



Occupational Health and Safety Tribunal Canada

Citation: Canada Post Corporation v. Gérald Desgroseillers and others and
Canadian Union of Postal Workers, 2012 OHSTC 23

Date: 2012-07-06

Case No.: 2012-40

Rendered at: Ottawa

Between:

Canada Post Corporation, Applicant

and

Gérald Desgroseillers and others, Respondents

and

Canadian Union of Postal Workers, Intervener

Matter: An application for a stay of a direction

Decision: The application for a stay is dismissed

Decision rendered by: Mr Richard Lafrance, Appeals Officer

Language of decision: French

For the Applicant: Ms Caroline Richard, Counsel, Bird Richard

For the Respondents: Mr Luc Lacasse, Employees' representative

For the Intervener: Ms Katty Duranleau, Counsel, Trudel Nadeau

REASONS

[1] This decision concerns two applications for a stay of directions, which were filed on June 13 and 28, 2012, by Ms Caroline Richard on behalf of the Canada Post Corporation (the Corporation) under subsection 146(1) of the *Canada Labour Code*, Part II. The directions were issued on June 8, 2012 by the Health and Safety Officer (HSO) Ms Jessica Tran.

[2] The Canadian Union of Postal Workers (CUPW) moved to be acknowledged as an intervener in the appeal. After having heard the submissions of the parties at a teleconference, I granted intervener status to the CUPW for the purposes of the application for a stay of the directions. In essence, I consider that it may help in settling this matter. The union has an interest in the health and safety of all of the Corporation's employees it represents. It may submit a different perspective and support the employees involved. The union representative was therefore authorized to make submissions regarding the application for a stay.

Background

[3] According to her investigation report, HSO Tran issued directives following an investigation of a refusal to work by Belinda Hubert, Katherine Riley, Leonard Smith and Gerald Desgroseillers. HSO Tran decided that the employees in question were subject to a danger and she issued the following two directions.

1st Direction

IN THE MATTER OF THE *CANADA LABOUR CODE*
PART II – OCCUPATIONAL HEALTH AND SAFETY
DIRECTION TO THE EMPLOYER UNDER PARAGRAPH 145(2)(a)

On May 17 and 25, 2012, the undersigned health and safety officer conducted an investigation of Mr Smith's work refusal in the work place operated by the Canada Post Corporation, being an employer subject to the *Canada Labour Code*, Part II, at 1780 Chemin Ste-Angélique, St. Lazare, Quebec, JOP 1V0 [sic], the said work place being sometimes known as CANADA POST.

The said health and safety officer considers that the delivery of mail to the LRSB on the St. Féréol route, which is a two-lane road on which traffic flows at 70 km/h and at higher speeds, which has a single dotted line and where the shoulder is insufficiently wide to allow a mail truck to move completely off the roadway, is dangerous for an employee at work, that is:

Stopping the mail truck on the roadway to obstruct (block) the traffic going in the same direction increases the risk of accidents for motorists who must go around the mail truck by crossing the dotted centre line. During our investigation on May 25, 2012, a standard type of vehicle was stopped, thereby blocking the roadway on the St. Louis route to make deliveries. A Ford F-150-type of truck passed the mail truck while a

Hydro-Québec vehicle was coming from the opposite direction. The Hydro-Québec vehicle braked suddenly, squealing its tires before finally driving onto the shoulder to avoid the Ford F-150-type of truck passing the Canada Post vehicle. In addition, a similar incident happened on the St. Féréol route on May 17, 2012, during the employer's investigation. The fact that motorists must cross the dotted centre line to go around the stopped Canada Post vehicle which partially blocks the roadway increases the danger of collision for automobile traffic and the Canada Post vehicle.

Therefore, you are hereby directed pursuant to paragraph 145(2)(a) of the *Canada Labour Code*, Part II to immediately implement measures to protect persons from this danger.

Pursuant to subsection 145(3), a notice bearing number 3934 was posted on the employees' bulletin board and cannot be removed without the officer's authorization.

Issued at St. Lazare, this 8th day of June 2012.

JESSICA TRAN

Health and Safety Officer

2nd Direction

IN THE MATTER OF THE *CANADA LABOUR CODE*
PART II – OCCUPATIONAL HEALTH AND SAFETY
DIRECTION TO THE EMPLOYER UNDER PARAGRAPH 145(2)(a)

On May 18 and 25, 2012, the undersigned health and safety officer conducted an inspection following four work refusals by Messrs. Gerald Desgroseillers, Leonard Smith, Ms Katherine Riley and Ms Belinda Hubert on May 17, 2012, in the work place operated by the Canada Post Corporation, being an employer subject to the *Canada Labour Code*, Part II, at 1780 Chemin Ste-Angélique, St. Lazare, Quebec, JOP 1V0 [sic], said work place being sometimes known as the CANADA POST CORPORATION.

