible. However, the TFI divisions and the subsidiaries are autonomous. They keep their own managers and employees and continue with their own transport activities under their own company names, thereby maintaining their culture and their relationship with their customers.
- [54] The TFI divisions work in four specific transport fields: less-than-truckload and parcel delivery, truckload, specialized truckload and specialized waste management services,

including the related transport services. These activities take place in Quebec but also extend beyond the limits of the province.

- [55] The relationship between the company and its divisions is a business relationship, and certain board decisions, such as decisions to merge two businesses, are made as part of the board's mission to ensure a better allocation of investments and the profitability of all divisions. To support this position, Mr. Desaulniers gave the following examples of how various aspects of the divisions' ongoing activities are managed:
- the advisors from TFI Transport 2 L.P. (2) responsible for statutory compliance may conduct audits and suggest an action plan for managing a division, but each division is responsible for hiring employees;
 - TFI Transport 2 L.P. (2) may help verify compilations related to statutory compliance, but each division is responsible for training employees;
 - TFI Transport 2 L.P. (2) manages the economic costs of records and assists each division with its actions, but the divisions are responsible for managing records related to occupational health and safety. They can ask for help filling out an accident investigation form, but they remain responsible for the investigation;
 - although the boards overseeing the company may make some decisions for economic reasons, the divisions themselves handle employee transfers, for example when two businesses are merged.
- [56] Mr. Desaulniers added that TFI Transport 2 L.P. (2) Gestion TransForce acts as a double safety net for managing occupational health and safety because there is a great deal of money involved in that area.
- [57] At the time it was acquired by TFI Holdings Inc., Transbord Inc. did not have a structured human resources unit. That was why it quickly contacted TFI Transport 2 L.P. (2) Gestion TransForce to seek its expertise. However, Mr. Desaulniers noted that other TFI divisions have sought little assistance from his division, including Canpar Transport L.P. (9), formerly Canpar, which has kept its own Vice-President, Human Resources.
- [58] Mr. Desaulniers testified that, when certain employees of Transport F. Audet Inc. and Transrive were transferred to TFI Transport 12 L.P. (12) (Transbord), Ms. Blanchard contacted him to ask whether she had to take account of the employees' seniority.
- [59] Mr. Desaulniers stated that his division does not provide any expertise concerning transport activities and is not involved in those activities. He also stated that TFI Transport 2 L.P. (2) Gestion TransForce provides consulting services only to the various TFI divisions and subsidiaries and not to other businesses that are not part of TransForce Income Fund.

Respondent's evidence

- [60] Jean-Marc Gagné, an employee representative on the work place health and safety committee of Division TFI Transport 12 L.P. (12) (Transbord) and a former employee of Transbord Inc., testified that nothing had changed after that business was acquired by TFI Holdings Inc.

Appellant's arguments

- [61] Based on the testimony of Ms. Langlois, Ms. Blanchard and Mr. Desaulniers, Mr. Lessard argued that each TFI division or subsidiary of TFI Holdings Inc. is an entity separate from the legal person known as TransForce Income Fund.
- [62] According to Mr. Lessard, the agreements on financing and service exchanges between the various TFI divisions and the company should not influence the determination of the true "employer", within the meaning of the *Code*, that is responsible for the employees of TFI Transport 12 L.P. (12) (Transbord). He argued that the "employer" is the entity responsible for hiring and dismissing employees and managing the day-to-day affairs of a business, not the legal person to which the business ultimately belongs, even if that legal person provides consulting services and can establish policies to assist with human resource management and deal with legal and statutory compliance issues.
- [63] In support of this argument, Mr. Lessard referred to *WIC Western International Communications Ltd. ("WIC") v. Communications, Energy and Paperworkers Union of Canada (CEP)*.³ In that case, WIC Western International Communications Ltd. – the parent company of BC TV – appealed from a direction issued by a safety officer who had designated it as the employer of BC TV's employees. The passages of that decision cited by Mr. Lessard include the following:

There are two issues to be determined in this case. The first issue is whether WIC is the true employer of BC TV employees as specified by the direction.

