



Occupational Health and Safety Tribunal Canada

Date: 2015-07-09
Case No.: 2013-22

Between:

H and R Transport Ltd., Appellant

Indexed as: *H and R Transport Ltd.*

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 confirmed.

Decision rendered by: Mr. Douglas Malanka, Appeals Officer

Language of decision: English

For the appellant: Mr. Patrick D. Kirwin, Barrister and Solicitor, Kirwin LLP

Citation: 2015 OHSTC 13

REASONS

[1] This decision concerns an appeal of a direction by H and R Transport Ltd. (H and R Transport or “the employer”) under subsection 146(1) of the *Canada Labour Code* (the Code) issued by Ms. Kim Mordaunt, a health and safety officer (HSO) with the Labour Program at Employment and Social Development Canada. The direction cites H and R Transport for two Code contraventions as follows:

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

DIRECTION TO THE EMPLOYER UNDER SUBSECTION 145(1)

On March 18, 2013, the undersigned health and safety officer conducted an investigation in the work place operated by H&R Transport Limited, being and employer subject to the *Canada Labour Code*, Part II, at 1 Maritime Ontario Blvd., Brampton, Ontario, L6S 6G4, the said work place being sometimes known as H & R Transport Limited.

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

No./No:1

Paragraph 125.(1)(q) - *Canada Labour Code* Part II,
Paragraph 19.6(1)(a) - Canada Occupational Health & Safety
Regulations which states;

The employer shall provide health and safety education to each employee which shall include the following:

- (a) *the hazard prevention program implemented in accordance with this Part to prevent hazards applicable to the employee, including the hazard identification and assessment methodology and the prevention measures taken by the employer;*

The employer has failed to provide education related to the hazard prevention program.

No./No:2

Paragraph 125.(1)(q) - *Canada Labour Code* Part II,
Paragraph 19.6(1)(d) - Canada Occupational Health & Safety
Regulations which states;

The employer shall provide health and safety education to each employee which shall include the following:

- (d) *an overview of the Act and these Regulations*

The employer has failed to provide and an overview of the Act and Regulations.

Therefore, you are HEREBY DIRECTED, pursuant to paragraph 145(1)(a) of the *Canada Labour Code*, Part II, to terminate the contraventions no later than April 12, 2013.

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 or reoccur.

Issued at North York, this 18th day of March, 2013.

[signed]
Kim Mordaunt
Health and Safety Officer
[...]

To: H & R TRANSPORT LIMITED
3601 2nd Avenue North
Lethbridge, Alberta T1H 5K7

Background

[2] On the morning of January 30th, 2013, Mr. Adnan Ghani, a truck driver with H and R Transport arrived at E & E McLaughlin Enterprises (E & E) to make a delivery. Mr. Ghani went into their office to submit the paperwork associated with the load and to obtain a bolt cutter to remove the seal on the doors of his vehicle. Mr. Levi Robinson, E & E's Receiver, came out and handed a bolt cutter to Mr. Ghani and then went back into the facility to open the dock bay doors next to Mr. Ghani to receive a load from Mr. Gary Porter, a truck driver with Grand River Enterprises. After cutting the seal on his trailer door, Mr. Ghani heard the dock door next to him opening and he went up to the dock door to return the bolt cutter to Mr. Robinson. Mr. Ghani did not see the trailer operated by Mr. Gary Porter backing up to the dock door and Mr. Porter was unaware of Mr. Ghani's presence. Mr. Ghani was crushed twice between the trailer and the dock as Mr. Porter first backed up to the dock and then move forward and back to reposition his trailer. Mr. Ghani was taken to hospital where he passed away the next day, January 31, 2013.

[3] Constable Kylie Banks of the Ontario Provincial Police (OPP), and Occupational Health and Safety Inspector Kelly Sebastian of the Ministry of Labour (MOL), Ontario, investigated the accident on January 30th, 2013 believing that H and R Transport was subject to provincial jurisdiction.

[4] OPP Officer Kylie Banks interviewed Mr. Robinson who was the sole witness to the accident. Mr. Robinson told Officer Banks that he was in the process of opening the dock door to receive Mr. Porter's trailer and heard Mr. Ghani calling to him with the intent of returning the bolt cutter through the open door. Mr. Robinson said he saw the truck backing up and told Mr. Ghani to get out of the way. However, Mr. Ghani did not move and the truck backed into him.

