Occupational Health and Safety Tribunal Canada

Tribunal de santé et sécurité au travail Canada

Ottawa, Canada K1A 0J2

Case No.: 2007-23

Preliminary decision
Decision No.: OHSTC-08-018 (I)

CANADA LABOUR CODE
PART II
OCCUPATIONAL HEALTH AND SAFETY

Canadian National Railway Company
(CN Rail)
appellant

and

James Poirier

and

Teamsters Rail Canada Conference

applicants

July 31, 2008

This application for authorization to take part in the hearing of this appeal was decided by Appeals Officer Jean-Pierre Aubre.

For the appellant
Johanne Cavé, Counsel

For the applicants
James Poirier, co-chair/employees, Macmillan Yard Work Place Health and Safety Committee,
Mike Wheten, Teamsters Canada Rail Conference.

[1] On March 19, 2007, at the Appellant's facility known as MacMillan Yard, there occurred a work related accident involving a CN Rail employee, which resulted in serious injury to the said employee. Mr. Michael Merson, a Rail Operations Supervisor (Terminal Trainmaster), was engaged at that time in operating employees' tasks due to a shortage of such operating employees. He suffered a disabling injury to his right lower extremity. More specifically, while engaged in coupling rail cars, and attempting to apply the handbrake on a moving rail car on which he was riding, Mr. Merson lost his footing and was unable to maintain his handgrip. As a result, the leading wheel of that rail car ran over and severed his right leg midway between the ankle and knee. At the time of the accident, Mr. Merson was acting in the capacity of foreman of a two-man team assigned to operating employees' tasks (coupling cars in the Pitch and Catch Mode).

[2] There followed an investigation into the circumstances of the above-mentioned occurrence being conducted by Brian L. Abbott, a Health and Safety Officer designated by the Minister of Labour. Mr. Abbott initiated his investigation by attending at the accident scene on the day of the accident.

[3] At the conclusion of the said investigation, the Health and Safety Officer found the employer CN Rail to have been in contravention of the Code and its Regulations on three counts, and even though the investigation had been initiated relative to an accident suffered by one individual employee, issued to the employer three general directions that appear to be applicable in their protective and preventive nature to all employees of said employer. At this time, it is not clear to this Appeals Officer whether the Health and Safety Officer intended the application of these directions to be to all the employees of the employer at the work place identified as MacMillan Yard or all the employees nationally of the employer. However, this question can be addressed when this appeal proceeds on the merits.

[4] The three directions ordered the employer to terminate all three contraventions and ensure that they not continue or reoccur. Those contraventions were described in the directions as follows:

- failure to investigate the hazard of footwear design worn by CN operating employees when riding equipment and performing switching activities;

- failure to have a fatigue management plan in place to protect supervisors from working excessive hours prior to performing operating employees work;

- failure to provide supervisors working as operating employees the information, instructions, training and supervision necessary to ensure their health and safety at work;

[5] During preparatory steps to arranging for a hearing of this appeal, the question arose relative to identifying a respondent or respondents to the appeal brought forth by the employer, resulting in a number of letters being sent to a number of parties at the MacMillan Yard work place, seeking indication as to their position vis-à-vis this appeal and their intention relative to taking part in the hearing of such.

[6] Initially, letters were sent to the employer, CN Rail, as well as to the United Transportation Union (UTU), the bargaining agent representing conductors and yard foremen at MacMillan Yard, to obtain availability dates for proceeding with the hearing of the appeal. On March 10, 2008, a response from the said bargaining agent advised that the "United Transportation Union will not be participating in this file."

[7] Given the response by UTU and the prospect of there being no party responding to the position of the employer at appeal, the undersigned Appeals Officer instructed Tribunal personnel to contact certain work place parties to try and ascertain whether there would be properly interested parties intending to participate in some capacity at the hearing. As such, letters were sent to the actual victim in the accident, Mr. Michael Merson, to both co-chairs of the work place health and safety committee as well as to the bargaining agent representing locomotive engineers who work alongside operating employees at MacMillan Yard, the Teamsters Canada Rail Conference.