...

Is WIC the true employer of BC TV employees?

"Employer" is defined broadly in section 122(1) of the *Code*:

"'employer' means a person who employs one or more employees and includes an employer's organization and any person who acts on behalf of an employer."

Clearly WIC is an employer within this definition. . . . The more important question here is whether it is an employer within the meaning of subsection 145(1) of the *Code*, given that the direction is issued under that authority, that provides as follows:

"Where a safety officer is of the opinion that any provision of this Part is being contravened, the officer may direct the employer or employee concerned to terminate the contravention within such time as the officer may specify and the officer shall, if requested by the employer or

³ *WIC Western International Communications Ltd. ("WIC") v. Communications, Energy and Paperworkers Union of Canada (CEP)*, CLC-RSO Decision No. 00-007, Regional Safety Officer Serge Cadieux, May 4, 2000.

employee concerned, confirm the direction in writing if the direction was given orally.”

The language of subsection 145(1) refers to the employer “concerned”. In other words, the legislation contemplates that the employer must have some direct relationship to the work place in which the contravention took place. The question then becomes whether “employer” in this context just means the entity which deals with the day to day managerial functions in the company and who has the bargaining relationship with the union (in this case BC TV) or whether it also includes a company such as WIC that is not involved in day to day issues in the work place and, at most, deals with senior management functions.

In relation to the meaning of “employer”, Mr. Litherland referred me to the decision of the Canada Labour Relations Board (now Canadian Industrial Relations Board) in *Northern Television Systems Limited* (1975), 14 di 136. . . . In considering this issue, the Board set out the following test for determining the identity of the employer:

- 1) Who hires the employees?
- 2) Who controls the employees’ work?
- 3) Who effectively establishes wages and working conditions?
- 4) Who controls any negotiations with respect to item 3?

In *Canadian Airline Flight Attendants’ Association*, the Board outlined the way it interprets the test. In evaluating the first branch of the test, the Board stated that it is not as critical who hires the employees as opposed to who controls the *selection*. The Board also noted that the third and fourth branch of the test are to be determined by who has control over the source of funds.

Mr. Litherland also relied on the case of *Syndicat des travailleurs de Murray Hill v. Murray Hill Limousine Service Ltd.* (1998), 74 di 127 for the proposition that the definition of “employer” relates to the concept of the “operator” of the business.

. . .

The following summarizes the evidence before me.

- WIC is a federally incorporated company. It is described in its own documents and literature variously as an “integrated broadcasting and entertainment company” and as a national broadcasting and communications holding company;
- One of WIC’s wholly owned subsidiaries is WIC Television Ltd. (“WIC TV”), which, in turn, owns BC TV and several other television stations in B.C. and Alberta. WIC also owns other corporations which own or have shares in radio stations, pay televisions stations etc.;

- For WIC itself, the workforce in British Columbia consist of 13 senior executives and administrative staff who work in downtown Vancouver. WIC has its own board of directors separate from WIC TV.
- WIC does not have a broadcasting license from the CRTC, does not own any broadcasting equipment and does not engage in any broadcasting itself. Mr. Farac described WIC's primary function as "strategically managing its investments";

...

- There is very little evidence regarding the day to day relationship between WIC and BC TV. Mr. Litherland asserts that BC TV and not WIC pays BC TV employees and that they are managed in their day to day functions by BC TV. This includes the assignment of work, hiring, firing and discipline.
- There are some policies that have been developed by WIC and apply to the various companies under the WIC corporate umbrella, including BC TV. The policies that are identified in the evidence are a sexual harassment and non-discrimination policy, standards of business conduct and journalistic objectives and guidelines.

...

Having regard to the facts set out above, I am of the view that BC TV and not WIC is responsible for hiring employees, controlling their work and setting their wages and working conditions. I am also satisfied that BC TV is the operator of the television business in question. The only uncertain issue is whether BC TV has control over the source of the funds. It is possible but not certain that WIC may have some control over the source of the funds. However, there is no evidence before me that BC TV cannot make the appropriate changes to the work place because of lack of funds. Therefore, I am of the opinion that the evidence indicates that BC TV is the employer for the purposes of section 145(1) of the *Code*.

