

Occupational Health  
and Safety Tribunal Canada



Tribunal de santé et  
sécurité au travail Canada

Ottawa, Canada K1A 0J2

**Citation:** Jazz Aviation LP v. Canadian Auto Workers, 2012 OHSTC 8

**Date:** 2012-02-17  
**Case No.:** 2012-07  
**Rendered at:** Ottawa

**Between:**

Jazz Aviation LP, Applicant  
and  
Canadian Auto Workers, Respondent

**Matter:** An application for a stay of a direction  
**Decision:** The stay of the direction is granted  
**Decision rendered by:** Mr. Richard Lafrance, Appeals Officer  
**Language of decision:** English  
**For the applicant:** Mr. Guy Lavoie, Counsel, Lavery, de Billy, LLP  
**For the respondent:** Ms. Rosanna Dewey, Canadian Auto Workers

Canada

## REASONS

[1] This concerns an application for a stay of a direction related to an appeal filed on January 20, 2012 by Ms. Giselle Lue, Corporate Occupational safety and health Manager for Jazz Aviation. The direction was issued to Jazz Aviation by Health and Safety Officer (HSO) Sylvain Renaud on December 13, 2011.

### Background

[2] The direction under appeal was issued by the HSO further to an inspection he conducted at Jazz Aviation installations at the Rouyn-Noranda Airport, Quebec.

[3] The direction issued to Jazz Aviation states:

The employer did not ensure that employees had access to safe working procedures that the employees could understand. The Aircraft Service Manual (ASM) includes safety procedures that must be understood. The manual is not available in French, so Francophone employees cannot consult it.

[4] As the appeal and stay application were submitted eight days after the allowed time limit of 30 days, I requested some explanation with regard to this before I could accept the application.

[5] A telephone conference was arranged on February 14, 2012 to receive the submission from Mr. Guy Lavoie, counsel for Jazz Aviation, and Ms. Rosanna Dewey Occupational Health and Safety Advisor for the Canadian Auto Workers' union.

[6] On the issue of being late to appeal the direction, Mr. Lavoie explained that the representative of Jazz Aviation, Mr. Steve Polak, Manager, Aircraft Services, who had been identified to receive the direction from HSO Renaud only received the said direction on January 18, 2012.

[7] He explained that HSO Renaud was unfortunately not given the correct address for Mr. Polak. It is only after Mr. Polak contacted HSO Renaud on January 18 to inquire about the direction that he learned of the error. As a result, HSO Renaud sent a copy of the direction by way of Email to Mr. Polak on January 18, 2012. The direction was appealed on January 20, 2012.

[8] As HSO Renaud concurred that this had indeed happened, I extended the time to make an appeal to January 20, 2012, pursuant to paragraph 146.2(f) of the *Canada Labour Code* (the Code), and accepted the application for appeal from Jazz Aviation.

[9] As for the stay application, having taken into consideration the oral submissions provided by the parties, I am ordering a stay of the direction effective immediately until a decision on the merits of the appeal is rendered by an Appeals Officer. Following are the reasons for the order.

## **Analysis**

[10] On the request for a stay of the direction, subsection 146(2) of the Code states that:

146(2) Unless otherwise ordered by an appeals officer on application by the employer, employee or trade union, an appeal of a direction does not operate as a stay of the direction

[11] I derive my authority from the Code, and must therefore exercise my discretion in a way that furthers the objective of the legislation, *i.e.*, the protection of the health and safety of employees.

[12] In the exercise of my discretion to grant a stay, I have applied the three part test adopted by the Tribunal in its examination and determination of such an application. This test requires that:

- 1) The applicant must satisfy the Appeals Officer that there is a serious question to be tried as opposed to a frivolous or vexatious claim.
- 2) The applicant must demonstrate that he would suffer significant harm if the direction is not stayed.
- 3) The applicant must demonstrate that should a stay be granted, measures will be put in place to protect the health and safety of employees or any person granted access to the work place.

### **Is the question to be tried serious as opposed to frivolous or vexatious?**

[13] I agree with the arguments put forward by Mr. Lavoie, counsel for the appellant, that this is a question with health and safety ramifications and as such is neither frivolous nor vexatious. I agree with his arguments that the direction and thus, the decision that will ensue, deals with a highly technical matter related to the health, safety and security of all Jazz Aviation staff involved as well as with the security of the aircrafts and its passengers. Consequently, I find that there is a serious issue to be resolved.

### **Will the applicant suffer significant harm if the direction is not stayed?**

[14] On the second criteria, Mr. Lavoie contended that if the direction is not stayed, Jazz Aviation would have to pay for translation costs of a highly technical document of over 400 pages, which, in the end if the direction is rescinded will be wasted time and money. In addition to the cost of translation, Jazz would also have to involve a significant number of technical employees to ensure that no mistakes have been introduced with the translation. He indicated that in a document of such technical nature, any mistake could introduce potential hazards for the health, safety and security of Jazz staff as well as its passengers.

[15] However, to retain the status quo for the present time represents no harm to the employees as they have been trained in French on all the work procedures in the document in question. As well, every supervisor or lead hand is fluently bilingual and available at all times to assist the employees regarding any concern they may have with any of the procedures.

[16] Consequently, I agree with Mr. Lavoie that Jazz Aviation would suffer significant harm if the direction is not stayed.

**What measures will be put in place to protect the health and safety of employees or any person granted access to the work place if the stay is granted?**

[17] On this criterion, Mr. Lavoie affirmed that the status quo was the best possible way to assure the health and safety of the employees. The employees all receive mandatory training in French on the content of the manual in question. Any updates or modifications to the content of the manual are communicated to the employees in bilingual bulletins.

[18] Mr. Lavoie also insist that it is much easier for the employees to get any information from the bilingual managers or lead hands that are highly knowledgeable and trained to deal with any situation at hand regarding procedures in the said manual rather than having to leaf through such a large manual.

[19] Ms. Dewey had some concerns with this as she canvassed some of the employees and they indicated that they would be more comfortable with having a French version of the manual. As well she was not sure that bilingual persons were always present to assist the employees.

[20] Mr. Lavoie confirmed that bilingual lead hands were always available and indicated that there were never any incidents or accidents reported in connection with this situation.

[21] While Ms. Dewey had some concerns with Mr. Lavoie's arguments, she did not convince me that the health and safety of the employees would be put at risk if the status quo is maintained until an Appeals Officers can hear the case and render a decision. One way or another, it would probably take longer to have the manual translated than to schedule the hearing in the next few months as suggested by Mr. Lavoie.

[22] Consequently, I agree that the measures in place will protect the health and safety of the employees until a decision is rendered by an Appeals Officer on this case.

**Decision**

[23] Consequently, I am granting the stay of the direction issued to Jazz Aviation by Health and Safety Officer Renaud on December 13, 2011 until an Appeals Officer can hear the case and render a decision.

Richard Lafrance  
Appeals Officer