



# Occupational Health and Safety Tribunal Canada

**Date:** 2016-05-25  
**Case No.:** 2016-18

**Between:**

Air Canada, Appellant

**Indexed as:** *Air Canada*

**Matter:** Appeal under subsection 146(1) of the *Canada Labour Code* of a direction issued by an official delegated by the Minister of Labour.

**Decision:** The direction is varied.

**Decision rendered by:** Mr. Olivier Bellavigna-Ladoux, Appeals Officer

**Language of decision:** English

**For the appellant:** Rosalind H. Cooper, Counsel, Fasken Martineau

**Citation:** 2016 OHSTC 9

## REASONS

[1] This decision concerns an appeal brought under subsection 146(1) of the *Canada Labour Code* (the Code) of a direction issued to Air Canada by Ms. Elizabeth Porto, an official delegated by the Minister of Labour (Ministerial delegate) on May 10, 2016. The appellant is requesting a variation of the direction to extend the compliance deadline.

### Background

[2] The direction was issued by the Ministerial delegate following an investigation conducted into an accident that occurred at Pearson International Airport on April 22<sup>nd</sup>, 2016. The accident involved a baggage worker who was fatally injured.

[3] On May 10, 2016, the Ministerial delegate issued a direction to Air Canada which requires the employer to terminate the contravention by no later than May 26, 2016. The direction reads :

On 26 April 2016, the undersigned Official Delegated by the Minister of Labour conducted an investigation in the work place operated by AIR CANADA, being an employer subject to the *Canada Labour Code*, Part II, at P.O. Box 6002, (Ramp & Baggage), TORONTO AMF, Mississauga, Ontario, L5P 1B4, the said work place being sometimes known as Air Canada- (Ramp & Baggage).

The said Official Delegated by the Minister of Labour is of the opinion that the following provisions of the *Canada Labour Code*, Part II, have been contravened:

No. / No: 1

Paragraph 125.(1)(k) - Canada Labour Code Part II

Section 14.7 – Canada Occupational Health and Safety Regulations

Paragraph 125.(1)(k): 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, ensure that the vehicles and mobile equipment used by the employees in the course of their employment meet prescribed standards.

Section 14.7: Where motorized materials handling equipment is used under conditions where a seat-belt or shoulder-type strap restraining device is likely to contribute to the safety of the operator or passengers, the materials handling equipment shall be equipped with such a belt or device.

**The employer has failed to ensure that motorized materials handling equipment operated by Air Canada have been equipped with a seat-belt or shoulder-type strap restraining device as prescribed.**

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 May 26, 2016.

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

Issued at Mississauga, ON, this 10<sup>th</sup> day of May, 2016.

[4] On May 20<sup>th</sup> 2016, the employer filed an application to appeal the direction to strictly request an extension of the compliance deadline. The employer is not challenging the substance of the direction. In its application to appeal, the employer also requested an expedited hearing into the matter. Alternatively, if the appeal could not be heard expeditiously, the employer also filed an application to stay the direction pending the determination of the appeal.

[5] On May 27<sup>th</sup> 2016, I held a hearing via teleconference to inquire further into the circumstances of the case and to hear the employer's arguments in support of their request to vary the compliance date. I also requested the attendance of Mr. Winston Georges, who assisted Ms. Porto in her investigation, since I was informed of her unavailability to attend.

[6] At the conclusion of the teleconference, I requested additional information from the employer regarding the additional security measures that would be implemented if additional time was granted to comply with the direction. The employer provided further documentation on May 30<sup>th</sup> and June 2<sup>nd</sup> 2016.

### **Issue**

[7] The issue for determination in this appeal is whether I should vary the direction to extend the compliance date of the direction.

### **Appellant's submissions**

[8] The appellant submits that it requires additional time to complete the installation of the seatbelts on the motorized material handling equipment (MMHE) as required by the direction. Upon the receipt of the direction, the appellant immediately took measures to comply with the direction as soon as possible, but the appellant maintains that it is impossible to do so within the specified deadline. The appellant undertook an assessment all its MMHE and determined that a total of 657 of them will require the installation of seatbelts.

[9] For 509 out of the 657 MMHE, the employer will be able to use kits that are engineered and supplied by the vehicle manufacturers for the installation of seatbelts. The average time to install a kit ranges from 2 to 6 hours. As for the remaining 148 MMHE, there are no kits available and it will require engineering solution to equip them with seatbelts, which may not be feasible until October 2016. The employer estimates that 80 % of the MMHE will be equipped with seatbelts by July 15, 2016

[10] For these reasons, the appellant submits that despite its best efforts, it will be impossible to equip all 657 MMHE with a seatbelt by the deadline indicated in the direction. Consequently, the appellant requests that the deadline for compliance be extended to November 15, 2016.

