



Occupational Health and Safety Tribunal Canada

Citation: Canada Post Corporation v. Canadian Union of Postal Workers, 2012
OHSTC 16

Date: 2012-06-05
Case No.: 2006-41
Rendered at: Ottawa

Between:

Canada Post Corporation, Appellant

and

Canadian Union of Postal Workers, Respondent

Matter: Appeal under subsection 146(1) of the *Canada Labour Code*
of two directions issued by a health and safety officer

Decision: The directions are varied

Decision rendered by: Mr. Michael McDermott, Appeals Officer

Language of decision: English

For the appellant: Mr. Stephen Bird, Counsel, Bird Richard

For the respondent: Mr. David Bloom, Counsel, Cavalluzzo Hayes Shilton
McIntyre and Cornish LLP

REASONS

[1] This decision concerns an appeal brought under subsection 146(1) of the *Canada Labour Code* (the Code) against two directions issued by Health and Safety Officer Jane Shimono on June 7, 2006, pursuant to paragraph 145(1)(a) of the Code. The appellant is the Canada Post Corporation and the respondent is the Canadian Union of Postal Workers (CUPW).

Background

[2] The directions were issued by the Health and Safety Officer (HSO) following investigation of a work refusal exercised on May 30, 2006, pursuant to subsection 128(1) of the Code, by Rural Suburban Mail Carrier (RSMC) Margaret Walker. The substance of the refusal related to road, shoulder and traffic conditions encountered by RSMC Walker at various rural mail box sites on Gormley Rural Route #1 located in the Town of Whitchurch-Stouffville, Ontario. The HSO made a finding of no danger but found contraventions of section 124 and paragraphs 125(1)(c), 125(1)(s) and 141(1)(c) of the Code, as well as of paragraphs 15.4(a) to (c) of the Canada Occupational Health and Safety Regulations. The HSO issued four separate directions all of which were initially appealed by the appellant. However, appeals of two of the directions were withdrawn by the appellant on August 19, 2011, leaving two directions addressing contraventions of section 124 under appeal. The texts of the two directions follow:

IN THE MATTER OF THE *CANADA LABOUR CODE*
PART II – OCCUPATIONAL HEALTH AND SAFETY

DIRECTION TO THE EMPLOYER UNDER SUBSECTION 145.(1)

On May 30 & 31, 2006, Health and Safety Officer Jane Shimono conducted an investigation in the work place operated by CANADA POST CORPORATION, being an employer subject to the *Canada Labour Code*, Part II, at 12275 Woodbine Avenue, Gormley, Ontario, L0H 1G0, the said work place being sometimes known as Canada Post Corporation.

The said health and safety officer is of the opinion that the following provision of the *Canada Labour Code*, Part II, has been contravened:

1. Section 124 of the CLC, Part II

Every employer shall ensure that the safety and health at work of every person employed by the employer is protected.

The rural suburban mail carrier is required to deliver/receive mail to/from “rural mailboxes,” which are located on or near cresting slopes/hills within 50 to 80 km/h speed limit zones, where the view of an approaching driver may be obscured (various RMBs on Woodbine

Ave. including 13387 to 13561 Woodbine Ave. etc.). These delivery locations causing a visual impediment to the RSMC and/or the approaching driver, creates the risk of collision with vehicles travelling on the same roadway; while the RSMC is in the process of entering/exiting the roadway from/to the road shoulder.

The above situation contrary to the employer's proposed *RSMC Safe Work Procedures*, which state, "Ensure your vehicle is not impeding the traffic flow when pulled off the roadway to serve a Point of Call and that your vehicle is not stopped on the crest of a hill or on a curve where the view of an approaching driver may be obscured." and/or the employer's *Route Maintenance Handbook*, June 2005, which states, "The inspecting officer should use the following guidelines to determine if an existing RMB or GMB site is unsafe: ...site lines to RMB's or GMB's do not allow adequate stopping distance. (This occurs when equipment is located on or near cresting slopes or sharp corners...)." As such, the employer has failed to protect the employees against the hazard of being struck by vehicular traffic.

