Occupational Health and Safety Tribunal Canada

Tribunal de santé et sécurité au travail Canada

Ottawa, Canada K1A 0J2

Case No.: 2007-35

Interlocutory decision
Order: OHSTC-08-024 (I)

CANADA LABOUR CODE
PART II
OCCUPATIONAL HEALTH AND SAFETY

Quebec Port Terminals Inc.
Appellant/Applicant

and

Syndicat des débardeurs de Trois-Rivières, Canadian Union of Public Employees, Local 1375
Respondent on appeal

and

Maritime Employers Association
Respondent on request

September 11, 2008

Decision on an objection by the Maritime Employers Association to the admissibility of a request by Quebec Port Terminals Inc. to add a party to the appeal, heard by Appeals Officer Katia Néron at Trois-Rivières, Quebec on July 8, 2008.

For the Maritime Employers Association
Robert Monette, Ogilvy Renaud

For Quebec Port Terminals Inc.
Pierre Jolin, McCarthy Tétrault

For the Syndicat des débardeurs de Trois-Rivières
Danny Venditti, Trudel, Nadeau, Attorneys

[1] On December 12, 2007, Denis Carron, on behalf of Quebec Port Terminals Inc. (QPT), appealed under subsection 146(1) of Part II of the *Canada Labour Code* (the *Code*) from two directions issued to QPT on December 5, 2007 by Health and Safety Officer (HSO) Claude Léger.

[2] On January 30, 2008, Pierre Jolin, on behalf of QPT, requested that I make the Maritime Employers Association (MEA) a party to this case. Alleging that one question to be decided in this case is whether the above-mentioned directions should have applied to the MEA and not QPT in their entirely or at least in part, Mr. Jolin submitted that the debate in this case cannot proceed without the MEA.

[3] On March 14, 2008, in reply to a written request made by the Tribunal's[1] Case Management Officer on March 5, 2008, Stéphane Saucier, the MEA's Occupational Heath and Safety Manager, stated that the MEA was not seeking to be made a party to this case.

[4] On March 28, 2008, Mr. Jolin reiterated his request that the MEA be considered an interested party in this case, arguing that its presence is essential to any possible debate.

[5] On July 8, 2008, at the start of the hearing held to deal solely with this question, Robert Monette for the MEA made a preliminary objection, arguing that the request to make the MEA a party to the proceeding is inadmissible in law and in fact. I must decide this question before determining whether I will make the MEA a party to the case.

Facts

[6] On December 3, 2007, Steve Richard, a longshoreman and member of the Syndicat des débardeurs de Trois-Rivières, Canadian Union of Public Employees (CUPE), Local 1375, was assigned to pier B1 at the Bécancour marine terminal, a work place operated by QPT, as a linesman for unmooring the M/V Sichem New York. When performing that manoeuvre, S. Richard was hit by a mooring line that severed one of his legs below the knee and injured his other leg.

[7] On December 4, 2007, HSO Léger went to the scene of the accident to investigate. He was told that the longshoremen in the same union as S. Richard were refusing to perform mooring manoeuvres because of the serious accident that had occurred the day before. Jean Poliquin, who managed the work place, also told him that non-unionized employees of QPT could perform ship mooring and unmooring operations.

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[1] Occupational Health and Safety Tribunal Canada.

[8] HSO Léger's report dated February 18, 2008, which sets out the reasons for the directions he issued on December 5, 2007, reads in part as follows:

> [TRANSLATION]
>
> Steve Richard is a longshoreman, and his name is on a list of longshoremen who can be assigned to moor and unmoor ships at the Bécancour marine terminal. That list was provided to QPT by Jean-Pierre Langlois, Senior Labour Relations Advisor, Maritime Employers Association (MEA), on July 10, 2007.
>
> . . . At the Port of Trois-Rivières-Bécancour, as at the Port of Montréal, a union (Local 1375) has been certified for all work connected with longshoring operations for ships in the region. The Maritime Employers Association (MEA) is also the association that represents employers engaged in such activities in the region.
>
> However, during my conversation with Jean Poliquin, he told me that QPT employees who are not members of the Syndicat des débardeurs, CUPE, Local 1375, can perform ship mooring and unmooring operations. This was happening at the time of our investigation, since the longshoremen refused to come and do mooring work after Steve Richard's accident. Because of that statement, I did not have to immediately determine whether the longshoremen assigned to operations on December 3, 2007 were MEA or QPT employees. Rather, I had to ensure that the situation that led to a serious accident did not occur again. I therefore issued my direction to QPT, since that company is responsible for ship mooring and unmooring operations at the Port of Bécancour and those operations could be performed by its employees.