[8] The injured employee, Michael Merson, provided a reply to the Tribunal on April 30, 2008, stating that he would take part in the hearing regarding his accident and that he would "participate on behalf of CN in this matter".

[9] On May 27, 2008, the undersigned Appeals Officer convened a teleconference with the parties listed at paragraph 7 above, as well as with counsel and representatives of CN Rail. On that occasion, the matter of whether there would be a party or parties seeking respondent or intervenor standing in this appeal was discussed, with the decision by the undersigned that all would be given the opportunity to make written submissions to the Appeals Officer, with the employer then being afforded the opportunity to reply .

[10] On June 11, 2008, Mr. Michael Merson, the injured employee who is also the Employer representative co-chair of the MacMillan Yard work place health and safety committee, informed the Tribunal that he would no longer seek co-appellant standing at the appeal "as the items in the

direction (sic) were not directed at (me) personally", and that consequently he would take part in the hearing solely as a witness.

[11] On June 10, 2008, Mr. James Poirier, the Employees representative co-chair of the same work place health and safety committee, provided the Tribunal with his justifications for wanting to be a party to the hearing and oppose the appeal as well as testify if needed. It should be noted that Mr. Poirier had previously informed the Tribunal by facsimile of April 28, 2008, of his intention, in his capacity of co-chair of the MacMillan Yard Health and Safety Committee, to "oppose the appeal by CN Rail and also to make representations at the hearing".

[12] He mentioned his concern for the safety of all people, union and management, and pointed out, in his capacity as co-chair of the health and safety committee, that the terms of reference of said committee are that it be privy to and help in training programs initiated by the employer, and that he has a wealth of experience when it comes to the operations in which the victim, Mr. Merson, was involved, referred to as "beltpack operations", and how this accident could have been avoided.

[13] More specifically as regards the three directions under appeal, he pointed out the following:

- the boots that are the object of the first direction and for which it is directed that a risk assessment be conducted, are not practical for the requirements of the job because of their weight and lack of mobility, as yard employees are required to "entrain" and "detrain" from moving equipment.

- where fatigue management is concerned, he offered the opinion that many of the supervisors at CN Rail are well outside of their limits with regards to hours worked and that rules governing rest lack in clarity when it comes to supervisors duties and actual time spent at work in a given week.

- as regards the training of supervisors in the performance of tasks that are described as unionized work, he offered the view that supervisors receive far less training than actual unionized employees called upon to do those same tasks.

[14] On June 9, 2008, the Teamsters Canada Rail Conference (TCRC), representing locomotive engineers at the MacMillan Yard, submitted its justifications for seeking intervenor status in this case. On May 12, 2008, it had indicated its support for the directions issued in this case and stated that it was opposing the position taken by CN Rail in the appeal. Pointing out that fatigue as well as training were the central points to its

submissions, the TCRC opined that fatigue as well as inadequate training were the contributing factors to the accident involving Mr. Merson.

[15] On the subject of fatigue, TCRC points out that CN Rail does not have in place a process to track and monitor the hours worked by supervisors called upon to perform the additional duties of railway train operating employees, even though those duties are designated as safety critical under the Canadian Rail Operating Rules (CROR). It adds that in those circumstances where supervisors are engaged in such operating duties, they execute those tasks directly with or at the very least in the same area as the members of the TCRC, thus making it imperative that these supervisors arrive at work in fit condition to perform those duties safely.

[16] As a means of relating this point to the situation at hand in this case, the TCRC noted that at the time of the accident, Mr. Merson had worked 72 hours in the 144 hours prior to working as a train operating employee, while under similar circumstances, a regular train operating employee at CN Rail would have had to be off work for 24 hours after working 64 hours within any seven day period.

[17] On the subject of training, TCRC pointed to the difference in training received by Mr. Merson in train operations and the training received by new operating employees before qualifying to work as CN operating employees. In the case of Mr. Merson, TCRC states, based on the Health and Safety Officer's report, that he received 2.5 days of LCS training (including 4 hours on the job training) and 5 days of training on Canadian Rail Operating Rules. By comparison, under the United Transportation Union collective agreement, new operating employees would receive eight weeks of classroom training and six months training in total before qualifying to work as CN operating employees.