Therefore, you are HEREBY DIRECTED, pursuant to paragraph 145(1)(a) of the *Canada Labour Code*, Part II, to **terminate the contravention immediately**.

Further, you are HEREBY DIRECTED, pursuant to paragraph 145.(1)(b) of the *Canada Labour Code* Part II, within the time specified by the health and safety officer, to take steps to ensure that the contravention does not continue to reoccur.

Issued at Toronto, this 7th day of June, 2006

Jane Shimono
Health and Safety Officer
Certificate Number: GE5811

To: CANADA POST CORPORATION
12275 Woodbine Avenue
Gormley, Ontario L0H 1G0

IN THE MATTER OF THE *CANADA LABOUR CODE*
PART II – OCCUPATIONAL HEALTH AND SAFETY

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On May 30 & 31, 2006, Health and Safety Officer Jane Shimono conducted an investigation in the work place operated by CANADA POST CORPORATION, being an employer subject to the *Canada Labour Code*, Part II, at 12275 Woodbine Avenue, Gormley, Ontario, L0H 1G0, the said work place being sometimes known as Canada Post Corporation.

The said health and safety officer is of the opinion that the following provision of the *Canada Labour Code*, Part II, has been contravened:

1. Section 124 of the CLC, Part II

Every employer shall ensure that the safety and health at work of every person employed by the employer is protected.

In order to deliver/receive mail to/from “rural mail boxes.” The rural suburban mail carrier is required to repeatedly park her vehicle on the right hand side of public roads, which do not have sufficient shoulders to allow the carrier to remove her vehicle on the right hand side of public roads, which do not have sufficient shoulders to allow the carrier to remove her vehicle from both the pavement and the traffic flow (Preston Lake route- Lakeview Ave., William Ave., Connaught Ave., Preston Ave.). This parking position being a visual and physical impediment to other vehicular traffic (as well as the limited means of ensuring her vehicle is visible from same distances) creates the risk of collision with other vehicles travelling on the same roadway.

The RSMC is required to deliver/receive mail to/from “rural mail boxes,” which are located on or near cresting slopes/hills and/or curves in the road, within a 40 km/hour speed limit zone, where the view of an approaching driver may be obscured (various RMBs on the Preston Lake route including 22/23 Connaught Ave. etc.). These delivery locations cause a visual impediment to the RSMC and/or the approaching driver; which, in turn, creates the risk of collision with vehicles travelling on the same roadway.

In addition, the RSMC is required to deliver/receive mail to/from various “rural mail boxes,” which are located on roads with more than two lanes (various RMBs on the Woodbine Ave. route, including 11723 to 11821 Woodbine Ave. etc.).

The above situations are contrary to the employer’s proposed *RSMC Safe Work Procedures*, which state, “*Ensure your vehicle is not impeding the traffic flow when pulled off the roadway to serve a Point of Call and that your vehicle is not stopped on the crest of a hill or on a curve where the view of an approaching driver may be obscured.*” and/or the employer’s *Route Maintenance Handbook*, June 2005, which states, “*The inspecting officer should use the following guidelines to determine if an existing RMB or GMB site is unsafe: ... the road is more than two lanes; the road does not have sufficient shoulders to allow delivery employees or customers to remove their vehicles from through traffic; ... site lines to RMB’s or GMB’s do not allow adequate stopping distance. (This occurs when equipment is located on or near cresting slopes or sharp corners...)*.” As such, the employer has failed to protect the employees against the hazard of being struck by vehicular traffic.

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 July 7, 2006.**

Further, you are HEREBY DIRECTED, pursuant to paragraph 145.(1)(b) of the *Canada Labour Code*, Part II, within the time specified by the health and safety officer, to take steps to ensure that the contravention does not continue to reoccur.

