Occupational Health and Safety Tribunal Canada
Tribunal de santé et sécurité au travail Canada

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Case No.: 2007-22

Interlocutory decision
Stay request: CAO-07-028 (S)

Canada Labour Code
Part II
Occupational Health and Safety

Maritime Employers Association
appellant

and

Longshoremen's Union C.U.P.E.
Local 375
respondent

August 23, 2007

This request for a stay was decided orally by Richard Lafrance, Appeals Officer, during a teleconference held on August 15, 2007.

For the appellant
Robert Monette, Counsel for the Maritime Employers Association, Ogilvy Renault

For the respondent
No representative

[1] This decision concerns a request for a stay of execution of a direction issued by Health and Safety Officer François de Champlain to the Maritime Employers Association (MEA) of Montreal on July 9, 2007.

[2] On August 7, 2007, Robert Monette, counsel for the MEA, requested that that direction be stayed until the appeal from it was heard and a decision made by an appeals officer.

[3] Since Officer de Champlain's direction required the MEA to comply by July 31, 2007, I decided to hear the appellant's arguments as soon as a teleconference could be arranged to hear the parties' arguments.

[4] Mr. Monette's arguments were therefore received during a teleconference held on August 15, 2007. No one represented the respondent even though the staff of the Occupational Health and Safety Tribunal Canada tried six times between August 9 and 15, 2007 to get someone from the Longshoremen's Union C.U.P.E. Local 375 to represent the employees as respondents in this case. In my opinion, C.U.P.E. Local 375

had sufficient time and opportunity to exercise its right to reply to Mr. Monette's arguments, and I could therefore hear those arguments despite the absence of a respondent in this case.

[5] On July 9, 2007, Health and Safety Officer de Champlain, after visiting the MEA's work place in Montreal, found that the MEA had not established a policy committee as provided for in the *Canada Labour Code* (the *Code*). He therefore directed the MEA to establish a policy committee in accordance with subsection 134.1(1) of the *Code* by July 31, 2007. He also requested that the MEA confirm to him by August 14, 2007 the steps it had taken to comply with the direction.

[6] The tests used when a stay is requested are those established by the Supreme Court of Canada in *Metropolitan Stores,*[1] namely:

1. whether the appellant makes a *prima facie* case and satisfies the appeals officer that the question under examination is a serious one;
2. whether there could result irreparable harm or prejudice if the stay is not granted;
3. the balance of inconvenience, that is, which party will suffer more prejudice if the stay is granted or refused.

[7] Over the past few years, a fourth test has been added by various appeals officers, namely, where needed, the protective measures put in place by the appellant prior to the decision on the stay request.

[8] Having heard Mr. Monette's arguments, I find, on the first test, that this request for a stay is serious and that a *prima facie* case has been made. The occupational health and safety of employees certainly deserves attention, and every effort must be made to ensure it. The question relates to the occupational health and safety of employees and is neither pernicious nor fanciful.

[9] As for the second test, namely the possibility of irreparable harm or prejudice if the stay is not granted, Mr. Monette submits that, if the MEA is required to change its approach and take responsibility for setting up a committee as requested by the Health and Safety Officer, without any representatives from the longshoring companies, the day-to-day application of working conditions affecting the occupational health and safety of employees will be greatly disrupted.

[10] According to Mr. Monette, the longshoring companies are currently responsible for ensuring the occupational health and safety of employees. They are the experts in the field, and they have the best knowledge of the work and tasks to be performed in a safe and healthy manner. Although a central health and safety committee involving the MEA and the various longshoring companies has existed for several decades now to coordinate health and safety at the Port of Montreal to a certain degree, each longshoring company has its work place health and safety committee and makes sure that the Code is applied. The MEA acts only as an observer and training advisor for those committees.

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[1] *Manitoba (Attorney General) v. Metropolitan Stores (MTS) Ltd.*, [1987] 1 S.C.R. 110.

[11] Mr. Monette argues that, if the MEA must take responsibility for establishing a committee as requested by the Health and Safety Officer, it will have to hire and train staff and take charge of implementing health and safety without the involvement of the longshoring companies. According to him, the employees' health and safety will be disrupted, to say nothing of the cost of establishing such a committee. Moreover, if the MEA is able to convince the appeals officer who hears the appeal from the direction that its appeal is justified, everything will have to be put back in place, and the problems created by these changes, not to mention the costs incurred to comply with the direction, might cause irreparable harm to the MEA and the employees.

[12] I accept Mr. Monette's arguments and acknowledge that the MEA might suffer irreparable harm going beyond economic harm alone if the committee in question is established.

[13] However, there are two other tests to be met, namely the balance of inconvenience and the measures put in place by the appellant to protect the employees.

[14] On the issue of the balance of inconvenience, Mr. Monette has satisfied me that the MEA is the entity that will suffer more prejudice, as mentioned above, if the direction is not stayed. According to him, if the application of the direction is stayed, the employees will continue to be protected by the various health and safety committees that already exist, without the involvement of an inexperienced coordination committee, and will not suffer any prejudice.

[15] The central committee not recognized by the Health and Safety Officer could continue playing its role, which has never been questioned or disputed by anyone during the decades it has existed. However, if the direction is upheld, the employees will be the ones to suffer prejudice, since establishing such a committee without the involvement of the longshoring companies will take a great deal of time and the committee will not necessarily be efficient or experienced with regard to the employees' duties and activities and might not make the right decisions about their health and safety in a timely manner.

[16] It is obvious from the report of Health and Safety Officer de Champlain that he was not acting in response to a complaint from anyone but rather was following up on another health and safety officer's assignment. In his report, Officer de Champlain does not state not that the central committee is not working; rather, he states that it was not established in accordance with the Code and that it does not operate exactly as the Code requires.

[17] For the moment, I am satisfied and I find that the MEA meets the tests set out above, and I therefore stay the direction issued to the Maritime Employers Association by Health and Safety Officer François de Champlain on July 9, 2007 until an appeals officer can hear the MEA's appeal as soon as possible.

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Richard Lafrance
Appeals Officer

Summary of Appeals Officer's Decision

Decision No.: CAO-07-028 (S)

Appellant: Maritime Employers Association

Respondent: Longshoremen's Union C.U.P.E. Local 375

Provisions : *Canada Labour Code*, 134.1(1)

Key Words: Stay request, policy committee, stay of direction

Summary:

On August 7, 2007, the Maritime Employers Association requested a stay of a direction issued by Health and Safety Officer François de Champlain on July 9, 2007.

On August 15, 2007, during a teleconference, the Appeals Officer stayed the said direction until an appeals officer could hear the MEA's appeal.