[18] On the subject of footwear, TCRC does not actually raise a justification for being allowed to intervene. It simply indicates its agreement with the conclusions of the Health and Safety Officer that the employer should assess the hazard of winter footwear worn by operating employees engaged in switching activities and that various footwear should be assessed and the safest identified for use by employees.

[19] On June 24, 2008, the Appellant CN Rail, through counsel Johanne Cavé, replied to the submissions made by the TCRC and James Poirier.

[20] Concerning the participation of the TCRC, the Appellant tersely stated that it had no objection to the TCRC being granted standing, although pointing out that the affected union in this instance was UTU, and not the TCRC.

[21] Where Mr. Poirier is concerned however, the Appellant objected to his being granted standing to take part in the hearing of the appeal, essentially claiming that he is attempting to circumvent the decision of the UTU to not take part in the appeal.

[22] In that respect, it is the position of the Appellant that as the UTU's representative on the work place health and safety committee, Mr. Poirier cannot seek to participate in the hearing in that capacity where the Union he represents has declined to participate, which would mean that he would be participating for his own personal purposes, something that would not constitute proper standing.

[23] Furthermore, it is also claimed by the Appellant that the role of Mr. Poirier on the work place health and safety committee being to represent the UTU, granting him standing would equate to forcing the UTU to participate against its will.

[24] Finally, while recognizing the function of employee/co-chair of Mr. Poirier on the work place health and safety committee, it is the Appellant's position that Mr. Poirier cannot speak on behalf of the committee without a mandate, since his views do not necessarily reflect those of the committee, and that there is no indication that he has canvassed other members of the committee for their views and obtained the mandate to participate in the appeal.

Decision

[25] In deciding whether to grant standing to a party or parties for the purpose of proceeding with the hearing of an appeal, one has to be mindful first of the purpose of the legislation and, secondly, of who would normally be the traditional or usual parties to proceed before an Appeals Officer.

[26] First, section 122.1 of the Code provides that Part II of the Code is intended to "prevent accidents and injury to health arising out of, linked with or occurring in the course of employment (...)", and this statement of purpose must, in my opinion, be central to any interpretation of the applicable legislation and the regulations made pursuant to Part II of the Code, as well as the processes established by and under the Code.

[27] Second, section 124 establishes the general obligation of the employer to " ensure that the health and safety at work of every person employed by the employer is protected" , and section 126 provides that "while at work", every employee shall comply with a number of statutory obligations, most telling of which, in the opinion of the undersigned, being

the obligation to "take all reasonable and necessary precautions to ensure the health and safety of the employee, the other employees and any person likely to be affected by the employee's acts or omissions".

[28] While stated in an overly simplified manner, those provisions serve to confirm that under the legislation, or more properly as part of the processes established through the legislation for the purposes of the legislation, the primary or usual parties in presence in the various processes founded on the legislation, either on their own or through representation, are employers and employees.

[29] This being said, appeal hearings conducted pursuant to section 146.1 of the Code by Appeals Officers are generally of an adversarial nature, where the parties are in turn afforded the opportunity to present material evidence and documents, question witnesses and submit arguments in support of their position. While the legislation does not define precisely who the generic parties to an appeal hearing can be, a general reading of said legislation brings one to the conclusion that an appellant can only be, in the case of an appeal against a direction by a Health and Safety Officer, an employer, an employee or a trade union that feels aggrieved by the said direction, while in the case of a decision of "no danger" issued by a Health and Safety Officer pursuant to subsection 129(7) relative to a refusal to work by an employee, it is solely the refusing employee, or a person designated by the latter for that purpose, that can act in that role. It bears noting here that the language of the Act is more general in the case of an appeal against a direction, stating "an" (in the French text:"tout") employer, employee or trade union, subject to establishing being aggrieved, as opposed to a more restrictive "the" (in the French text: "l'employé") employee in the case of an appeal against a decision of "no danger"