[9] The same report by HSO Léger describes the employees' working conditions at the time of his investigation as follows:

> [TRANSLATION]
>
> The employees performing mooring and unmooring operations have no specific instructions for doing that type of work.
>
> During my conversation with Mr. Poliquin, he gave me a copy of the emergency plan dated August 2000. . . . When I asked about the implementation of those measures, he told me that some of them, such as the use of a dinghy, are not enforced and that they are not known to all the people involved. . . .
>
> Mr. Poliquin also confirmed that the available means of communication between the ship and the linesmen . . . is oral communication if the ship is close enough and the employees performing the operations speak English. Otherwise, they communicate by gesturing to one another.
>
> There are no means available for communicating directly with the ship's pilots and/or captain to find out their intentions or the procedures they have chosen for ship mooring and unmooring operations or emergencies.

[10] Based on the foregoing, HSO Léger issued a direction for danger to QPT on December 5, 2007 under paragraphs 145(2)(*a*) and (*b*) of the *Code*. In

the direction, he stated that he was of the opinion that the performance of ship mooring and unmooring manoeuvres without written procedures, adequate training, adequate means of communicating with the ship and adequate emergency procedures known to all those involved constituted a danger to an employee while at work. The direction reads in part as follows:

> [TRANSLATION]
>
> On December 5, 2007, the undersigned Health and Safety Officer conducted an investigation at the work place operated by Quebec Port Terminals (QPT), an employer subject to Part II of the *Canada Labour Code* and located at 355 Alphonse-Deshaies Blvd., Bécancour, Quebec, sometimes known as the Port of Bécancour, QPT.
>
> The said Health and Safety Officer considers that the performance of an activity constitutes a danger to an employee while at work, to wit:
>
> the mooring and unmooring of ships without written procedures, adequate training, adequate means of communicating with the ship and adequate emergency procedures known to all those involved may cause serious injury or a risk of death, including by drowning.
>
> Accordingly, you are HEREBY DIRECTED, under paragraph 145(2)(*a*) of Part II of the *Canada Labour Code*, to take measures to correct the hazard immediately.
>
> In accordance with subsection 145(3), a notice bearing number 3496 has been affixed at the QPT office in Bécancour, and no person shall remove the notice unless authorized to do so by a health and safety officer
>
> You are ALSO HEREBY DIRECTED, under paragraph 145(2)(*b*) of Part II of the *Canada Labour Code*, NOT to perform the activity in respect of which these directions are issued until the directions are complied with.

[11] To prevent employees from performing ship mooring and unmooring manoeuvres at the Port of Bécancour until QPT had complied with the above-mentioned direction, HSO Léger issued a second direction, again to QPT, under subsection 145(2.1) of the *Code*. That direction reads in part as follows:

> [TRANSLATION]
>
> On December 5, 2007, the undersigned Health and Safety Officer conducted an investigation at the work place operated by Quebec Port Terminals (QPT), an employer subject to Part II of the *Canada Labour Code* and located at 355 Alphonse-Deshaies Blvd., Bécancour, QC, sometimes known as the Port of Bécancour.
>
> The said Health and Safety Officer considers that the performance of an activity constitutes a danger, to wit:

From Part II:

the mooring and unmooring of ships without written procedures, adequate training, adequate means of communicating with the ship and adequate emergency procedures known to all those involved may cause serious injury or a risk of death, including by drowning.

Accordingly, you are HEREBY DIRECTED, under subsection 145(2.1) of Part II of the *Canada Labour Code*, to:

discontinue the activity.

Is the request to make the MEA a party to this proceeding inadmissible in fact and in law?

The MEA's arguments

[12] Referring to HSO Léger's report of February 18, 2008 and the wording of the impugned directions, Mr. Monette argued, on behalf of the MEA, that HSO Léger intentionally and specifically wanted his directions to apply to QPT, since he designated it by name as the employer, not the MEA, and the directions applied to the work place operated by QPT at the Port of Bécancour.