Finally, in light of the development and implementation of the Traffic Safety Assessment Tool (TSAT), I, the undersigned, HEREBY VARY this direction so that the above contravention does not apply where a rural mailbox has passed a properly administered TSAT.

Issued at Toronto, this 7th day of June, 2006

Jane Shimono
Health and Safety Officer
Certificate Number: GE5811

To: CANADA POST CORPORATION
12275 Woodbine Avenue
Gormley, Ontario L0H 1G0

[3] The HSO's report contains a comprehensive review of facts established during her investigation including: reference to the specifications and markings of the vehicle that a RSMC is personally required to provide in order to perform the job; the requirements of the Highway Traffic Act that prohibit driving against the direction of regular traffic; and, Canada Post Corporation (CPC) policies on the dimensions of Rural Mail Boxes (RMBs) as well as on safety considerations relevant to their placement. The report is buttressed with significant photographic and narrative information illustrating factual findings specific to particular RMB locations.

[4] As is evident from her report and wording of the directions, the detailed concerns identified by the HSO relate to such issues as: the location of some RMBs contrary to then existing CPC policies; the volume and speed of traffic; the frequent need for the RSMC's vehicle to exit and enter the road to effect delivery and pick-up of mail at the RMBs; the presence of cresting hills and slopes as well as curves that may restrict the vision of approaching traffic; and, the condition of road shoulders and width of same that may not permit the vehicle to be fully removed from the pavement when delivery or pick-up is taking place.

[5] In reaching her decision the HSO concluded that insufficient evidence had been presented to confirm that the situations she had identified "could conclusively cause injury to a person exposed to it, before the hazard or condition can be corrected, or the activity altered". Thus the definition of danger and related tests had not been met. However, a finding that "the employer had failed to protect the employees from the primary hazard of being struck by vehicular traffic" was made and the directions requiring termination of contraventions of section 124 of the Code were issued.

[6] This appeal dates from June 2006. The case file indicates that several other HSO decisions affecting the same parties were appealed during the period 2006 to 2008. Although specifics might vary, these appeals shared similar overall fact situations. Some involved ergonomic issues arising from the method of delivery and pick-up of mail requiring the RSMC to stretch across from the driver's seat to reach the RMB via the front passenger seat window, others involved traffic and road issues and some involved both categories of issue. While RSMC Walker expressed concern to the HSO about ergonomic issues she did not invoke them as reasons for her work refusal and the traffic related issues are those relevant in this appeal.

[7] Drawing on the case file, it appears that efforts were made by Appeals Officers and the parties to rationalize processing of the appeals and to avoid unnecessary duplication. Some appeals were heard while others were delayed pending the prospect of decisions in the active cases having relevance to the issues in waiting files. Two Appeals Officer decisions have been brought to my attention as having particular relevance to the determination of this appeal. The first is *D. Morrison et al. and Canada Post Corporation* (2009 OHSTC 32) referred to hereinafter as the Abbotsford - Maple Ridge decision. The second is *Pamela Townsend et al and Canada Post Corporation* (2010 OHSTC 7) referred to hereinafter as the Newmarket decision.

[8] In the light of the work refusals and while appeals were being considered, CPC initiated consultant studies with the aim of developing a reliable traffic safety assessment mechanism culminating in the development of the Traffic Safety Assessment Tool, commonly referred to as the TSAT. Under the auspices of iTrans Consulting, a panel took part in the design of the TSAT process and rationale. The panel comprised individuals with expertise in traffic safety modelling, human behavioural science, occupational health and safety and highway regulation. I was informed by the parties that the process included extensive consultation with the National Health and Safety Policy Committee and that the TSAT is subject to continuing refinement. The criteria applied to determining safety of delivery to RMBs include sight lines, traffic volumes and speeds, and road configurations. CPC is in the process of applying TSAT tests to all of the 843, 000 or so RMBs in Canada and claims at this point to be about half way through the task.