[30] The only other provision in the legislation that broaches the subject of "party" to a proceeding is paragraph 146.2 (g), where authority is granted to the Appeals Officer to make any person or any group (in the French text:"toute personne ou tout groupe") party to a proceeding where the Appeals Officer is of the opinion that the person or group has substantially the same interest as one of the parties. It bears noting here that the concept of added party, what the undersigned would refer to as "intervenor", is dealt with in this provision in the more general terminology of person or group, in contrast to the term "appellant" which refers to employer, employee and trade union. Furthermore, the wording of the provision makes it also abundantly clear that an added party is one which is added to the basic or existing parties to the proceeding, in that it must, in the opinion of the Appeals Officer, have substantially the same interest as one of the parties (in the French text: "une des parties").

[31] This leaves whole the question of who can respond to an appeal being made against a decision or direction by a Health and Safety Officer since the legislation is indeed silent on the notion of respondent. In the context of such a decision or direction favoring a work place party being challenged at appeal, it would appear logical that the primary opponent to said appeal would be the work place party objecting to the possibility that through appeal, the initial direction or decision favoring it would or could be reversed or altered at appeal. However, beyond this rationalization, one has, in my opinion, to recognize that if an appeal can be brought, under the legislation, by an employee, an employer or a trade union, it would only be logical that those same parties be seen as capable of responding in an appeal process to challenges to initial decisions or directions favoring them, either directly or through directly designated representatives or representatives acting as such through functions established by the same legislation.

[32] Counsel for the employer has indicated not opposing the TCRC taking part in the hearing of this appeal, commenting however that the TCRC is not the affected union in this case.

[33] The fact that there is no opposition from the employer, the appealing party, while being an element to be taken into account, is certainly not determinative of the issue, as the addition of a party to a proceeding is conditional on certain conditions directly related to the case being met. Those conditions are set by the legislation and also by case law, and will be examined later.

[34] In the case of the participation by James Poirier, employee co-chair of the work place health and safety committee, counsel for the employer has objected to his being added as a party to the hearing essentially on the basis that at the committee, Mr. Poirier's function is to represent the union that has selected him on the committee, said union (UTU) having already declined to take part in the hearing, and that if he were then allowed to take part, it would be on a personal basis and for his own personal purposes. Counsel also questioned whether Mr. Poirier had obtained a mandate from the committee in that regard.

[35] As I stated relative to the TCRC application, there are certain conditions set by statute and by case law that need to be met prior to granting standing and I will deal with those later. However, I would comment as follows on the objection by the employer at this time.

[36] First, I would point out that the authority that is mine to add parties to the proceeding is considerable in that it applies to <u>any person or any group</u> that, in my opinion, has met the conditions set by the statute. In that respect, it needs to be pointed out that Mr. Poirier has not applied in terms

of representing a union or the union to which he apparently belongs, but as employee co-chair of the work place health and safety committee and, to use the latter's own words, as a person with specific experience concerned " for the safety of all people both union and management at Canadian National Rail". Furthermore, it should be noted that Mr. Poirier, prior to being co-chair of the said committee, is first and foremost an employee of the said employer.

[37] Second, that being said, to equate or reduce the participation of Mr. Poirier, or any other person for that matter, to the work place health and safety committee, as one of union or union interests representation in the case of employee members, would amount to putting an entirely too restrictive interpretation on the language of the statute. From a general stand point, as I pointed out earlier, the statute's central purpose is one of protection and prevention as regards the health and safety of employees, not one of representing or safeguarding union interests, although both may converge, and this is what must guide the interpretation of any provision of the statute. One must note that subsection 135 (1) states that a work place health and safety committee is established "for the purposes of addressing health and safety matters that apply to individual work places". Furthermore, as regards the selection of employee members to the said committee, one must take into consideration that for a unionized work place or environment, while it is the trade union that makes the selection, the statute does not require that the selection be solely from among the employees it represents, but it does require that the selection be completed in consultation "with any employees who are not (...) represented".