[5] Mr. Robinson told Officer Banks that E & E's safety policy prohibited its employees from going onto the dock receiving area when trucks are around and truck drivers are required to cut the seal(s) on their trailer door(s) while he watches from inside. Mr. Robinson also confirmed that E & E safety procedures require drivers

making deliveries to use the side door, sometimes referred to as the man-door, to enter the building.

[6] When it became evident that H and R Transport is a federally regulated business, HSO Mordaunt met with MOL Inspector Sebastian on February 4th, 2013, and received the documents and information that he had obtained relative to the accident. OPP Constable Banks also provided HSO Mordaunt with a copy of her notes and a recording of her interviews.

[7] HSO Mordaunt then conducted her own investigation at H and R Transport and obtained information and documents from the company regarding its safety education programs for employees. The documents obtained by HSO Mordaunt are included in her Hazardous Occurrence Investigation Report dated July 5th, 2013. The Report also includes an “Activity Log” regarding her investigation.

[8] One of the documents HSO Mordaunt obtained was a copy of H and R Transport’s Hazard Prevention Policy (HPP). HSO Mordaunt noted in her investigation report that H and R Transport’s HPP specifies that high visibility vests must be worn in all company yards and docks and when attending all client work sites. However, HSO Mordaunt stated that there was no record of Mr. Ghani having been trained on the HPP.

[9] HSO Mordaunt reviewed H and R Transport’s Health and Safety Management Systems Manual and noted that the “General Rules” section specifies that employees must identify hazards and determine appropriate safe methods and practices prior to beginning any job or task. HSO Mordaunt noted, however, that there was no indication that employees are trained to conduct such job hazard analyses and identify prevention measures and, there was no record that Mr. Ghani had been trained on the Manual.

[10] On March 18, 2013, HSO Mordaunt spoke with Mr. Mike Weir, Loss Control, Mr. McNutt and Mr. Johnson, and Mr. Johnson told her that H and R Transport meets with employees to inform them of the health and safety policies and conducts weekly safety meetings. Mr. Weir acknowledged to HSO Mordaunt during this exchange that there is disconnect between the Fleet Personnel Handbook and the employee sign offs. Mr. Johnson confirmed, however, that H and R Transport receives complaints from time to time that their drivers are not wearing high visibility vests.

[11] On March 19, 2013, HSO Mordaunt went to H and R Transport and reviewed a Loblaws’ Good to Go Program video on procedures that apply to deliveries at Loblaws. HSO Mordaunt commented in her report that the video did not contain any specific information about yard safety.

[12] HSO Mordaunt issued a direction to H and R Transport on March 18, 2013, respecting the two contraventions already noted. H and R Transport appealed the direction on April 12, 2013. Given the nature of the questions raised by this appeal, the appeal was conducted by way of written submissions.

[13] An oral hearing by videoconference was subsequently held on January 9, 2015, with HSO Mordaunt and counsel for the employer in order to gather HSO Mordaunt's narrative regarding circumstances that led to her direction.

Issue

[14] The issue in this appeal is to determine whether HSO Mordaunt was justified in issuing a direction to the employer finding a contravention of paragraphs 125(1)(q) of the Code and paragraphs 19.6(1)(a) and (d) of the *Canada Occupational Health and Safety Regulations* (COHSRs).

Appellant's submissions

[15] In his submissions, Mr. Kirwin, counsel for the appellant, confirmed that the appellant does not dispute any of the factual allegations as set out by HSO Mordaunt in pages 6 to 16 of her Hazardous Occurrence Investigation Report dated July 5, 2013.

Contravention of Paragraph 125(1)(q) of the Code and paragraph 19.6(1)(a) of the COHSRs:

[16] Mr. Kirwin held that HSO Mordaunt did not specify in her investigation report what specific facts led to her finding that H and R Transport was in contravention of paragraph 125(1)(q) of the Code and paragraph 19.6(1)(a) of the COHSRs and the evidence does not support HSO Mordaunt's findings.

[17] Mr. Kirwin maintained that there was no evidence that H and R Transport had not provided Mr. Ghani with education on the HPP or that the education was deficient. Mr. Kirwin further held that there is considerable evidence to the contrary and, at most, there is finding that the acknowledgement of education signed by employees did not refer specifically to HPP education.