[9] As a result of the jurisprudence established in the decisions identified and the development and acceptance of an objective and science based traffic safety assessment tool, Counsel for the appellant indicated that the scope of CPC's appeal has been narrowed. As will be detailed below, the substance of the appeal now concentrates effectively on the issue of "wheels on, wheels off" the road and the continuing application of directions in this case that were issued before the two appeal decisions identified above were delivered and before the development of the TSAT.

Issue

[10] The issue I have to decide is whether or not the directions issued by the HSO on June 7, 2006, with respect to contraventions of section 124 of the Code, should be varied in the light of the development of the Traffic Safety Assessment Tool.

Submissions

[11] A hearing was held in Toronto on May 7, 2012. No witnesses were called and no formal evidence was entered. Written argument was submitted jointly by Counsel for both parties and entered in the case record.

[12] The joint submission addresses the appeal of the section 124 contraventions and focuses particularly on the "wheels on, wheels off" the road issue quoting directly from the opening paragraph of the second of the two directions copied in paragraph two above, as follows:

[...] in order to deliver/receive mail to/from 'rural mail boxes' the rural suburban mail carrier is required to repeatedly park her vehicle on the right hand side of public roads, which do not have sufficient shoulders to allow the carrier to remove her vehicle from both the pavement and the traffic flow (Preston Lake route – Lakeview Ave., William Ave., Connaught Ave., Preston Ave.). This parking position being a visual and physical impediment to other vehicular traffic (as well as the limited means of ensuring her vehicle is visible from safe distances) create the risk of collision with other vehicles travelling on the same roadway.

The submission concludes that application of the direction as its wording now stands effectively prevents RSMC delivery to any RMBs where the vehicle must park in whole or in part on the roadway and that it has caused suspension of delivery to a large number of RMBs in the Gormley area.

[13] While acknowledging that at the time of the HSO's investigation CPC had not evaluated hazards on Gormley Rural Route #1, the submission asserts that the passage of time and the introduction of the TSAT have led to the issues raised in the directions under appeal being largely resolved. More specifically, the submission indicates that all RMBs on the route have been TSAT assessed. Those that did not pass the test (which presumably could not be relocated or otherwise modified to reach pass level) have been converted to other modes of delivery. Those that passed and for which all four wheels are off the roadway have had RMB delivery restored. There remains a group that, although having passed the TSAT including its "wheels on/off" related element, still has RMB delivery suspended as a result of the application of the directions under appeal. The parties jointly agree that delivery to these latter RMBs should be restored as soon as possible.

[14] Referring to the Abbotsford – Maple Ridge and Newmarket decisions, the submission notes that the Appeals Officer who heard both cases made a decision of danger with respect to the traffic issues but also determined that when the TSAT has been passed RMB delivery constitutes a normal condition of employment as provided for in paragraph 128(2)(b) of the Code.

[15] The submission includes additional information on the TSAT methodology explaining the road configuration and characteristics, traffic volumes and speeds, and sightlines criteria that are taken into consideration when testing is performed. Beside relevant appeal decisions, attachments include the TSAT report of December 2006, the TSAT Rationale Version 3.0 of May 2008 and the TSAT Guidance Document of the same date, and test results from the Gormley TSAT assessments.

[16] The remedy sought by the appellant is that the two directions under appeal "*be varied to declare that delivery to an RMB which has passed a properly administered TSAT assessment, regardless of whether the RSMC can park with four wheels off the road, does not constitute a 'danger' pursuant to the Code, and does in fact constitute a "normal condition of employment pursuant to section 128(2)(b) of the Code."* The appellant makes a related request that the directions "*be varied to declare that delivery to the 119 RMBs (subsequently reduced to 101)*

where the RSMC cannot park with four wheels off the road constitutes a 'normal condition of employment' pursuant to section 128(2)(b) of the Code."