[38] The selection of the employee co-chairperson of the workplace health and safety committee, as prescribed by the statute, is even more clearly indicative of the fact that the function is not one restricted to union representation, as trade unions are evacuated from the process, subsection 135.1 (7) stating that employee co-chairs are selected from among committee employee members.

[39] Finally, while I am mindful that in many instances, employees of an employer may be represented by a number of trade unions in a given establishment of an employer, one must underline the fact that at subsection 135 of the Code, the statute provides that there is to be one work place health and safety committee per identifiable work place controlled by the employer at which twenty or more employees are normally employed, and not one work place committee per group of employees identifiable through their trade union affiliation, with the selection and appointment of the members of the committee being reserved to the employer. In my opinion, this is not supportive of a position that would see members of a work place health and safety committee, and

even more so the employee co-chair of said committee, having a union representation role at the committee.

[40] As stated earlier, tests or criteria for granting standing can be found both in the legislation as well as in case law. Where the Code is concerned, one can look to paragraph 146.2(g) to find a dual test relating both to the interest of any given person or group, and also the consequential effect a given case could have on the person or group. The provision states that the Appeals Officer must be convinced, reach the opinion, the party seeking standing first has substantially (in the French text: "essentiellement") the same interest as one of the parties. The use of the word "substantially" indicates that the party seeking standing need not have the same interest as one of the parties, but one that approximates the interest of one party. In addition, the legislation requires that the party evidencing such substantial same interest be liable to be affected by the decision to be rendered in the appeal to which that party seeks to become a party.

[41] The case law of most jurisdictions has been fairly consistent over the years in retaining as a rule for allowing intervention by way of granting standing the necessity of the party seeking standing to have a valid and direct interest in the litigation, not merely a passing or superficial one, and risk being directly affected by the decision. As such, in Rothmans of Pall Mall Canada Limited v. Canada (Minister of national Revenue-M.N.R., (1976) 2 F.C. 500, Mr. Justice Ledain of the Federal Court of Appeal stated that the rule for recognition of status or *locus standi* requires that the party seeking such should have a genuine grievance entitling the challenge of the lower level interpretation, such interpretation being capable of adversely affecting the latter's legal rights or impose on the party additional legal obligations, with the direct possibility of causing direct prejudice to the interests of that party. In William (Billy) Soloski v. The Queen, (1978) 1 F.C. 609, Heald J. reiterated and endorsed the same test formulated by Ledain J. in the Rothmans case, adding however that one needs more than being merely interested or concerned to be granted status. He stated: "However, a well motivated concern and interest in the outcome of a particular proceeding before the Court is not, per se, a legal reason for permitting intervention and participation in that proceeding".

[42] In Schofield and Minister of Consumer and Commercial Relations, (1980) O.J. No.3613, Wilson J. of the Ontario Court of Appeal referred to Ledain J. in the Rothmans case above, as well as to an earlier decision by Chief Justice Jackett in R. v. Bolton (1976) 1 F.C. 252, to reformulate the test as follows:

> It seems to me that the Bolton and Soloski decisions stand for the proposition that, in order to obtain standing as a person "interested " in litigation between

other parties, the applicant must have an interest in the actual lis between those parties.

[43] The Federal Court of Appeal essentially adopted the same position in Canadian Transit Co. v. Canada (Public Service staff Relations Board, (1989) 3 F.C. 611, taking the position that the "mere interest in the eventual outcome of a proceeding before a tribunal whether financial or otherwise, is not in itself sufficient to give an individual a right to participate therein. To be among the interested parties that a tribunal ought to involve in a proceeding before it to satisfy the requirements of the *audi alteram partem* principle, an individual must be directly and necessarily affected by the decision to be made. His or her interest must not be merely indirect or contingent, as it is when the decision may reach him or her only through an intermediate conduit alien to the preoccupation of the tribunal, such as a contractual relationship with one of the parties immediately involved."