[18] Mr. Kirwin cited several documents where Mr. Ghani had acknowledged in writing of having received health and safety education. Mr. Kirwin conceded that the documents did not deal specifically with H and R Transport's HPP however the material made reference to the HPP overall and referenced yard safety. These signed documents included:

- Air Brake Adjustment Certificate;
- WHMIS Training: Handling and Transportation of Dangerous Goods and Transportation of Dangerous Goods Competency Test;
- Distribution Centre Dock Safety Quiz; and
- Driver's Road Test.

[19] Mr. Kirwin cited numerous documents that are part of H and R Transport's health and safety program that relate to the hazard of moving equipment in a yard. Mr. Kirwin then submitted that the existence of the documents establish that H and R Transport provided information to employees on its HPP and that

H and R Transport was in compliance with its obligations under paragraph 125(1)(q) of the Code and paragraph 19.6(1)(a) of the COHSRs.

[20] Mr. Kirwin referred to Mr. Ghani signature acknowledging that: he had received a copy of the H and R Transport's Fleet Personnel Handbook; that he understood that he was to comply with all policies and procedures in the Handbook; and that he is required to keep the handbook in his assigned vehicle for reference purposes. Mr. Kirwin conceded that the form signed by Mr. Ghani did not identify the HPP education but held that the education clearly referenced HPP overall and specifically referenced safety precautions to be taken regarding yard safety.

[21] Mr. Kirwin held that HSO Mordaunt's reliance on Weir's statement that there was a "disconnect" between the Fleet Training given by H and R Transport and the acknowledgement of education signed by the employees was problematic because Mr. Weir was not referring to the education given to employees on the HPP and was only indicating that not all of the education given was documented.

[22] Mr. Kirwin further submitted that the issue of education and the sign-off by the employee are separate and distinct issues and are dealt with separately in section 19.6 of the COHSRs. Mr. Kirwin argued, therefore, that the test for compliance found in the COHSRs is whether the information was given by the employer and not whether there is a written acknowledgement by the employee that it was given. Mr. Kirwin held that H and R Transport's duty under the legislation and regulations was to provide information on the HPP implemented by the employer which was done.

[23] Mr. Kirwin stated that HSO Mordaunt's direction should be set aside due to lack of evidence and cited the Supreme Court of Canada decision in *Service Employees' International Union, Local No 33 v. Nipawin District Staff Nurses Association et al.* [1975] 1 S.C.R. 382 in support of this position.

Contravention of paragraph 125(1)(q) of the Code and paragraph 19.6(1)(d) of the COHSRs:

[24] On the second issue as to whether the H and R Transport failed to provide an overview of the Act and Regulations. Mr. Kirwin referred me to the appeal record and the testimony of HSO Mordaunt at the hearing on January 9, 2015. Mr. Kirwin held that there is no reference in HSO Mordaunt's activity log relating to paragraph 19.6(1)(d) of the COHSRs and there is no evidence that HSO Mordaunt raised this issue with the appellant during her investigation to request training information or give H and R Transport an opportunity to respond. Mr. Kirwin held that H and R Transport would have provided training material if it had been requested by HSO Mordaunt.

[25] Mr. Kirwin held that the direction in question should be rescinded because HSO Mordaunt's report does not support her finding of a contravention in respect of paragraph 19.6(1)(d) and because she did not provide the appellant with an opportunity to submit evidence to the contrary.

Supplementary Submissions

Contravention of Paragraph 125(1)(q) of the Code and subsections 19.6(4) and (5) of the COHSRs:

[26] Following receipt of the employer's submissions, I held a telephone conference with counsel for the appellant to request some clarifications and additional information. I advised him that, in addition to the paragraphs of the COHSR identified in the direction, I would be considering subsections 19.6(4) and (5) of the COHSR and therefore the appellant was entitled to submit new evidence. I also informed him that the appeal proceeds in the nature of a *de novo* hearing, and that I can receive and consider new evidence, whether or not it was seen or considered by the HSO at the time of their investigation. I also informed counsel for the appellant that an appeals officer is invested with all the same powers as the HSO pursuant to subsection 145.1(2) and therefore has the statutory role to investigate the circumstances relating to the appeal.

[27] Mr. Kirwin then provided supplementary submissions in which he submitted that there is no onus on any party to rebut allegations or opinions of a health and safety officer which are not supported by evidence. In this regard, he cited paragraph 674 in the Parks Canada Agency and Douglas Martin and Public Service Alliance of Canada, Decision No. CAO-07-015, where I noted that Justice Dawson stated at paragraph 25 in *Canadian Freightways Ltd. v. Canada (Attorney General)*, 2003 FCT 391, that there is no onus on any party in an appeal under section 146.1. Mr. Kirwin also referred to paragraph 56 of the *Canada Border Services Agency v. Public Service Alliance of Canada*, 2014 OHSTC 11, where Appeals Officer Pierre Hamel concluded that an appeals officer's task is to determine whether the decision of the health and safety officer was correct based on the evidence.