Analysis

[17] At the outset I want to make it clear that I accept the validity of the TSAT as an appropriate and accepted mechanism for determining the safety of RMB delivery with respect to criteria such as traffic volumes and speeds, road configuration and characteristics, and appropriate sight lines. Paragraph 22 of the parties' joint submission is eloquent on the confidence that they both have in the way the TSAT was developed and in the effectiveness of its application. It is also evident from the Abbotsford – Maple Ridge and Newmarket decisions that the TSAT has been found to offer a valid method for determining and mitigating traffic related hazards that may be encountered by RSMCs when delivering mail to RMBs. With specific reference to the “wheels on, wheels off” issue, I find paragraphs 166 and 167 of the Newmarket decision particularly instructive and also illustrative of the application of the TSAT. I quote them here.

[166] On the issue of not having all four wheels off the road, I found in TSAT 18 that under certain conditions, TSAT accepts this and allows for the vehicle to be stopped in the travel portion of the road. I found two conditions in TSAT where not having all four wheels off the travelled portion of the road is accepted.

1) 2 lanes roadway:

- no double solid line in centre
- a count of less than 40 vehicles in 15 minutes
- no hill or curve within the 11 seconds time gap behind the vehicle, and
- no hill or curve within the 14 seconds time gap in front of the vehicle,

2) 4 lanes roadway:

- a count of less than 80 vehicles in 15 minutes
- no hill or curve within 11 seconds time gap behind the vehicle.

[167] Consequently, for those locations where the RSMCs vehicles may have stopped on the travel portion of the road, if, when assessed, all the criteria set by TSAT are met, I find that this is as acceptable as with any of the other situations assessed. Therefore, I find that it is not always necessary to have four wheels off the road to be in a situation where, along with the other circumstances discussed above, the “danger” is a normal condition of employment.

[18] The previous paragraph essentially sets down the rationale for the decision articulated below with a caveat concerning the last few words of paragraph 167 of the Newmarket decision. Both Newmarket and Abbotsford – Maple Ridge are decisions in which the Appeals Officer reversed the HSO's “no danger” decisions and then found the “danger” identified in his decisions to be subject to the normal condition of employment provision in paragraph 128(2)(b) of the

Code. He was able to do this because he was considering appeals pursuant to subsection 129(7) of the Code following HSO findings of “no danger”. I do not have a subsection 129(7) appeal before me since RSMC Walker did not file an appeal of the HSO’s “no danger” finding. As such, I am of the view that the language of the Code would not allow me to vary the directions as requested by the appellant in such a way as to include a declaration within them that the work involved constitutes a normal condition of employment pursuant to paragraph 128(2)(b) of the Code.

[19] That said, quite what would have been the outcome had a subsection 129(7) appeal been lodged in this case is a matter of speculation, but it seems likely that the similarity in fact situations would have led to a similar conclusion as in the two referenced Appeals Officer decisions. Had that have been the case, I note that it would not have been a matter of varying a direction but of rescinding it since a finding of normal condition of employment in the meaning of the Code speaks for itself and does not lead to or need a direction.

[20] What I do have before me are appeals of two directions following findings of contraventions of section 124 of the Code. The section reads as follows:

124. Every employer shall ensure that the health and safety at work of every person employed by the employer is protected.

When making her decision that the section had been contravened, the HSO did not have the benefit of the TSAT mechanism with which to assess the traffic safety aspects of RSMC delivery to RMBs on Rural Route #1 at Gormley. Had she had that sophisticated tool before her she may well have reached a different conclusion. However, it was not available and I acknowledge Counsel for the appellant’s oral comment that, without a reliable assessment tool at the time, it is difficult to judge whether the findings of contraventions are valid or not. Furthermore, we now have jurisprudence that bears directly on the “wheels on, wheels off” issue that is also relevant.

[21] I am confronted with a situation in which the development of the TSAT and emerging jurisprudence have overtaken the wording of directions issued some six years ago, wording that on its face prevents resumption of delivery to RMBs even though they have passed the TSAT requirements. In a recent decision involving the same parties on a quite different matter (2012 OHSTC 7), I addressed the effect of changing circumstances on the future validity of directions issued pursuant to the provisions of the Code. The case involved an appeal of a direction pursuant to paragraph 145(2)(a) of the Code issued following a finding of danger, but I believe the comments quoted below are also relevant here.