[13] He added that, in his opinion, the said directions were issued to the proper party, namely the party that employed the employees who could be covered by the directions and that controlled their work place and the activities they performed there. According to Mr. Monette, this is the only definition applicable to a true employer, as recognized in the case law. He further argued that the fact that certain responsibilities were delegated to the MEA through a collective agreement, including with regard to the deployment of longshoremen, did not make the MEA the longshoremen's true employer.

[14] To support these arguments, Mr. Monette referred to the following authorities:

- *La Reine v. Société de Terminus Racine (Montréal)*, Court of Quebec, docket no. 500-73-002272-041, judgment rendered on February 16, 2007, G. Garneau, JCQ

- *La Reine v. Société Terminus Racine (Montréal)*, Superior Court, docket no. 500-73-02272-041, judgment rendered on October 12, 2007, A. Vincent, JSC

- *Maritime Employers' Association and Syndicat des débardeurs C.U.P.E. Local 375*, 2006 FCA 360

- *Procureur général v. Compagnie d'arrimage de Québec Ltée and Denis Dupuis*, docket no. 200-72-001488-944/200-72-001487-946, judgment rendered on December 16, 1996, M. Babin, Summary Convictions Court

- *Her Majesty the Queen v. Fednav Limited et al.*, judgment rendered on September 19, 1996, Zabel J., Ontario Court of Justice (Provincial Division)

- *Location de Main-d'oeuvre Excellence inc. v. Commission de la construction du Québec*, 2008 QCCA 999, Quebec Court of Appeal

[15] Based on the foregoing, Mr. Monette argued that my power of inquiry under the *Code* – even if *de novo* – does not extend to considering whether, as urged by QPT in this case, HSO Léger's directions of December 5, 2007 should have applied to a person other than QPT or whether other directions should have been issued to one or more other persons under the *Code*.

[16] Mr. Monette also argued that an appeals officer's power under paragraph 146.2(*g*) of the *Code* to "*make a party to the proceeding . . . any person who, or any group that, in the officer's opinion has substantially the same interest as one of the parties and could be affected by the decision*" implies that the person or group must ask or voluntarily agree to be made a party. As well, since the word "*compel*" or "*contraindre*" is not used in this paragraph and since the MEA objects, Mr. Monette submitted that I have no authority to make the MEA a party to this case.

[17] In support of this position, he referred to Appeals Officer Douglas Malanka's decision in *Correctional Service of Canada - Drumheller Institution and CO's Schellenberg and Wood, Correctional Service of Canada, employees, and Larry DeWolfe, Co-Chair Work Place Occupational Health and Safety Committee, Drumheller Institution (a.k.a. Drumheller Penitentiary), for the employees, and Neil S. Campbell, Health and Safety Officer*.[2] In that case, Appeals Officer Malanka wrote the following at paragraphs 34 and 52 of his decision:

> 34 On a separate matter, Mr. DeWolfe complained to me on the last day of the hearing that his supervisor had informed him the previous evening that he would not receive salary or travel expenses for his participation at the hearing. Mr. Fader indicated that he was not aware of what the employer would finally

[2] *Correctional Service of Canada - Drumheller Institution and CO's Schellenberg and Wood, Correctional Service, employees, and Larry DeWolfe, Co-Chair Work Place Occupational Health and Safety Committee, Drumheller Institution (a.k.a. Drumheller Penitentiary), for the employees, and Neil S. Campbell, Health and Safety Officer*, [2002] C.L.C.A.O.D. No. 6, May 9, 2002.

do, but suggested that Mr. DeWolfe was not a party to the hearing because he was at the hearing to represent Drumheller Institution employees.

52 I interpret from subsection 146(1) and paragraph 146(2)(h) that a party includes an employee, employer or trade union that feels aggrieved by a direction. Paragraph 146(2)(g) authorizes an appeals officer to make a party to a hearing any person or group that in the officer's opinion, has substantially the same interest as one of the parties and could be affected by the decision.
(emphasis added)

[18] Mr. Monette also referred to the correspondence between QPT and the MEA after HSO Léger issued his directions on December 5, 2007.

[19] In a letter dated December 21, 2007, Jean Gaudreau from QPT denied having any responsibilities related to S. Richard's accident in the final paragraph on page 1:

[TRANSLATION]

All responsibilities related to this accident are yours, including but not limited to the work procedure, training and occupational health and safety, and the attached directions should therefore have been issued to you.