[28] Paragraph 674 of the Parks Canada decision reads:

[674] Mr. Lambrecht argued that there is no onus on either party in respect of an inquiry carried out by an Appeals Officer pursuant to subsection 146.1(1) of the Code. In this regard, he referred to the Federal Court decision in *Canadian Freightways Limited and Attorney General of Canada and Western Canada Council of the Teamsters supra*, Justice Dawson confirmed that the Appeals Officer is simply conducting an investigation into the circumstances of a decision or direction of a health and safety officer and there is no onus on either party. She wrote at paragraphs 25 and 26:

[25] More recently in *Verville and Canada (Correctional Service)*, [2002] C.L.C.A.O.D. No. 12 at paragraph 15, an appeals officer described the nature of an appeal of the type at issue in the present proceeding as follows:

The Code permits anyone who is "aggrieved" by a direction to appeal the decision to an appeals officer (s.146(1)). The appeals officer then shall, "in a summary way" inquire into the circumstances of the direction, and may vary, rescind or

confirm the direction (s.146.1(1)). The job of the appeals officer is to place himself or herself in the shoes of the health and safety officer and make the determination that he or she ought to have made. An appeal under s.146(1) is not an “appeal” in the technical sense, and thus there is no onus on anyone (see H.D. Snook [...]). Guided by s.122.1, which states that the purpose of Part II of the Code is to “prevent accidents and injury to health arising out of, linked with or occurring in the course of employment”, an appeals officer is simply concerned with coming up with the correct decision from a health and safety perspective.

[26] These authorities suggest that the hearing into an appeal of a decision is in the nature of a *de novo* hearing where the appeals officer is to view all of the circumstances and then make a decision.

[29] Mr. Kirwin informed me that, as a result, the appellant did not wish to present any further evidence with respect to the Health and Safety Education program which they submit was in place at H and R Transport at the time of the HSO investigation. The appellant concluded by saying that there is no evidence to support the HSO’s opinion that the sections of the Code and Regulations were contravened.

[30] The appellant also reiterated that the issue of information and the issue of “sign off” by the employees are separate and distinct issues and that a deficiency in the sign off procedures is not evidence of a deficiency in the training itself.

[31] Finally, counsel for the appellant acknowledged in his closing submissions that its administrative procedures fell short with respect to compliance of subsections 19.6(4) and (5) of the COHSR, but submits that they are now in compliance which was confirmed by the HSO. The appellant therefore requests that I do not issue a direction citing contraventions of subsections 19.6(4) and (5).

Analysis

[32] The issue in this appeal is to determine whether HSO Mordaunt was justified to issue a direction to the employer finding a contravention of paragraphs 125(1)(q) of the Code and paragraphs 19.6(1)(a) and (d) of the COHSRs. Having raised the matter with the appellant, I must also determine if H and R Transport was in contravention of paragraphs 19.6(4) and (5) of the COHSR.

[33] First, I will address Mr. Kirwin’s submission that there is no onus or obligation on an appellant to rebut allegations by or opinions of a health and safety officer which are not supported by evidence.

[34] As stated by the Federal Court of Appeal in *Martin v. Canada (Attorney General)*, 2005 FCA 156:

[28] An appeal before an appeals officer is *de novo*. Under section 146.2, the appeals officer may summon and enforce

the attendance of witnesses, receive and accept any evidence and information on oath, affidavit or otherwise that he sees fit, whether or not admissible in a court of law, examine records and make inquiries as he considers necessary. In view of these wide powers and the addition of subsection 145.1(2), there is no rationale that would justify precluding an appeals officer from making a determination under subsection 145(1), if he finds a contravention of Part II of the Code [...]

[35] Furthermore, at paragraph 56 of the *Canada Border Services Agency v. Public Service Alliance of Canada*, Appeals Officer Pierre Hamel further wrote:

[56] [...] The point being that if, through a faulty or otherwise inappropriate investigation, a party's right to present evidence or argument has been curtailed, chances are that the direction would be vulnerable as it would likely be founded on an incomplete or arbitrary factual basis. Any such deficiency in that process may be cured by the hearing before the appeals officer, which is a *de novo* process, in the course of which all parties have the opportunity to present evidence and argument.