[64] Mr. Lessard also submitted that the duties imposed on the employer by the *Code* in relation to the employees working in TFI Transport 12 L.P. (12) (Transbord) had to be performed by that division's top executive, Annie Blanchard, since she was, at the time of the accident, the managerial employee or "person act[ing] on behalf of . . ." who was responsible for managing the division's employees and activities. In this regard, Mr. Lessard cited the following passage from Judge Brière's decision in *Commission de la santé et de la sécurité v. Les Mines Sigma (Québec) Ltée*,⁴ in which he stressed the responsibility of company managers under the *Code*:

⁴ *Commission de la santé et de la sécurité v. Les Mines Sigma (Québec) Ltée*, CT/TT Decision No. 500-29-000296-911, Judge Marc Brière, May 25, 1992, point 5.2, page 404.

[Translation]

Strangely, the A.O.H.S. virtually ignores company managers, that is, any person employed as a manager, superintendent, foreman or agent of the employer in its relations with its workers; such persons are excluded from the definition of “worker” and are not included in the definition of “employer”; the Act applies to them only when it imposes a duty on “every person” or, if the employer is a corporation, when they have prescribed, authorized or consented to a prohibited action (s. 241 – oddly, however, these same managers cannot be prosecuted if the employer is a natural person). We simply note that the same is not true under the *Canada Labour Code*,⁽¹⁹⁾ section 122 of which defines “employer” as “a person who employs one or more employees . . . and any person who acts on behalf of an employer”. This means that the employer’s duty to ensure that the health and safety at work of every person it employs is protected (s. 124) also applies to the company’s managers.

- [65] Mr. Lessard further submitted that the role of TFI Transport 2 L.P. (2) in TransForce Income Fund can be compared to the role that an organization like Public Works and Government Services Canada (PWGSC) plays for the various Treasury Board departments in the federal government. He argued that it would therefore be wrong to conclude that TFI Transport 2 L.P. (2) Gestion TransForce is the employer of the employees working for TFI Transport 12 L.P. (12) (Transbord). In support of this argument, he cited the following passage from the decision of Appeals Officer Douglas Malanka in *Public Works and Government Services Canada v. Mark Hawkins*:⁵

. . . Stated more generally, the responsibility that a department has under Part II to ensure that the health and safety of every person employed by the department is protected is not supplanted by anything that PWGSC, or any other department or agency appointed by or acting on behalf of Treasury Board, says, does or advises in respect of the occupational health and safety of the persons it employs. They are essentially only acting as advisors to the employer.

- [66] According to Mr. Lessard, the fact that, as of a certain date, TFI Transport 12 L.P. (12) (Transbord) had a business relationship with TransForce Income Fund in which it obtained consulting services through TFI Transport 2 L.P. (2) Gestion TransForce and leased the equipment required for its activities through TFI Transport 2 L.P. (2) Locations TransForce, among other things, did not make that business a different business than it had been before, since it had to pay for those services and Ms. Blanchard continued to be responsible for managing the employees and activities.
- [67] Based on this evidence and these arguments, Mr. Lessard submitted that Transbord was Mr. Lebrun’s true employer within the meaning of the *Code*. He therefore requested that

⁵ *Public Works and Government Services Canada v. Mark Hawkins*, CLC-AO Decision No. 05-003, Appeals Officer Douglas Malanka, January 7, 2005, paragraph 62.

the name TransForce be removed from the direction and replaced by Transbord, which now operates as Division TFI Transport 12 L.P. (12) (Transbord).

Respondent's arguments

[68] Jean-Marc Gagné did not make any arguments against Mr. Lessard's position.

Analysis and decision

[69] The issue to be decided in this case is whether Health and Safety Officer Sirois erred in designating TransForce as the employer of the employees of Division TFI Transport 12 L.P. (12) (Transbord) in his direction of December 16, 2005.