[20] In a letter dated January 22, 2008, Mr. Saucier from the MEA wrote the following in paragraphs 6 and 7 on page 4:

[TRANSLATION]

. . . it is wrong to think that the MEA will hold itself responsible for a work accident related to duties in relation to which it has no control over the activity, method or work place and which it was also not assigned to perform. If you thought, as you have in the past, that training by the MEA was desirable, I trust that you would have told us. This was not at all the case for the linesmen. Since our organization's role is not to load and unload ships but rather to engage in collective bargaining and deploy workers, it is obviously your responsibility, and it is within your discretion, to inform us of your needs.

In this context, although we are aware of all the consequences of this unfortunate event, we are in no way responsible for it, and we will vigorously defend our position if it is challenged further by you or anyone else.

[21] Relying on these documents, Mr. Monette argued that the MEA and QPT have a competing interest in this case, not the same interest. He therefore submitted that the criterion of having "*substantially the same interest as one of the parties*" set out in paragraph 146.2(*g*) of the *Code*, which must be used to determine whether the MEA should be made a party to the case, is not met.

[22] Moreover, if a new direction is issued to the MEA following the inquiry in this case, the MEA could not exercise the right provided for in

subsection 146(1) of the *Code*. In Mr. Monette's opinion, this would be prejudicial to the MEA and a denial of justice.

[23] With regard to the need for the MEA to be present for the hearing of this case, Mr. Monette argued that the MEA's presence is neither essential nor necessary for QPT to make full answer and defence in this case. In support of this position, he pointed out that QPT can, among other things, ask me under paragraph 146.2(*a*) of the *Code* to summon an MEA representative as a witness and "*enforce the attendance of [the representative] and compel [the representative] to give . . . evidence under oath and to produce any documents and things*" that I consider necessary to decide this case.

Quebec Port Terminals Inc.'s arguments

[24] Mr. Jolin, on behalf of QPT, submitted that the role of an appeals officer under the *Code* is not only to advance the law. According to Mr. Jolin, the mandate of an appeals officer is above all curative in nature, since the ultimate purpose of the *Code*, as specified in section 122.1, is "*to prevent accidents and injury to health arising out of, linked with or occurring in the course of employment to which this Part applies*".

[25] Mr. Jolin also referred to the definition of the term "*employer*" in subsection 122(1) of the *Code*. He noted that not one but three entities are included in that definition as it applies in the *Code*. The definition reads as follows:

> "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;

[26] Mr. Jolin also referred to the decision of de Montigny J. of the Federal Court in *Maritime Employers' Association v. Syndicat des débardeurs, C.U.P.E. Local 375*[3] and the decision of Décary J.A. of the Federal Court of Appeal in the same case.[4] In those decisions, the Federal Court and the Federal Court of Appeal affirmed the findings made by Appeals Officer Pierre Guénette in *Maritime Employers Association*,[5] namely that the MEA could be considered an employer for the purposes of the *Code* and could be issued a direction under the *Code*. Décary J.A. wrote the following, *inter alia*, at paragraph 6 of his judgment, agreeing with the conclusions of de Montigny J.:

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[3] *Maritime Employers' Association v. Syndicat des débardeurs, C.U.P.E. Local 375*, 2006 FC 66, Mr. Justice Yves de Montigny, January 24, 2006.
[4] *Maritime Employers' Association v. Syndicat des débardeurs C.U.P.E. Local 375*, 2006 FCA 360, Mr. Justice Robert Décary, November 6, 2006.
[5] *Maritime Employers Association*, Decision CAO 04-046, December 6, 2004.

> [6] . . . The MEA is in a hybrid position. Given the fact that in practice it is an employer's organization for employers of longshoremen whose health and safety are at issue, its status as employer representative for the purposes of the collective agreement signed with the Syndicat des débardeurs, and the undertakings that it makes on its behalf in this agreement in health and safety matters, it cannot be excluded from the application of Part II of the *Canada Labour Code*.

[27] Mr. Jolin also referred to my decision in *Maritime Employers Association and Syndicat des débardeurs, Canadian Union of Public Employees, Local 375*.[6] In that case, I varied a direction for danger issued to the MEA on February 18, 2005 by HSO Léger to include what I considered a contravention by the MEA in relation to its responsibility under the *Code* – by way of the collective agreement – to train the unionized longshoremen covered by the said direction.

