

Occupational Health
and Safety Tribunal Canada



Tribunal de santé et
sécurité au travail Canada

Ottawa, Canada K1A 0J2

Citation: Robert Q's Airbus Inc., 2013 OHSTC 9

Date: 2013-02-07
Case No.: 2013-09
Rendered at: Ottawa

Between:

Robert Q's Airbus Inc., Appellant

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

Decision: The direction is varied.

Decision rendered by: Mr Michael Wiwchar, Appeals Officer

Language of decision: English

For the appellant: Mr Robert Rackham, Drivers and Fleet Manager

REASONS

[1] This decision concerns an appeal brought under subsection 146(1) of the *Canada Labour Code* (the Code) against a direction issued to Robert Q's Airbus Inc., the employer, by Ms Michelle Sterling, Health and Safety Officer (HSO), Human Resources and Skills Development Canada (HRSDC), Labour Program, on January 18, 2013.

Background

[2] The direction was issued by HSO Sterling following an investigation at the employer's work place at 105 Wharncliffe Road South, London, Ontario, on January 9, 2013. A single contravention was identified in the direction pursuant to paragraph 125(1)(z.03) of the Code and subsection 19.1(1) of the Canada Occupational Health and Safety Regulations.

[3] The contravention in the direction was described by the HSO as follows:

The employer has failed to ensure that they have a program in place for the prevention of hazards in the work place, including ergonomic related hazards. Specifically, the employer has failed to ensure that hazard identification, assessment, preventative measures and employee education have been addressed with regard to the Ford F350 passenger vans.

[4] Furthermore, the direction stipulated that the employer was directed to terminate the contravention no later than February 4, 2013.

[5] On February 1, 2013, Mr Rackham, representing the employer, and the HSO corresponded electronically. Written in the email exchange, Mr Rackham made a request to the HSO for an extension of the February 4, 2013, limitation date in order to allow for more time to comply with the direction because of issues he was having involving the procurement of professional services to conduct an ergonomic assessment. The HSO replied that she was legally unable to amend her direction in order to provide an extension. The HSO advised Mr Rackham to contact this Tribunal and she stated that she was not opposed to providing an extension but the compliance date of the direction can only be varied by an appeals officer.

[6] Later, on February 1, 2013, Mr Rackham filed an application for an appeal with this Tribunal along with a copy of the direction and the electronic correspondence between him and the HSO. The application for appeal stated that the appellant was seeking an extension of the time limit so that it could comply with the direction.

[7] On February 4, 2013, I held a hearing via teleconference in the presence of Mr Rackham and HSO Sterling whereby I made an inquiry into the circumstances of this appeal.

Issue

[8] The appellant is seeking a variation of the direction's compliance date. The issue therefore is whether such a variation is warranted.

Appellant's submissions

[9] The appellant's representative, Mr Rackham, submitted during the hearing that he is not challenging the contravention identified by the HSO. Mr Rackham stated that he is making a serious effort to comply with the direction however he is encountering some delays caused by a nonresponsive firm that he sought a quote from to provide an ergonomic assessment.

[10] It is submitted by the appellant's representative that he will endeavour to have a firm come the work place and perform the assessment of the vehicles identified in the direction as soon as possible. Mr Rackham requested an additional 2 weeks which would allow him the time to comply and to provide a response to the HSO.

Analysis

[11] I must determine whether or not I should vary the direction's date to terminate the contravention based on the submission made by the employer's representative during the hearing.

[12] I find that the appellant's representative made convincing arguments that the additional time to comply is required and that this was not a frivolous request. I am also swayed to extend the compliance date because the HSO stated during the hearing that an additional 2 weeks is a reasonable amount of time to address the requirements stated in her direction given the circumstances.

[13] I therefore agree that the appellant be granted an extension to the termination date to comply as stated in the direction.

Decision

[14] For the above reasons and pursuant to paragraph 146.1(1)(a) of the Code, I hereby vary the direction issued by HSO Sterling on January 18, 2013.

[15] The following paragraph of the direction: "*The employer is **HEREBY DIRECTED**, pursuant to paragraph 145(1)(a) of the Canada Labour Code, Part II, to terminate the contravention no later than February 4, 2013.*" is substituted by:

"The employer is **HEREBY DIRECTED**, pursuant to paragraph 145(1)(a) of the Canada Labour Code, Part II, to terminate the contravention no later than February 22, 2013."

Michael Wiwchar
Appeals Officer