An HSO’s decision is not pulled out of thin air. In the case of a danger finding, it is arrived at following consideration of circumstances that his or her investigation found to exist at the time of the refusal. If the circumstances materially change such that a hazard found to constitute a danger would no longer exist, then I see no barrier to implementation of procedures that had previously been prohibited as a result of the danger finding and a remedial direction. In the present case, the configuration of the road, lack of sidewalks and traffic patterns were taken into account by the HSO. Should the municipality decide, for example, to upgrade the road configuration, extend the public sidewalk and implement related

measures, as was surmised during the conference calls, then it may well be that the original direction would be redundant. However, the parties would be well advised to consult an HSO, perhaps through the auspices of their joint health and safety committee, before instituting any changes.

[22] I had been inclined to follow the same approach in this case. However, argument made by the parties has convinced me that a more direct course is appropriate. The current case is not so much a matter of a change in material circumstances that caused a hazard but rather in a change in the methodology of determining and mitigating a hazard, a change that needs to be communicated to all concerned. Furthermore, the RMBs in this case and the people who own the properties where they are located have been without direct service for almost six years. It is in the public interest to move along with reinstatement of that service.

[23] In the light of the development of the TSAT and emerging jurisprudence, I find that the directions under appeal no longer have practical application to rural mail boxes that have passed a properly administered assessment using the traffic safety assessment tool (TSAT) and I will vary the wording of the directions accordingly.

[24] In line with my reasoning in paragraph 18 above, I am not prepared to respond to the related request to declare that delivery to the now 101 RMBs on Rural Route #1 at Gormley which still receive no service despite having passed the TSAT constitutes a normal condition of employment pursuant to paragraph 128(2)(b) of the Code and to list the RMBs in an appendices to the varied directions. Furthermore, I am of the view that such specific mentions and appendices would be redundant since the variations to the directions are of general application. I do, however, understand why the parties want to have the RMB locations identified. Consequently, I am attaching the list as an appendix (APPENDIX 1) to this decision in recognition of the assurances in the parties' joint submission to the effect that the RMBs concerned have passed all requirements of the TSAT assessments including the "wheels on, wheels off" criteria. As such, resumption of delivery and pick-up service to the listed RMBs is not contrary to the varied directions.

Decision

[25] For the reasons given in my analysis above and pursuant to my authority under paragraph 146.1(1)(a) of the Code, I hereby vary the directions issued by the HSO on June 7, 2006, to confirm that the contraventions identified do not apply to any rural mail box that has passed a properly administered assessment using the traffic safety assessment tool (APPENDIX 2 & 3).

Michael McDermott
Appeals Officer

APPENDIX 1

Note: Jointly submitted by the parties' counsel, herein is a complete listing of the Rural Mail Boxes which have passed a properly administered Traffic Safety Assessment Tool (TSAT) evaluation as of 7 May, 2012, but for which delivery has been inhibited by continuing application of the directions. The contemplated resumption of delivery to these Rural Mail Boxes is not in contravention of the varied directions and is permitted.

BETHESDA SIDE SIDERD	2342
BETHESDA SIDE SIDERD	2455
BETHESDA SIDE SIDERD	2487
BETHESDA SIDE SIDERD	2509
BETHESDA SIDE SIDERD	2537
BETHESDA SIDE SIDERD	2567
BETHESDA SIDE SIDERD	2623
CONNAUGHT AVE	6
CONNAUGHT AVE	10
CONNAUGHT AVE	14
CONNAUGHT AVE	15
CONNAUGHT AVE	18
CONNAUGHT AVE	19
CONNAUGHT AVE	22
CONNAUGHT AVE	23
CONNAUGHT AVE	26
CONNAUGHT AVE	27
CONNAUGHT AVE	31
CONNAUGHT AVE	35
CONNAUGHT AVE	39
JOYCE BLVD	9
JOYCE BLVD	17
JOYCE BLVD	21
JOYCE BLVD	22
JOYCE BLVD	25