[28] Mr. Jolin also submitted the collective agreement[7] between the MEA and the longshoremen belonging to the Syndicat des débardeurs de Trois-Rivières, CUPE, Local 1375.

[29] Based on that document, the wording of the impugned directions and all of the above-mentioned authorities, Mr. Jolin argued that it was entirely reasonable and justified in this case – and that HSO Léger should have done this before issuing his directions on December 5, 2007 – to consider whether the person to whom the said direction or directions applied was the proper person, having regard to the circumstances in which the directions were issued and the duties imposed on an employer by the *Code*. In Mr. Jolin's opinion, one of those circumstances had to do with the unionized longshoremen and their training as provided for in the collective agreement.

[30] Regardless of the facts or the law that justified issuing the directions of December 5, 2007 to QPT rather than another person or group, Mr. Jolin argued, referring to the content of the directions and the circumstances in which they were issued, that a direction could very well have been issued to the MEA in this case. As I understand his argument, unless the MEA is a party to this case, another direction cannot be issued to it, if I consider such a direction appropriate. As a result, according to Mr. Jolin, all the debate concerning this case will have been in vain.

[31] In Mr. Jolin's view, the question of whether the MEA or QPT was the true employer, within the meaning of the *Code*, of the longshoremen in

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[6] *Maritime Employers Association v. Syndicat des débardeurs, Canadian Union of Public Employees, Local 375*, Decision CAO 07-037, September 28, 2007.

[7] Collective agreement between the Maritime Employers Association and the Syndicat des débardeurs, CUPE, Local 1375, 2006-2007-2008-2009-2010.

question at the time of HSO Léger's investigation is also central to this case, as is the question of what concrete responsibilities each of them had in light of the three entities making up the term "*employer*" as it applies in the *Code*.

[32] Mr. Jolin argued that, in this case, all of these questions must be examined not only to resolve them once and for all but particularly – given the purpose of the *Code* – to prevent an accident like the one on December 3, 2007 from occurring again.

[33] Mr. Jolin also referred to the factors considered by the Federal Courts in deciding whether to order that a person be added as a party or cease to be a party. He referred to rule 104(1) of the Federal Courts Rules,[8] the English and French versions of which read as follows:

104(1) **Order for joinder or relief against joinder** – At any time, the Court may:	104(1) **Ordonnance de la Cour** - La Cour peut, à tout moment, ordonner :
(a) order that a person who is not a proper or necessary party shall cease to be a party; or	a) qu'une personne constituée erronément comme partie ou une partie dont la présence n'est pas nécessaire au règlement des questions en litige soit mise hors de cause;
(b) order that a person who ought to have been joined as a party or whose presence before the Court is necessary to ensure that all matters in dispute in the proceeding may be effectually and completely determined be added as a party, but no person shall be added as a plaintiff or applicant without his or her consent, signified in writing or in such other manner as the Court may order.	b) que soit constituée comme partie à l'instance toute personne qui aurait dû l'être ou dont la présence devant la Cour est nécessaire pour assurer une instruction complète et le règlement des questions en litige dans l'instance; toutefois, nul ne peut être constitué codemandeur sans son consentement, lequel est notifié par écrit ou de telle autre manière que la Cour l'ordonne.

[34] Mr. Jolin also quoted the English and French versions of paragraph 146.2(*g*) of the *Code*, which read as follows:

146.2 For the purpose of a proceeding under subsection 146.1(1), an appeals officer may:	146.2 Dans le cadre de la procédure prévue au paragraphe 146.1(1), l'agent d'appel peut :
. . .	[...]

[8] *Federal Courts Practice 2008* by Brian J. Saunders, B.A., LL.B., LL.M., DIP. LEGAL STUDIES OF THE BAR of ONTARIO, Meg Kinnear, B.A., LL.B., LL.M., OF THE BARS OF ONTARIO AND DISTRICT OF COLUMBIA, Donald J. Rennie, B.A., LL.B., OF THE BAR of ONTARIO, Graham Garton, Q.C., B.A., LL.B., OF THE BAR of ONTARIO.

(*g*) make a party to the proceeding, at any stage of the proceeding, any person who, or any group that, in the officer's opinion, has substantially the same interest as one of the parties and could be affected by the decision.	*g*) en tout état de cause, accorder le statut de partie à toute personne ou tout groupe qui, à son avis, a essentiellement les mêmes intérêts qu'une des parties et pourrait être concerné par la décision.