[70] To make my decision, I must consider the interpretation and application of the relevant provisions of the *Code*, the facts of the case and any relevant case law.

[71] In this case, the contravention alleged against the employer by HSO Sirois in his direction, which has not been refuted by evidence to the contrary, is that it failed to ensure, as required by section 124 of the *Code*, that the health and safety of a person it employed was protected because it did not provide him with the fall-protection system required by paragraph 125(1)(l) of the *Code* and paragraph 12.10(1)(a) of the *COHSR*. There were also the underlying contraventions under paragraphs 12.10(1.1)(a) and (b) of the *COHSR*, namely not making a report in writing to the regional health and safety officer setting out the reasons why it was not practicable to provide a fall-protection system and including a job safety analysis and a description of the training and instruction to be provided to every employee likely to climb onto a vehicle or its load concerning the safe method of climbing onto and working on the vehicle or its load without such a system.

[72] According to subsection 123(1), Part II of the *Code* applies "to and in respect of employment on or in connection with the operation of any federal work, undertaking or business other than a work, undertaking or business of a local or private nature in Yukon, the Northwest Territories or Nunavut". Under section 2 of the *Code*, a road transport business that extends beyond the limits of a province is a work, undertaking or business extending beyond the limits of a province and is therefore under federal jurisdiction. Based on the evidence submitted, the activities of TFI Transport 12 L.P. (12) (Transbord) are thus subject to federal jurisdiction.

[73] Moreover, under subsection 122(1) of the *Code*, an employer, within the meaning of the *Code*, is "a person who employs one or more employees". Subsection 122(1) reads as follows:

122(1) "employer" means a person who employs one or more employees and includes an employers' organization and any person who acts on behalf of an employer.

(emphasis added)

- [74] However, according to subsection 125(1) of the *Code*, for an employer to have the duties set out in section 124 and subsection 125(1) of the *Code*, the employer must control the work place concerned or the work activity carried out by an employee. Section 124 and subsection 125(1) read as follows:

124. Every employer shall ensure that the health and safety at work of every person employed by the employer is protected.

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. . . .

(emphasis added)

- [75] In light of the foregoing, it is my opinion that three things must be analysed in this case. First, it must be determined whether the legal persons in TransForce Income Fund's organizational structure that oversee TFI Transport 12 L.P. (12) (Transbord) are works, undertakings or businesses under federal jurisdiction and are subject to the duties set out in the *Code*. Second, Mr. Lebrun's true employer must be determined. Third and finally, it must be determined who controlled the transport activities of TFI Transport 12 L.P. (12) (Transbord) and had real authority over them, including over the work activity being carried out by Mr. Lebrun at the time of his accident.

Are the legal persons in TransForce Income Fund that oversee TFI Transport 12 L.P. (12) (Transbord) works, undertakings or businesses under federal jurisdiction, and are they subject to the duties set out in the *Code*?

- [76] In *Northern Telecom Ltd. v. Communications Workers of Canada* (1979), 98 DLR (3d) 202 (SCC), the Supreme Court established the following tests for determining whether an entity is a federal work, undertaking or business whose labour relations are federally regulated. First, the operation at the core of the federal undertaking must be examined. Then one must look at the particular subsidiary operation engaged in by the employees in question. Finally, it must be determined whether the relationship between that operation and the core federal undertaking can be characterized as "vital", "essential" or "integral".
- [77] It was established above that, because of its extraprovincial road transport activities, TFI Transport 12 L.P. (12) (Transbord) is a federal work, undertaking or business within the meaning of the *Code*.
- [78] The evidence also shows that the transport activities carried out in other TFI divisions (the specific divisions were not indicated) may extend beyond the limits of the province of Quebec, with the result that those divisions are also federal works, undertakings or businesses within the meaning of the *Code*.
- [79] The evidence also establishes that TransForce Income Fund's organizational structure was created for tax purposes.