The said health and safety officer considers that mail delivery to rural mailboxes on two-way roads (2 lanes) with a speed limit of 50 km/h and greater, where there is a single solid centre line and where it is impossible for the Canada Post employee to park the mail truck on the shoulder and move completely off the roadway, is a danger for an employee at work, that is:

Stopping the mail truck on the roadway to obstruct (block) the traffic going in the same direction increases the risk of accidents for motorists who must go around the mail truck by crossing the solid centre line. During our investigation on May 25, 2012, a standard type of vehicle was stopped, blocking the traffic on the St. Louis route to make deliveries. A Ford F-150-type of truck passed the postal vehicle while a Hydro-Québec vehicle was coming from the opposite direction. The Hydro-Québec vehicle braked suddenly, squealing its tires to finally drive onto the shoulder to avoid the Ford F-150-type of truck passing the Canada Post vehicle. In addition, a similar incident happened on the St. Féréol route on

May 17, 2012, during the employer's investigation. The fact that motorists must cross the solid centre line to go around the stopped Canada Post vehicle which partially blocks the roadway increases the danger of collision for automobile traffic and the Canada Post vehicle. This is the same situation on the St. Louis, Chemin du Fleuve, St. Féréol, Lotbinière and Chevrier routes.

Therefore, you are hereby directed pursuant to paragraph 145(2)(a) of the *Canada Labour Code*, Part II to immediately implement measures to protect persons from this danger.

Pursuant to subsection 145(3), a notice bearing number 4571 was posted on the employees' bulletin board and cannot be removed without the officer's authorization.

Issued at Montreal, this 8th day of June 2012.

JESSICA TRAN

Health and Safety Officer

[4] The Corporation filed a notice of appeal of the directions mentioned above, issued on June 8, 2012 by HSO Tran. It applied for a stay of the directions until the matter is decided on its merits.

[5] On June 28, 2012, a teleconference was held with the parties to hear the stay application. At the beginning of the hearing, 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. These criteria are the following:

- 1) The applicant must satisfy the appeals officer that the question to be tried is serious as opposed to frivolous or vexatious.
- 2) The applicant must demonstrate that he or she would suffer significant harm if the direction is not stayed by the appeals officer.
- 3) The applicant must demonstrate that if 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 the directions in question specifically concerned the health and safety of the Corporation's employees. It also submitted that in the past the Tribunal has often acknowledged that such issues were serious and not frivolous or vexatious. In addition, none of the parties alleges that the issue on appeal is frivolous or vexatious. I accordingly conclude that a serious question is to be tried.

Would the applicant suffer significant harm if the directions are not stayed?

[7] Ms Richard submitted on behalf of the applicant that the Corporation's legislative

mandate obliges it to deliver mail to all residents of Canada. Because the only way to comply with the direction issued by HSO Tran is to stop mail deliveries, she submitted that this would be a serious infringement by the Corporation of its legislative obligation to deliver mail to persons residing at the addresses concerned in this matter. Therefore, the harm suffered by the Corporation would be significant from the point of view of the Canadian population. Because of this, she submitted that the Corporation would suffer significant harm if the directions are not stayed.

[8] On behalf of the respondents, Mr Lacasse objected to this conclusion. In his opinion, the Corporation will not suffer significant harm because as it is presently demonstrated, the mail for the persons concerned is delivered to a community mailbox or either to a local post office which is the most practical for these persons. He added that this arrangement certainly does not cause more harm to the Corporation than in some similar circumstances where rural mailboxes which are considered to be dangerous are removed and the mail is then sent to a community mailbox or a local post office. Accordingly, because this situation involves a determination of danger by HSO Tran regarding the employees concerned, Mr Lacasse contested a stay of the directions.

[9] Ms Duranleau, counsel for the union, was of the same opinion as Mr Lacasse, that is, the Corporation would not suffer any significant harm.

[10] Considering the above, I am of the opinion that to comply with the directions, the Corporation will have to cease delivering mail to the mailboxes in question and take the means required to deliver mail to another place which may be accessed by the owners, and this will certainly cause it inconvenience. On the other hand, I am not convinced that the Corporation will suffer significant harm if the implementation of the directions is not stayed.

[11] Because I have ruled that the second criterion is not met, it is not necessary to analyze the third criterion mentioned at paragraph 5 above.

Decision

[12] For these reasons, the application for a stay of the directions issued by HSO Tran on June 8, 2012 to the Corporation pursuant to paragraph 145(2)(a) of the Code is dismissed.

Richard Lafrance
Appeals Officer