[44] However, while intervention may be based on whether sufficient interest is present or not, it cannot go unqualified as an intervenor may not have the same or as complete interest as a party of direct interest, at least in most instances. As such then, there is the need to recognize that the degree of interest may not be the same. This was recognized by the British Columbia Court of Appeal in Canada (Attorney General) v. Aluminum Co. of Canada Ltd, 35 D.L.R. (4th) 495, where Seaton J., recognizing the need for imposing limits to such right of intervention, stated: "When we consider whether to allow intervention, we must consider the scope of that intervention. We must adopt restrictions, probably like those adopted in the United States, if we are to have the benefit of more frequent interventions. Intervenors should not be permitted to take the litigation away from those directly affected by it. Parties to litigation should be allowed to define the issues and seek resolution of matters they determine appropriate to place in issue. They should not be compelled to deal with issues raised by others. (underline added)

[45] There is a balance to be maintained between the interests of those seeking to intervene and those who, as central or parties of direct interest, are seeking the resolution of the issue or situation that affects them directly. On this, the Federal Court, through Rouleau J., quite succinctly put it this way: "The key considerations are the nature of the issue, and the likelihood of the applicant being able to make a useful contribution to the resolution of the action without causing injustice to the immediate parties (Rothmans, Benson & Hedges Inc. v. Canada (Attorney General (T.D.), (1990) 1 F.C. 74)

[46] Beyond the question of the interests of the parties in presence, be they those seeking to intervene or those that would be the immediate parties to

the issue, the question of the potential contribution by the intervenor(s) to the resolution of the central issue must also be looked at in terms of the assistance it can bring to the decision maker. In Papaschase Indian Band v. Canada (Attorney General), 2005 ABCA 320, Fraser C.J.A. of the Alberta Court of Appeal, invoking the Supreme Court of Canada in R. v. Morgentaler, stated:

> It may be fairly stated that, as a general principle, an intervention may be allowed where the proposed intervener is specially affected by the decision facing the Court or the proposed intervener has some special expertise or insight to bring to bear on the issues facing the court. As explained by the Supreme Court of Canada in R. v. Morgentaler, (1993) 1 S.C.R. 462 at para 1: "(t)he purpose of an intervention is to present the court with submissions which are useful and different from the perspective of a non-party who has a special interest or particular expertise in the subject matter of the appeal".

[47] Taking all of what precedes into account brings one to formulate a number of questions that need to be answered in order to decide whether to grant standing to an applicant, although clearly an affirmative answer is not required to each and every one of those in order to reach a decision. Those could be formulated as follows:

- whether the intervenor can assist in the resolution of the matter;
- whether the intervenor can bring a different perspective to the issue;
- whether the intervenor can make a useful contribution to the proceedings;
- whether the intervenor has relevant expertise that otherwise would not be available to the tribunal;
- whether the intervenor's participation would cause injustice to the other parties;
- whether the intervenor has a real, substantial and identifiable interest in the matter;
- whether the intervenor's interest is greater than that of a member of the general public;
- whether the intervenor is in a unique position that is different from that of the parties;
- whether the interests of the intervenor will or would be affected by the outcome of the hearing;

[48] The two applicants have presented their justifications for seeking standing and while there are common elements, there are also clear differences in the rationale for their action.

[49] The TCRC has made its application as representing employees who work in close proximity to railway operating employees whose tasks were at the center of the accident to Mr. Merson. It makes the point that it is imperative that the supervisors who are called upon to temporarily

execute the tasks of said railway operating employees "arrive at work in fit condition to perform their duties safely" and be properly trained in the execution of these tasks, so as to ensure that not only the health and safety of these supervisors is protected but also that of the locomotive engineers the TCRC represents.

[50] While I have considered that CN Rail is not objecting to TCRC taking part in the hearing, I am of the view that the applicant TCRC not only can assist in the resolution of the matter, but also can make a useful contribution to the proceeding and bring a different perspective to the issue in light of the different group of employees it represents in the same work place. In my opinion, given the purpose of the legislation, the applicant has established a real, substantial and identifiable interest in the issue, having regard again to the health and safety the group of employees it represents working with or in close proximity to those supervisors substituting for railway operating employees, an interest which is undoubtedly greater than that of a member of the general public and could be affected by the outcome of the hearing. I would add that the participation of the TCRC, in my opinion, would not cause an injustice to other parties, and that by virtue of their representation of employees active first in railway operations and secondly employees who are employed at MacMillan Yard, the applicant can bring to the proceeding relevant expertise, even if I cannot conclude that such expertise would not be otherwise available to the Tribunal. Furthermore, I am satisfied that the TCRC meets the test set at paragraph 146(2) (g) of the Code, in that it has substantially the same interest as the party that would respond to the appeal made by the employer, that interest which essentially relates to the group of employees it represents at the work place being capable of being affected by the decision in the present case, the directions being appealed being of consequence to all employees.