- [80] Based on the foregoing, I am of the opinion that, to determine whether there is a “vital”, “essential” or “integral” relationship between the transport activities under federal jurisdiction carried out in the TFI divisions and the activities of the various legal persons overseeing them, I must look beyond TransForce Income Fund’s corporate artifices and determine whether there is a relationship of authority between these legal persons and the TFI divisions, specifically TFI Transport 12 L.P. (12) (Transbord) in this case.
- [81] The evidence shows that the board of trustees of TFI Operating Trust, the second trust for the entire company that was created under the first trust, TransForce Income Fund, manages the affairs of the entire group, subject to the amount of money involved, in cooperation with the board of directors of TFI Holdings Inc. These two boards have the authority to decide to merge businesses acquired by TFI Holdings Inc. into one of the existing divisions through one of the TFI limited partnerships, as was done with the assets and previous activities of Transport F. Audet Inc. and Transrive, which were merged with the assets and activities of Transbord Inc. after it was itself wound up and transferred to TFI Transport 12 L.P. (12) (Transbord).
- [82] The evidence also indicates, although Ms. Langlois did not say whether this occurs through the board of trustees of TFI Operating Trust or the board of directors of TFI Holdings Inc., that the company’s board may decide to resell or dissolve one of the businesses purchased by TFI Holdings Inc., even if it was consolidated under one of the TFI divisions, as was the case for TFI Transport 9 L.P. (9), which was resold.
- [83] The evidence further shows that audits are carried out by TFI Transport 2 L.P. (2) Gestion TransForce, which was created for the sole purpose of providing management services to the TFI transport divisions of TransForce Income Fund, including TFI Transport 12 L.P. (12) (Transbord). The purpose of those audits is to establish action plans to help the TFI transport divisions comply with transport legislation, which is important to maintain their operating licences for their transport activities both in Quebec and in the United States.
- [84] The evidence also indicates that the human resources activities carried out by the management division of TFI Transport 2 L.P. (2) Gestion TransForce in the TFI divisions have an impact on the management activities of those divisions.
- [85] Moreover, according to the evidence, Sylvain Desaulniers, who works for TFI Transport 2 L.P. (2) Gestion TransForce, must submit a report to the board after reviewing human resources policies, wage scales and work accident records in each of the businesses acquired by the company that will be transferred to the divisions. Is the “board” here the board of trustees of TFI Operating Trust or the board of directors of TFI Holdings Inc.? Mr. Desaulniers did not specify.
- [86] In light of all this evidence, I conclude that TransForce Income Fund is involved in the day-to-day management and usual activities of its TFI transport divisions, including TFI Transport 12 L.P. (12) (Transbord), through the boards of trustees or directors of TFI Operating Trust, TFI Holdings Inc. and TFI Transport 2 L.P. (2) Gestion TransForce. I

also conclude that the way things are done is decided from above, through the authority of the boards, and not by the officers of the various TFI divisions.

- [87] I would add that the evidence adduced did not satisfy me that the relationship between the decision-making activities of the boards of TFI Operating Trust and TFI Holdings Inc. and the activities of TFI Transport 2 L.P. (2) Gestion TransForce is not vital or does not have a fundamental impact on the activities of the TFI transport divisions, including TFI Transport 12 L.P. (12) (Transbord). On the contrary, as set out above, Mr. Desaulniers testified that the advice provided by his management service has an impact on human resources management in those divisions. Moreover, in my opinion, the fact that the legal persons overseeing the TFI divisions can become involved, through their agents, in the normal management of the activities of the TFI transport divisions under federal jurisdiction is sufficient to subject them, and their directing mind, to the legislation applicable to those divisions.

Who was Mr. Lebrun's true employer?