[11] The appellant submits that, in the interim, additional measures are taken to enhance worker's safety. The appellant summarized those measures as follows in its written submissions:

To address worker safety and provide assurances in the context of the stay application, Air Canada:

1. Had initiated a safety campaign on April 30, 2016. Has reviewed its vehicles in its fleet and is reviewing all of its MMHE across its entire fleet.
2. Had initiated daily safety briefings for workers using MMHE to remind them of safe practices when operating MMHE.
3. Issued a safety bulletin on or about May 25, 2016 addressing MMHE safety related hazards in and around the ramp area including driving techniques, adherence to all airport traffic directives, wearing seatbelts, keeping within vehicle corridors, driving at safe speeds and turning with caution.
4. Issued a safety bulletin on May 31, 2016 reminding managers of employees who operate MMHE about their obligations to ensure their teams comply with Air Canada procedures, including observing and auditing compliance and coaching employees.

## **Analysis**

[12] The sole issue that is before me in this appeal is whether the circumstances of this case justify that I exercise my power under paragraph 146.1(1)(a) of the Code to vary the compliance date specified in the direction. That paragraph reads:

146.1(1)a) If an appeal is brought under subsection 129(7) or section 146, the appeals officer shall, in a summary way and without delay, inquire into the circumstances of the decision or direction, as the case may be, and the reasons for it and may (a) vary, rescind or confirm the decision or direction

(my emphasis)

[13] The direction issued by Ms. Porto requires the employer to equip all his MMHE with seatbelts by May 26, 2016, which only gave the employer approximately two weeks to comply.

[14] The appellant has convinced me that it was impossible for the employer to comply with the direction within that deadline given the large number of MMHE that need to be equipped with seatbelts and also the fact that the employer has to rely on the manufacturers for the supply of the seatbelt kits and on subcontractors

for integrated engineered solutions. I am also satisfied that the additional amount of time that is being requested to install the seatbelts on all 657 MMHE is reasonable in the circumstances of this case.

[15] In addition, as I explained to the appellant during the teleconference call, in exercising my powers under the code, I need to be mindful of the purpose of Part II of the Code which is stated at section 122.1 of the Code as follows:

The purpose of this Part is to prevent accidents and injury to health arising out of, linked with or occurring in the course of employment to which this Part applies.

[16] In view of that, I requested the employer to provide me with documentation to demonstrate the safety precautions that are been taken until the direction is fully complied with along with an action plan for the installation of the seatbelts. To that end, the employer submitted safety bulletins issued to the employees regarding the use of seatbelts and safe practices when operating a MMHE, a spreadsheet detailing the vehicle types and models, the availability of kits for installation and the date of compliance/installation as well as the content of a safety bulletin reminding Managers of their obligations to communicate and enforce safety expectations.

[18] After having reviewed the appellants submissions and the additional documents submitted, I am satisfied that, despite its best efforts, the employer will not be able to equip all 657 MMHE with a seatbelt by the compliance date of May 26, 2016. I am also satisfied that the November 15, 2016 compliance date proposed by the employer is reasonable given the engineering solutions and time required to complete the installation. Finally, I am convinced that the measures implemented by the employer will provide an acceptable level of protection to employees until all 657 MMHE can be equipped with a seatbelt.

[19] In view of the foregoing, I find that the circumstances of this case justify that I exercise my power to vary the compliance date and extend the deadline to November 15, 2016.

### **Decision**

[17] For the above reasons and pursuant to paragraph 146.1(1)(a) of the Code, I hereby vary the direction issued by Ms. Porto, Ministerial delegate, on May 10, 2016 to extend the deadline for compliance to November 15, 2016. The varied direction is appended to this decision.

Olivier Bellavigna Ladoux  
Appeals Officer

## APPENDIX

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

#### **DIRECTION TO THE EMPLOYER UNDER SUBSECTION 145(1) AS VARIED BY APPEALS OFFICER OLIVIER BELLAVIGNA-LADOUX ON JUNE 7, 2016**

On 26 April 2016, the undersigned Official Delegated by the Minister of Labour conducted an investigation in the work place operated by AIR CANADA, being an employer subject to the *Canada Labour Code*, Part II, at P.O. Box 6002, (Ramp & Baggage), TORONTO AMF, Mississauga, Ontario, L5P 1B4, the said work place being sometimes known as Air Canada- (Ramp & Baggage).

The said Official Delegated by the Minister of Labour is of the opinion that the following provisions of the *Canada Labour Code*, Part II, have been contravened:

**No. / No : 1**

Paragraph 125.(1)(k) - Canada Labour Code Part II

Section 14.7 – Canada Occupational Health and Safety Regulations

Paragraph 125.(1)(k): 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, ensure that the vehicles and mobile equipment used by the employees in the course of their employment meet prescribed standards.

Section 14.7: Where motorized materials handling equipment is used under conditions where a seat-belt or shoulder-type strap restraining device is likely to contribute to the safety of the operator or passengers, the materials handling equipment shall be equipped with such a belt or device.

**The employer has failed to ensure that motorized materials handling equipment operated by Air Canada have been equipped with a seat-belt or shoulder-type strap restraining device as prescribed.**

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 15, 2016.**

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

Issued at Mississauga, ON, this 10<sup>th</sup> day of May, 2016.

Elizabeth Porto  
Official Delegated by the Minister of Labour  
Certificat Number: ON0153

To: AIR CANADA  
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