[35] According to Mr. Jolin, even if it may be thought – which he did not argue – that the term "*accorder*" used in the French version of paragraph 146.2(*g*) of the *Code* leaves room for doubt, as alleged by Mr. Monette, the wording in the English version of paragraph 146.2(*g*), namely "*make a party to the proceeding . . . in the officer's opinion*", indicates that an appeals officer may exercise this authority unilaterally, without having to obtain the consent of the person or group concerned.

[36] Mr. Jolin also argued that the words "*at any stage of the proceeding*" and "*in the officer's opinion*" in paragraph 146.2(*g*) of the *Code* mean, in law, that an appeals officer has full authority to determine, on his or her own initiative, whether the presence of a person or group is necessary for a full and fair hearing of a proceeding. For that purpose, the appeals officer must determine whether the person or group has substantially the same interest as one of the parties to the proceeding and could be affected by the decision.

[37] As well, in Mr. Jolin's view, the word "*affected*" in paragraph 142.6(*g*) means that the appeals officer must consider whether the person or group in question will have a role to play in the officer's decision and, if so, that the officer must give the person or group every opportunity to contribute to the debate when the case is heard.

[38] If the appeals officer finds that the above-mentioned two criteria are met, the officer may not only use all of his or her authority to make the person or group a party to the case but also has a legal obligation to do so. In Mr. Jolin's opinion, this is the full meaning that must be given to the authority conferred on an appeals officer under paragraph 146.2(*g*) of the *Code*.

Arguments of the Syndicat des débardeurs de Trois-Rivières

[39] Mr. Venditti, on behalf of the Syndicat des débardeurs de Trois-Rivières, CUPE, Local 1375, supported Mr. Jolin's request to make the MEA a party to the proceeding and said that he also agreed with all of Mr. Jolin's arguments.

[40] However, he noted that the power to conduct an inquiry *de novo* conferred on me by subsection 146.1(1) of the *Code* and the powers set out in that subsection allow me to inquire into all the circumstances of the directions

under appeal and to "*vary, rescind or confirm*" the directions or "*issue any direction*" I consider appropriate "*under subsection 145(2) or (2.1)*". According to Mr. Venditti, this means that I have full authority under subsection 146.1(1) to examine all aspects of this case that I consider appropriate, just as I have the power to issue any other direction authorized by the *Code* if I think it necessary.

[41] Mr. Venditti also noted that the purpose of directions issued under the *Code* is to protect employees, which implies that they must be issued to the proper persons, namely all persons who can take steps to implement them.

[42] Since the content of HSO Léger's directions of December 5, 2007 and the circumstances in which they were issued can include a sharing of responsibilities imposed by the *Code* on both an employers' organization such as the MEA and other persons such as those included in the definition of "employer" in the *Code*, Mr. Venditti submitted that the proper interpretation of each person's duties under the *Code* is a question that needs to be clarified in this case.

Decision on the preliminary objection to the request to add the MEA as a party

[43] To decide the preliminary objection to the admissibility in fact and in law of the request to make the MEA a party to this proceeding, I believe I must answer the following two questions:

- Does the power conferred by paragraph 146.2(*g*) of the *Code* allow an appeals officer to compel a person or group to become a party to a case if the person or group does not wish to become a party?

- If my answer to this question is no, I can only find that Mr. Jolin's request, supported by Mr. Venditti, to require the MEA to take part in the proceeding is inadmissible. If my answer is yes, the second question is whether, based on the facts, the case law and the arguments submitted, the MEA has substantially the same interest as one of the parties to the proceeding and could be affected by my decision. If I find this to be the case, I will conclude that the request as set out above is admissible.

[44] Looking at all the powers conferred on appeals officers by section 146.2 of the *Code*, what I understand, as Mr. Monette argued, is that, if Parliament had wanted paragraph (g) of that section to give appeals officers the authority to compel a person or group to become a party to a proceeding, it would have clearly stated this as it did in paragraph (*a*) of the same section, which uses the words "enforce" and "compel". After all, if

Parliament saw fit to use the words "make a party to the proceeding" in paragraph (*g*) but used the words "enforce the attendance" in paragraph (*a*), it must be concluded that the meaning of these words differs.