- [88] To determine the identity of Mr. Lebrun's employer, I will rely on the test established by the Canada Industrial Relations Board in *Northern Television Systems Limited* (1975), 14 di 136, which was cited by Regional Safety Officer Serge Cadieux in his decision in *WIC Western International Communications Ltd.*, *supra*. Here, I interpret this test as involving the following branches:
- Who hired the employees of TFI Transport 12 L.P. (12) (Transbord), or who controlled their selection?
 - Who controlled their work, including who owned the equipment used by these employees?
 - Who effectively established wages and working conditions, and who controlled the sources of funds needed to carry out the division's activities?
- [89] The evidence shows that Ms. Blanchard was responsible for hiring and selecting the employees of TFI Transport 12 L.P. (12) (Transbord). The evidence also shows that day-to-day management of the employees, their work and the division's activities had been delegated to her. However, the evidence indicates that human resources documents, including the hiring guidelines policy, were reviewed by Sylvain Desaulniers after that business was acquired by TFI Holdings Inc. As well, the decision to transfer some of the employees of Transport F. Audet Inc., including Mr. Lebrun, under Ms. Blanchard's authority in TFI Transport 12 L.P. (12) (Transbord) was made by the board of directors of TFI Holdings Inc., not by Ms. Blanchard.
- [90] With regard to the issue of who controlled the work performed by the employees of TFI Transport 12 L.P. (12) (Transbord), the evidence indicates that all documents concerning human resources management and occupational health and safety in that division were examined by Sylvain Desaulniers, including the rules on speed limits, the tracking of documents or manifests, timecards, the assignment of work, the use of tractors and equipment, the loading of platform trailers, tarping, alcohol and drugs, lateness and absences, harassment, collective insurance and disciplinary penalties.

- [91] In addition, the decision to transfer the activities performed by the employees of Transport F. Audet Inc. under Ms. Blanchard's authority was made by the board of directors of TFI Holdings Inc., not by Ms. Blanchard.
- [92] Moreover, the person who signed the investigation form relating to Mr. Lebrun's accident as the investigator was an employee of TFI Transport 2 L.P. (2) Gestion TransForce, not Ms. Blanchard.
- [93] The evidence also shows that all the rolling stock, including the trucks used by TFI Transport 12 L.P. (12) (Transbord), is owned by Locations TransForce under Division TFI Transport 2 L.P. (2). That division is under the financial control of TFI Holdings Limited Partnership, which the evidence shows is the financial agent for all the TFI divisions. However, the evidence indicates that business decisions about such matters as the profitability of the TFI decisions are made not by TFI Holdings Limited Partnership but rather by the board of directors of TFI Holdings Inc. and the board of trustees of TFI Operating Trust. The evidence also indicates that the rolling stock owned by Locations TransForce is leased only to the subsidiaries or TFI divisions for the sole purposes of their activities, and not to other businesses that are not part of TransForce Income Fund.
- [94] On the issue of who established the employees' wages and working conditions, I was not given any evidence indicating that only Ms. Blanchard could decide the wages paid to the employees working for TFI Transport 12 L.P. (12) (Transbord). On the contrary, the evidence shows that the wage scale of the employees in each TFI division is reviewed by TFI Transport 2 L.P. (2) Gestion TransForce. As well, given that the employees of TFI Transport 12 L.P. (12) (Transbord) are not unionized, I am of the opinion that control over their wages and working conditions was no longer under the complete authority of Ms. Blanchard or Transbord Inc., since Ms. Blanchard was no longer the business' owner and Transbord Inc. no longer existed.
- [95] Furthermore, according to the evidence adduced, the company has decided that each TFI division must meet financial objectives. Obviously, the profits or losses resulting from the work performed by the employees of TFI Transport 12 L.P. (12) (Transbord) are those of TransForce Income Fund, and each TFI division basically exists for the benefit of TransForce Income Fund.
- [96] However, I believe that this legal person's second trust, TFI Operating Trust, controls the funds required for the activities of TFI Transport 12 L.P. (12) (Transbord) through the decisions made by its board of trustees. The evidence shows that TFI Operating Trust stands between the various entities and TransForce Income Fund, the group's first trust, and that it was created as a second trust with the authority to manage the entire group. Moreover, I was not given any evidence indicating that TransForce Income Fund makes decisions affecting the activities of the businesses acquired by the group or its TFI divisions. According to the evidence, such decisions are made by the board of trustees of TFI Operating Trust and the board of directors of TFI Holdings Inc. The evidence also shows that the board of trustees of TFI Operating Trust oversees the board of directors of TFI Holdings Inc. and that the latter's decisions are subject to financial limits.