[51] For these reasons, I will grant intervenor status to the TCRC and accept that it take part in the hearing of this appeal. The fact however that it represents a group of employees distinguishable from railway operating employees, even where their tasks are executed in close proximity, causes the undersigned to set certain limits to the scope of the intervention by the TCRC, so as to avoid that the litigation be taken away from those directly affected or that issues more concrete to the TCRC be raised in the case. Consequently, the intervention shall be limited to taking part in the questioning of witnesses testifying at the hearing and making representations on the issues raised by the appeal.

[52] This brings me to Mr. Poirier's application who, in my opinion, finds himself in a unique situation due to the fact that he comes to this application in the absence of a readily identified respondent to the position taken by the employer in the appeal, and professing to speak not solely for himself in

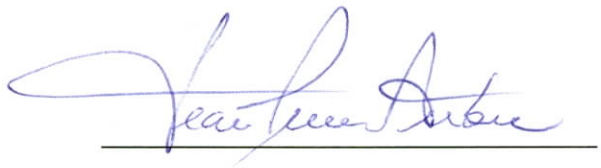
opposing the appeal, but for the employees of the employer in his capacity of employee co-chair of the work place health and safety committee at MacMillan Yard. I would add that contrarily to the objection formulated by counsel for the employer, Mr. Poirier has not presented himself and I do not consider that in his application he is seeking to act in representation of the trade union of which he is a member, a question I have dealt with earlier in this decision. Counsel for the employer also questioned the mandate of Mr. Poirier to participate in the appeal, claiming that there is no indication that he had canvassed the members of the committee for their views. However, I give no weight to this objection as there is no evidence to support this allegation, and in light of the fact that my authority to add parties to a hearing extends to "any person". Furthermore, I would add that such questions as the existence or not of a mandate from the members of the committee concerns the internal workings of the committee and the relationship between the members of the committee and their chair(s).

[53] It is worth noting that in his justifications for wanting to intervene in this case, he stated that he does have "concern for the safety of all people both union and management at Canadian National Rail" and wants to "work to make the railroad industry a safe environment", an interest that takes on more importance than that of the general public due to his role within the process or structure provided under the Code to promote and protect the health and safety of employees in the work place, and the general nature of the directions being appealed.

[54] Mr. Poirier claims considerable experience as regards beltpack operations, such as were involved in the accident to Mr. Merson, and as to how said accident could have been avoided. This constitutes relevant expertise that may not be otherwise readily available to the tribunal. In addition, as the question of proper training is involved in this case, he points out that the work place health and safety committee assists in training programs initiated by the employer. Given this, my opinion is that Mr. Poirier could assist in the resolution of this matter and make a useful contribution to the proceedings in providing some response to the position taken by the employer, considering also his relevant expertise in beltpack operations. Such intervention would not, in my opinion, cause injustice to other parties.

[55] I am also of the view that Mr. Poirier's application satisfies the test set at paragraph 146.2 (g) of the Code, essentially for the same reasons as the TCRC, but taking into account the larger constituency to which the role of Mr. Poirier as co-chair of the work place health and safety committee makes this applicable, and the general scope of the directions under appeal.

[56] This being said, I will grant standing to Mr. Poirier to intervene in this matter. In light of the particulars of the latter's situation within the work place, as well as the general directions under review, that intervention can be closer to that of respondent and as such, Mr. Poirier will be authorized to present evidence and witnesses, take part in the examination of all witnesses and formulate representations in support of his position.



Jean-Pierre Aubre
Appeals Officer