[36] These decisions establish that the hearing before the appeals officer is a *de novo* process which provides an opportunity for the parties to submit evidence to support their position. In the instant case, the appellant was given ample opportunity to submit evidence to corroborate their assertion that they were in fact, compliant with their obligations under the Code.

[37] In this case, I must satisfy myself based on the totality of the evidence that H and R Transport provided education to Mr. Ghani on the HPP and an overview of the Code and its Regulations and that H and R Transport acknowledged education provided to Mr. Ghani in writing and maintained records of that education in order to decide whether to confirm, vary or rescind the direction issued by HSO Mordaunt in this case.

Contravention of paragraph 125(1)(q) of the Code and paragraphs 19.6(1)(a) and (d) of the COHSRs:

[38] Paragraph 125(1)(q) of the Code obliges every employer to provide their employees with the information, instruction, training and supervision necessary to ensure their health and safety at work in the prescribed manner. The prescribed manner is described in Part XIX, Hazard Prevention Program, of the COHSRs. Paragraph 125(1)(q) of the Code reads:

125. (1) Without restricting the generality of section 124, every employer shall, in respect of every work place controlled by the employer and, in respect of every work activity carried out by an employee in a work place that is not controlled by the employer, to the extent that the employer controls the activity,

(q) provide, in the prescribed manner, each employee with the information, instruction, training and supervision necessary to ensure their health and safety at work;

[39] Subsection 19.1(1) of the COHSRs requires every employer, in consultation with the policy or workplace health and safety committee as the case may be, to develop, implement and monitor an HPP for the prevention of hazards in the work place. Paragraph 19.1(1)(e) of the COHSRs, specifies that the HPP must include employee education. Paragraph 19.1(1)(e) reads:

19.1 (1) The employer shall, in consultation with and with the participation of the policy committee, or, if there is no policy committee, the work place committee or the health and safety representative, develop, implement and monitor a program for the prevention of hazards, including ergonomics-related hazards, in the work place that is appropriate to the size of the work place and the nature of the hazards and that includes the following components:

(e) employee education; [...]

[40] Paragraphs 19.6(1)(a) and (d) of the COHSRs establish that the employer must provide health and safety education to each employee regarding the HPP and an overview of the Code and COHSRs implemented in accordance with the COHSRs. Paragraphs 19.6(1)(a) and (d) of the COHSRs read:

19.6 (1) The employer shall provide health and safety education, including education relating to ergonomics, to each employee which shall include the following:

(a) the hazard prevention program implemented in accordance with this Part to prevent hazards applicable to the employee, including the hazard identification and assessment methodology and the preventive measures taken by the employer;

[...]

(d) an overview of the Act and these Regulations.

[41] Subsections 19.6(4) and (5) read as follows:

19.6 (4) Each time education is provided to an employee, the employee shall acknowledge in writing that they received it, and the employer shall acknowledge in writing that they provided it.

19.6 (5) The employer shall keep, in paper or computerized form, records of the education provided to each employee, which shall be kept for a period of two years after the employee ceases to be exposed to a hazard.

[42] In order to determine this matter, it is useful to consider what education involves. The term education is not defined in the Regulations. In accordance with the principles of statutory interpretation and specifically section 12 of the *Interpretation*

Act, I must adopt a fair, large and liberal interpretation of education that is consistent with the purpose of the Code.

[43] According to the Webster's New World Dictionary the term "education" is defined as:

1. the process of training and developing the knowledge, skill, mind, character, etc, especially by formal schooling;
2. teaching; training; knowledge; ability, etc., thus developed [...]

[44] Given the above definition, I am of the view that, education on the HPP requires more than simply bringing documents to the employees' attention. I was not persuaded by Mr. Kirwin's statement that the copies of the education documents in the appeal record are, in and of themselves, proof that H and R Transport educated Mr. Ghani on the HPP or that H and R Transport has established in evidence that the education required was provided to Mr. Ghani.

[45] Section 19.6 of the COHSRs requires that employees be educated on all components of the HPP. I received a large amount of documents from H and R Transport, some of which addressed certain components of the HPP. Namely, Mr. Ghani acknowledged in writing that he had received education on air brake adjustment, WHMIS training on the handling and transportation of dangerous goods and his driver's road test. However, I see no indication from the documents that yard safety was included in the education that Mr. Ghani received. In my opinion without having received education on all components of the HPP, which include yard safety, it cannot be said that the employer has fulfilled its obligations under paragraph 19.6(1)(a).