[45] I agree with Mr. Jolin that these two paragraphs do not have the same purpose and that there may be some consistency between the words "*make a party to the proceeding*" and "*accorder le statut de partie*" in paragraph 146.2(*g*) of the *Code* and the Federal Courts Rules quoted above, from which I might draw inspiration to decide a question about adding a party to a proceeding. However, aside from the fact that the *Code* does not contain a provision as clear and specific as the one in the Federal Courts Rules, I must also note that there are limits on the power provided for in those rules. I am therefore of the opinion that, since paragraph 146.2(*g*) does not include a statement like "*but no person shall be added as a plaintiff or applicant without his or her consent*" as found in the Federal Courts Rules, I can only conclude that paragraph 146.2(*g*) does not allow a party to be added to a proceeding, whatever status the appeals officer considers it appropriate to give the party, unless the party has requested it or consented to it.

[46] I am not persuaded by Mr. Jolin's argument, which was supported by Mr. Venditti, that the MEA's presence as a party in this proceeding is necessary. In my opinion, the only valid reason that might support this argument is that the MEA's absence as a party would result in the dismissal of QPT's appeal, which is not the case. It is important to note here that the appeal before me concerns directions issued solely to QPT.

[47] I am also of the opinion, as noted by Mr. Venditti and confirmed by the Federal Court of Appeal in *Douglas Martin and Public Service Alliance of Canada and Attorney General of Canada*,[9] that appeals officers have complete authority in the cases before them to exercise the full power *de novo* conferred on them by subsections 145.1(2) and 146.1(1) of the *Code* if they consider it appropriate having regard to the *Code*'s primary purpose.

[48] In the above-mentioned case, Rothstein J.A. wrote the following at paragraphs 26, 27 and 28 of his judgment:

> [26] At one time it was questionable whether an appeals officer could proceed under subsection 145(1) when a health and safety officer had made a previous determination under subsection 145(2). See *Marine Terminals Inc. v. Longshoremen's Union Local 375* (2000), 192 F.T.R. 1 (T.D.); affirmed (2001), 213 F.T.R. 59 (C.A.). However, subsequent to that decision, the Code was amended by the addition of subsection 145.1(2) which provides:

[9] *Douglas Martin and Public Service Alliance of Canada and Attorney General of Canada*, 2005 FCA 156, docket no. A-491-03, Rothstein J.A., May 6, 2005.

(2) For the purposes of sections 146 to 146.5, an appeals officer has all of the powers, duties and immunity of a health and safety officer.	(2) Pour l'application des articles 146 à 146.5, l'agent d'appel est investi des mêmes attributions - notamment en matière d'immunité - que l'agent de santé et de sécurité.

> [27] Under section 146.1, an appeals officer may "vary, rescind or confirm" a direction of a health and safety officer. If a health and safety officer has made a direction under subsection 145(2) that the appeals officer considers inappropriate, he may rescind that direction. However, because he now has all the powers of a health and safety officer, he may also vary it to provide for what he considers the health and safety officer should have directed.
>
> [28] An appeal before an appeals officer is *de novo*. Under section 146.2, the appeals officer may summon and enforce the attendance of witnesses, receive and accept any evidence and information on oath, affidavit or otherwise that he sees fit, whether or not admissible in a court of law, examine records and make inquiries as he considers necessary. In view of these wide powers and the addition of subsection 145.1(2), there is no rationale that would justify precluding an appeals officer from making a determination under subsection 145(1), if he finds a contravention of Part II of the Code, notwithstanding that the health and safety officer had issued a direction under subsection 145(2).
>
> (emphasis added)

[49] What I understand from this is that I have full authority to act as described above, in compliance with the principles of natural justice.

[50] This also means that, if they consider it necessary, QPT and the Syndicat des débardeurs de Trois-Rivières, CUPE, Local 1375, can ask me to enforce the attendance of an MEA representative as a witness in this case and compel that representative to produce documents so they can challenge the directions issued by HSO Léger. However, I will wait for such a request before I make such an order.

[51] For the reasons set out above, I conclude, however, that I do not have the authority under paragraph 146.2(*g*) of the *Code* to make the MEA a party to this case without its consent.

[52] Accordingly, the MEA's objection to the admissibility in law of this request is allowed and the said request to add a party is denied.

Katia Néron
Appeals Officer