Occupational Health and Safety Tribunal Canada

Citation: S.G.T. 2000 Inc. v. Teamsters Quebec, local 106, 2012 OHSTC 15

Date: 2012-05-15
File No.: 2012-21
Rendered at: Ottawa

Between:

S.G.T. 2000 Inc.

and

Teamsters Quebec, local 106

Matter:	An application for a stay of a direction
Decision:	The application for a stay is dismissed
Decision rendered by:	Ms. Katia Néron, Appeals Officer
Language of decision:	French
For the Applicant:	Ms. Suzanne Coderre, in charge of health and safety for S.G.T. 2000 Inc., Mr. Jean-Pierre Rabbath, Director of Compliance and Energy Efficiency, Ms. Chantale Fauché, Human Resources Coordinator
For the Respondent:	M. Martin Savoie, union representative, Teamsters Quebec, local 106

REASONS

[1] This decision concerns an application for a stay of a direction, which was filed on March 30, 2012 by Ms. Suzanne Coderre, on behalf of S.G.T. 2000 Inc., under subsection 146(1) of Part II of the *Canada Labour Code* (the Code). The direction was issued to S.G.T. 2000 Inc. by the Health and Safety Officer (HSO) Ms. Jessica Tran on March 29, 2012.

Background

[2] According to her investigation report, HSO Tran issued her direction following an accident on March 29, 2012 involving Mr. Mario Bossé, a driver for S.G.T. 2000 Inc. At the time of his accident, Mr. Bossé was installing tarpaulins on wood loaded on a flatbed trailer. To do so, he had used a step ladder to climb on top of the load. He had begun to unroll a first tarpaulin when he fell off the load from a height of approximately 11 feet. He sustained several fractures. Mr. Bossé was not wearing any fall protection system when performing his work. On the basis of this finding, HSO Tran requested a copy of the work procedure for the safe performance of the task in question. The employer did not supply this procedure. Considering that this situation infringed paragraph 125(1)(*p*) of the Code, as well as paragraph 12.10(1)(*a*) and subsection 12.10(1.1) of the *Canada Occupational Health and Safety Regulations* (the Regulations), HSO Tran issued the following direction:

> IN THE MATTER OF THE *CANADA LABOUR CODE*
> PART II – OCCUPATIONAL HEALTH AND SAFETY
> DIRECTION TO THE EMPLOYER UNDER SUBSECTION 145(1)
>
> On March 29, 2012, the undersigned health and safety officer conducted an inspection following the accident of Mr. Bossé in the work place operated by S.G.T. 2000 Inc., an employer subject to Part II of the *Canada Labour Code* at 354 Chemin Yamaska, St-Germain-de-Grantham, said place being sometimes known as S.G.T. 2000 Inc.
>
> 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 12.10(1)(*a*) *Canada Occupational Health and Safety Regulations*
> Paragraph 125(1)(*p*) of the *Canada Labour Code*
>
> On March 29, 2012, Mr. Mario Bossé was working on a trailer at a height of more than 2.4 m without using a fall protection system, thereby running the risk of falling and sustaining serious injuries.
>
> Therefore, you are HEREBY DIRECTED pursuant to paragraph 145(1)(*a*) of the *Canada Labour Code*, Part II, to terminate the contravention no later than November 29, 2012.

> Further, you are HEREBY DIRECTED pursuant to paragraph 145(1)(*b*) of the *Canada Labour Code*, Part II, to take steps by April 13, 2012 at the latest to ensure that the contravention does not continue or reoccur.
>
> Issued at St-Germain-de-Grantham, this 29th day of March 2012
>
> JESSICA TRAN
> Health and Safety Officer No: QC8864

[3] During her inspection, HSO Tran was informed that in performing his task, Mr. Bossé had walked backwards to unroll the tarpaulin over the load. Since in her opinion this work method to perform the task in question did not allow the employee to see if there was a difference in level, she concluded that this work method posed a danger for a serious if not a deadly fall for an employee. Accordingly, on March 30, 2012, she issued a direction for a notice of danger to S.G.T. Inc., prohibiting it from proceeding this way to install a tarpaulin over a load.