[46] The evidence also confirmed that Mr. Ghani signed a statement in connection with H and R Transport's Fleet Personal Handbook. However, the signature only confirms that he understood that he was required to keep the Handbook in the assigned vehicle for reference purposes and required to comply with the Handbook. In my opinion nothing confirms that H and R Transport actually provided Mr. Ghani with education on the voluminous Handbook containing 356 pages of information. Presenting employees with training documents for their compliance, retention and reference while performing work, as opposed to providing education on the material, falls short of the requirements in paragraph 19.6(1)(a) of the COHSRs.

[47] Finally, Mr. Kirwin referred me to an H and R Transport document entitled, "Excerpts from H & R Transport Health and Safety Management System" which deals with task analysis, hazard identification and inspections. The concern I have with this is that H and R Transport's duty under the Code and COHSRs to educate employees on the HPP is not satisfied by instructing its employees to carry out their own hazard analysis and risk mitigation especially when there is no evidence that H and R Transport trained its employees on how to conduct such analyses.

[48] Mr. Kirwin held that HSO Mordaunt reliance on Mr. Weir's statement that there was a "disconnect" between the Fleet Training given by H and R Transport and the acknowledgement of training signed by the employees was problematic because Mr. Weir was not referring to the training given to employees on the HPP and was only indicating that not all of the training given was documented.

[49] My understanding is that HSO Mordaunt was attempting to obtain Mr. Ghani's HPP education records from H and R Transport and Mr. Weir was communicating that the records being requested could not be produced. Regardless, H and R Transport had the opportunity on appeal to provide record of Mr. Ghani's education on H and R Transport's HPP which they did not do. Moreover, Mr. Kirwin confirmed during a telephone hearing that H & R Transport could not produce further records.

[50] Based on all of the above, I confirm HSO Mordaunt's finding that H and R Transport is in violation of paragraphs 125(1)(q) of the Code and paragraph 19.6(1)(a) of the COHSRs.

[51] With respect to 19.6(1)(d) of the COHSRs, Mr. Kirwin argued that this contravention should be rescinded because HSO Mordaunt had not raised this matter with H and R Transport at the time of her investigation and had not provided H and R Transport an opportunity to respond to the allegation.

[52] While this is a valid criticism of HSO Mordaunt's investigation process in regard to paragraph 19.6(1)(d) of the COHSRs, my review of the direction pursuant to section 146.1 of the Code is *de novo* in nature and I am vested with the same powers as HSO Mordaunt. In this respect, having reviewed the documentation provided by the employer, I was unable to conclude that education on an overview of the Act and Regulations was given. The appellant had ample opportunity to provide evidence, not only to the HSO, but also to me during the course of this appeal to support their assertion that H and R Transport provided Mr. Ghani with an overview of the Act and Regulations, which it chose not to do. In the absence of such evidence in support of their assertion, I am left to conclude that H and R Transport was in contravention of paragraph 19.6(1)(d) as well.

[53] Finally, with regard to subsections 19.6(4) and (5) of the COHSR, I have already indicated that an oral hearing was held on January 9, 2015, that provided H and R Transport with an opportunity to submit evidence or argument regarding the interpretation and application of these subsections in this case.

[54] Mr. Kirwin acknowledged in his submissions that section 146.1 of the Code authorizes an appeals officer to issue directions that ought to have been made by the health and safety officer. Mr. Kirwin submitted that a direction in respect of subsections 19.6(4) and (5) of the COHSRs are unnecessary due to the passage of time and the fact that HSO Mordaunt acknowledged that the procedures instituted by the appellant following the incident now comply with those provisions.

[55] While I have determined that H and R Transport was in contravention of paragraphs 19.6(4) and (5) of the COHSRs at the time of HSO Mordaunt's investigation, I was pleased to learn from HSO Mordaunt during her testimony at the January 9, 2015 hearing that these shortcomings had been since rectified. Although the Code enables me to vary the direction to reflect these contraventions which were present at the time, the fact is that to do so would serve no practical purpose as the employer is now in compliance with his obligations.

Decision

[56] For these reasons, the direction issued by HSO Kim Mordaunt on March 18, 2013, is confirmed.

Douglas Malanka
Appeals Officer