JOYCE BLVD	26
JOYCE BLVD	29
JOYCE BLVD	30
JOYCE BLVD	33
JOYCE BLVD	37
KENNEDY LANE	6
KENNEDY LANE	10
KENNEDY LANE	11
KENNEDY LANE	14
KENNEDY LANE	15
KENNEDY LANE	18
KENNEDY LANE	19
KENNEDY LANE	22
KENNEDY LANE	25
KENNEDY LANE	29
KENNEDY LANE	30
KENNEDY LANE	34
LAKEVIEW AV	6
LAKEVIEW AV	10
LAKEVIEW AV	11
LAKEVIEW AV	14
LAKEVIEW AV	18
LAKEVIEW AV	23
LAKEVIEW AV	26
LAKEVIEW AV	31
LAKEVIEW AV	34
LAKEVIEW AV	35
LAKEVIEW AV	38
LAKEVIEW AV	39
LAKEVIEW AV	42
LAKEVIEW AV	43
LAKEVIEW AV	46
LAKEVIEW AV	50
LAKEVIEW AV	51
LAKEVIEW AV	54
LAKEVIEW AV	55
LAKEVIEW AV	58
LAKEVIEW AV	62

LAKEVIEW AV	66
LAKEVIEW AV	70
LAKEVIEW AV	74
LAKEVIEW AV	75
LAKEVIEW AV	78
LAKEVIEW AV	82
LAKEVIEW AV	83
LAKEVIEW AV	86
LAKEVIEW AV	87
LAKEVIEW AV	90
LAKEVIEW AV	91
LAKEVIEW AV	94
LAKEVIEW AV	95
LAKEVIEW AV	98
PRESTON AVE	1
PRESTON AVE	2
PRESTON AVE	6
SLATERS RD	5421
SLATERS RD	5483
SLATERS RD	5761
SLATERS RD	5778
SLATERS RD	5822
SLATERS RD	5823
SLATERS RD	5859
SLATERS RD	5957
VANDORF RD	2375
VANDORF RD	2388
VANDORF RD	2547
VANDORF RD	2572
VANDORF RD	2660
VANDORF RD	2692
VANDORF RD	2730
VANDORF RD	2770
VANDORF RD	2811
VANDORF RD	2961
VANDORF RD	2976
WILLIAM AVE	40
WOODBINE AV	14774

APPENDIX 2

IN THE MATTER OF THE *CANADA LABOUR CODE* PART II – OCCUPATIONAL HEALTH AND SAFETY

DIRECTION TO THE EMPLOYER UNDER SUBSECTION 145(1)

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The said health and safety officer is of the opinion that the following provision of the *Canada Labour Code*, Part II, has been contravened:

1. Section 124 of the CLC, Part II

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The rural suburban mail carrier is required to deliver/receive mail to/from “rural mailboxes,” which are located on or near cresting slopes/hills within 50 to 80 km/h speed limit zones, where the view of an approaching driver may be obscured (various RMBs on Woodbine Ave. including 13387 to 13561 Woodbine Ave. etc.). These delivery locations causing a visual impediment to the RSMC and/or the approaching driver, creates the risk of collision with vehicles travelling on the same roadway; while the RSMC is in the process of entering/exiting the roadway from/to the road shoulder.

The above situation contrary to the employer’s proposed *RSMC Safe Work Procedures*, which state, “*Ensure your vehicle is not impeding the traffic flow when pulled off the roadway to serve a Point of Call and that your vehicle is not stopped on the crest of a hill or on a curve where the view of an approaching driver may be obscured.*” and/or the employer’s *Route Maintenance Handbook*, June 2005, which states, “*The inspecting officer should use the following guidelines to determine if an existing RMB or GMB site is unsafe: ...site lines to RMB’s or GMB’s do not allow adequate stopping distance. (This occurs when equipment is located on or near cresting slopes or sharp corners...).*” As such, the employer has failed to protect the employees against the hazard of being struck by vehicular traffic.