- [97] I conclude from this that the directing mind of TransForce Income Fund, that is, the true employer in the entire organizational structure, is the second trust, TFI Operating Trust.
- [98] Accordingly, I am of the opinion that Mr. Lebrun's true employer within the meaning of the *Code* was TFI Operating Trust, an entity that, as already established, is also subject to the duties set out in the *Code*.

Who controlled the work activity carried out by Mr. Lebrun?

- [99] I am of the opinion that the work activity carried out by Mr. Lebrun was controlled by TFI Operating Trust for the following reasons.
- [100] Based on the evidence adduced, and for all the reasons set out above, the transport activities of TFI Transport 12 L.P. (12) (Transbord) were no longer carried out on behalf of a business owned by Ms. Blanchard's family but were carried out on behalf of and under the financial and operational control of the board of trustees of TFI Operating Trust.
- [101] In view of the foregoing, and even though the evidence shows that the company had decided that Ms. Blanchard should continue to manage the work activities carried out by the employees of TFI Transport 12 L.P. (12) (Transbord), I conclude that Ms. Blanchard did not have full control over those activities at the time of the investigation conducted by HSO Sirois but was acting on behalf and under the authority of TFI Operating Trust. I am therefore of the opinion that she was not the only one exercising control over the work activity carried out by Mr. Lebrun and that TFI Operating Trust was really in control, since it was the entity that actually had financial and operational control over the activities of transport division TFI Transport 12 L.P. (12) (Transbord) through its board of trustees and the board of directors of TFI Holdings Inc.
- [102] I have no evidence indicating that TFI Operating Trust had delegated responsibility to Ms. Blanchard for ensuring that the activity of setting up tarpaulins on the load of a truck was carried out in accordance with the rules set out in section 12.10 of the *COHSR*. Moreover, I have no information indicating that the contravention alleged by HSO Sirois was committed without the consent or knowledge of TFI Operating Trust or in spite of actions taken by TFI Operating Trust to prevent it.

Comments on the case law submitted by the appellant

- [103] After reading the decision of Regional Safety Officer Serge Cadieux in *WIC Western International Communications Ltd.*, *supra*, I am of the opinion that a distinction must be drawn between that case and the present one on the following basis. Unlike in *WIC Western International Communications Ltd.*, *supra*, no evidence was adduced in this case showing that any of the TFI divisions has its own board of directors separate from the board of trustees of TFI Operating Trust and the board of directors of TFI Holdings Inc. Moreover, it does not appear that WIC's board of directors could decide to dissolve any of its subsidiaries or transfer a subsidiary's assets, employees and activities to

another subsidiary or that the equipment and properties used for all the subsidiaries' activities were owned by one of WIC's subsidiaries.

- [104] With regard to the decision in *Public Works and Government Services Canada v. Mark Hawkins, supra*, I understand that Appeals Officer Malanka concluded that the true employer within the meaning of the *Code* was the Treasury Board and not one of its departments.
- [105] Finally, although *Commission de la santé et de la sécurité, supra*, dealt with a contravention under Quebec's *Act respecting occupational health and safety*, I note that Judge Brière concluded that Les Mines Sigma (Québec) Ltée was guilty of that contravention.

Decision

- [106] For all these reasons, and on the basis of the evidence, the legislation and the case law, I am of the opinion that TFI Operating Trust was Mr. Lebrun's true employer, within the meaning of the *Code*, at the time of the investigation conducted by HSO Sirois and that the name of that legal person should have been used in the direction as the employer. Moreover, to identify the establishment or TFI division concerned, HSO Sirois in his direction should also, in my opinion, have referred to Division TFI Transport 12 L.P. (12) (Transbord), where Mr. Lebrun worked.
- [107] Accordingly, as I am authorized to do by subsection 146.1(1) of the *Canada Labour Code*, I am varying the direction issued on December 16, 2005 by Health and Safety Officer Sirois in the manner indicated in the appended document.