[4] S.G.T. 2000 Inc. appealed the above-mentioned direction issued on March 29, 2012 by HSO Tran, seeking its cancellation. While pending the hearing of the matter, it applied for a stay of the implementation of the direction. S.G.T. 2000 Inc. did not appeal the direction of a notice of danger issued under subsection 145(2).

[5] A hearing of the application for a stay was held by teleconference with the parties on April 5, 2012. At the beginning of the hearing, I asked the applicant to confirm that the appeal and the application for a stay by the employer only concerned the direction issued under subsection 145(1) of the Code and I reminded the parties of the criteria which are used by appeals officers to exercise their discretion for the stay of a direction, as provided under subsection 146(2) of the Code:

> 1) The applicant must satisfy the appeals officer that the question to be tried is serious as opposed to frivolous or vexatious complaint.
>
> 2) The applicant must demonstrate that he or she would suffer significant harm if the direction is not stayed by the appeals officer.
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> 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?

[6] The applicant submitted that using flatbed trailers to carry wood is one of its main activities and that it is necessary to install tarpaulins over the loads. The applicant explained that this task is performed by its drivers, not only at the work place but also at customers' locations, which are work places it does not control, particularly in the United States. The applicant submitted that the direction issued will prevent it from carrying on this activity and that drivers could be laid off as a result. In addition, it submitted that this

could have an impact on the survival of the company. No one alleged that the application for a stay was frivolous or vexatious. I accordingly conclude that a serious question is to be tried.

Would the applicant suffer significant harm if the direction is not stayed?

[7] Ms. Coderre contended on behalf of the applicant that specifically mentioning in the direction that Mr. Bossé was not using a fall protection system when he was working on a trailer of more than 2.4 m in height prevents S.G.T. 2000 Inc. from examining other measures which could ensure the safety of its employees who have to install tarpaulins on wood which is loaded on flatbed trailers. She submitted that one way of safely performing this task, contrary to what was said to HSO Tran during her inspection, is to allow an employee to proceed by moving ahead and not backwards. This is already being taught to each of the drivers. She added that Mr. Bossé was taking training at the time of his accident. Although she admitted that this safe work procedure was not written, and this is why S.G.T. 2000 Inc. did not give a copy of this document to HSO Tran, Ms. Coderre submitted that the company agreed to examine and improve the work method for installing tarpaulins on loads of wood if needed, as well as reinforcing the training given to its drivers. On the other hand, preventing this task from being performed, which according to her will result from the direction regarding a contravention issued by HSO Tran, would cause significant harm to the company.

[8] On behalf of the respondent, Mr. Savoie confirmed that the union was willing to examine safe work instructions for the performance of the task in question, but he was worried that the direction as issued could prevent the performance of this task and entail layoffs of drivers. As he did admit, however, it is a matter of examining the existing work procedure, improving it if necessary and ensuring proper training for each driver.

[9] In my opinion, and contrary to what the applicant submitted, the terminology used in the direction allows examining other solutions than the use of a fall protection system in the performance of the task in question. In her direction, HSO Tran did in fact specify that in her opinion the provision contravened was in addition to paragraph 125(1)(*p*) of the Code and paragraph 12.10(1)(*a*) of the Regulations. At the beginning of this paragraph, an exception is provided regarding its application by referring to paragraph 12.10(1.1) of the Regulations. This paragraph allows an employer to provide every employee who is likely to climb onto the vehicle or its load with training and instruction on the safe method of doing so whenever it is not reasonably practicable to provide a fall protection system. In addition, I underline the fact that the direction allows the applicant until April 13, 2012 to cease any contravention of the provisions specified in the direction and to prevent the continuance of the contravention or its repetition.

[10] On this basis, I consider that the direction issued by HSO Tran, as she in fact stated, allows the applicant to analyze and examine other solutions than supplying a fall protection system to its employees to comply with the direction. I also consider that the time limit given by HSO Tran to do so was reasonable. For these reasons, I am not

satisfied that not granting the applicant a stay of the direction will cause it significant prejudice.

[11] Because I have ruled that the second criterion mentioned above has not been met, it is not necessary to analyze the third criterion mentioned in paragraph 3, above.

Decision

[12] For these reasons, the application for a stay of the direction issued by HSO Tran on March 29, 2012 to S.G.T. 2000 Inc. under subsection 145(1) of the Code is dismissed.

Katia Néron
Appeals Officer