Therefore, you are HEREBY DIRECTED, pursuant to paragraph 145(1)(a) of the *Canada Labour Code*, Part II, to terminate the contravention **immediately**.

Further, you are HEREBY DIRECTED, pursuant to paragraph 145(1)(b) of the *Canada Labour Code* Part II, within the time specified by the health and safety officer, to take steps to ensure that the contravention does not continue to reoccur.

Finally, in light of the development and implementation of the Traffic Safety Assessment Tool (TSAT), I, the undersigned, HEREBY VARY this direction so that the above contravention does not apply where a rural mailbox has passed a properly administered TSAT.

Michael McDermott
Appeals Officer

To: CANADA POST CORPORATION
12275 Woodbine Avenue
Gormley, Ontario
L0H 1G0

APPENDIX 3

IN THE MATTER OF THE *CANADA LABOUR CODE* PART II – OCCUPATIONAL HEALTH AND SAFETY

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In order to deliver/receive mail to/from “rural mail boxes.” The rural suburban mail carrier is required to repeatedly park her vehicle on the right hand side of public roads, which do not have sufficient shoulders to allow the carrier to remove her vehicle on the right hand side of public roads, which do not have sufficient shoulders to allow the carrier to remove her vehicle from both the pavement and the traffic flow (Preston Lake route- Lakeview Ave., William Ave., Connaught Ave., Preston Ave.). This parking position being a visual and physical impediment to other vehicular traffic (as well as the limited means of ensuring her vehicle is visible from same distances) creates the risk of collision with other vehicles travelling on the same roadway.

The RSMC is required to deliver/receive mail to/from “rural mail boxes,” which are located on or near cresting slopes/hills and/or curves in the road, within a 40 km/hour speed limit zone, where the view of an approaching driver may be obscured (various RMBs on the Preston Lake route including 22/23 Connaught Ave. etc.). These delivery locations cause a visual impediment to the RSMC and/or the approaching driver; which, in turn, creates the risk of collision with vehicles travelling on the same roadway.

In addition, the RSMC is required to deliver/receive mail to/from various “rural mail boxes,” which are located on roads with more than two lanes (various RMBs on the Woodbine Ave. route, including 11723 to 11821 Woodbine Ave. etc.).

The above situations are contrary to the employer’s proposed *RSMC Safe Work Procedures*, which state, “*Ensure your vehicle is not impeding the traffic flow when pulled off the roadway to serve a Point of Call and that your vehicle is not stopped on the crest of a hill or on a curve where the view of an approaching driver may be obscured.*” and/or the employer’s *Route Maintenance Handbook*, June 2005, which states, “*The inspecting officer should use the following guidelines to determine if an existing RMB or GMB site is unsafe: ... the road is more than two lanes; the road does not have sufficient shoulders to allow delivery employees or customers to remove their vehicles from through traffic; ... site lines to RMB’s or GMB’s do not allow adequate stopping distance. (This occurs when equipment is located on or near cresting slopes or sharp corners...).*” As such, the employer has failed to protect the employees against the hazard of being struck by vehicular traffic.

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 **July 7, 2006**.

Further, you are HEREBY DIRECTED, pursuant to paragraph 145(1)(b) of the *Canada Labour Code*, Part II, within the time specified by the health and safety officer, to take steps to ensure that the contravention does not continue to reoccur.

Finally, in light of the development and implementation of the Traffic Safety Assessment Tool (TSAT), I, the undersigned, HEREBY VARY this direction so that the above contravention does not apply where a rural mailbox has passed a properly administered TSAT.

Michael McDermott
Appeals Officer

To: CANADA POST CORPORATION
12275 Woodbine Avenue
Gormley, Ontario
L0H 1G0