Katia Néron
Appeals Officer

APPENDIX

IN THE MATTER OF THE CANADA LABOUR CODE PART II - OCCUPATIONAL HEALTH AND SAFETY

Further to an appeal filed under subsection 146(1) of Part II of the *Canada Labour Code*, the undersigned Appeals Officer has made an inquiry, pursuant to section 146.1 of Part II of the *Canada Labour Code*, into a direction issued to TransForce under paragraphs 145(1)(a) and (b) of Part II of the *Canada Labour Code* on December 16, 2005 by Health and Safety Officer Steve Sirois following his investigation of a fatal accident suffered by an employee of TFI Transport 12 L.P. (12) (Transbord).

After reviewing the facts, the legislation and the case law, the undersigned Appeals Officer varies the direction issued by Health and Safety Officer Sirois as follows:

DIRECTION TO THE EMPLOYER UNDER PARAGRAPHS 145(1)(a) and (b)

On December 16, 2005, Health and Safety Officer Steve Sirois conducted an investigation into the fatal accident suffered by Léo Lebrun, who worked in Division TFI Transport 12 L.P. (12) (Transbord) operated by TFI Operating Trust, an employer subject to Part II of the *Canada Labour Code* and located at 8585 Trans-Canada Highway, St-Laurent, Quebec.

The said Health and Safety Officer is of the opinion that the following provisions of Part II of the *Canada Labour Code* have been contravened:

Paragraph 125(1)(l) of the *Canada Labour Code* and paragraphs 12.10(1)(a) and (1.1)(b) of the Canada Occupational Health and Safety Regulations.

The employer has not provided a fall-protection system to workers working on the load of a vehicle at a height of more than 2.4 metres above the nearest permanent safe level, without making the report provided for in paragraph 12.10(1.1)(b) of the Canada Occupational Health and Safety Regulations to the regional health and safety officer.

Accordingly, you are HEREBY DIRECTED, pursuant to paragraph 145(1)(a) of Part II of the *Canada Labour Code*, to terminate any contravention at once, on December 16, 2005.

You are also HEREBY DIRECTED, pursuant to paragraph 145(1)(b) of Part II of the *Canada Labour Code*, to take steps, by December 16, 2005 at the latest, to ensure that the contravention does not continue or re-occur.

Issued at Montreal this 16th day of December 2005.

To: TFI Operating Trust/Fiducie d'exploitation TFI
8585 Trans-Canada Highway, Suite 300
St-Laurent, Quebec
H4S 1Z6

Ottawa, June 15, 2007.

Katia Néron
Appeals Officer

Summary of Appeals Officer's Decision

Decision No.: CAO-07-022

Appellant: TransForce Income Fund (TransForce Inc.)

Respondent: Jean-Marc Gagné

Provisions: *Canada Labour Code*, 146(1), 145(1)(a) and (b), 145(2)(a) and (b), 125(1)(i), 122(1), 124, 123(1), 125(1), 146.1(1)
Canada Occupational Health and Safety Regulations, 12.10(1), 12.10(1.1)(a) and (b), 15.8(1)

Key Words:

Summary:

On December 7, 2005, a truck driver employed by Transbord Inc. died when he fell from a height of 3.45 metres from the load on his trailer.

Following his investigation, the Health and Safety Officer (HSO) found that no fall-protection system or structure had been provided to the employee. On December 15, 2005, the HSO issued a direction to Transbord stating that the fact that an employee walks at a height of more than 2.4 metres without a fall-protection system constitutes a danger of falling. On December 16, 2005, the HSO issued a direction to TransForce stating that the employer had failed to provide workers with a fall-protection system.

Following her review, the Appeals Officer identified TFI Operating Trust as the deceased's employer at the time of the HSO's investigation. The Appeals Officer also varied the direction issued by the HSO on December 16, 2005.