

Occupational Health
and Safety Tribunal Canada



Tribunal de santé et
sécurité au travail Canada

Date: 2019-11-06
Case No.: 2019-22

Between:

Rosedale Transport Limited, Appellant

Indexed as: *Rosedale Transport Limited*

Matters: Appeal under section 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: Ms. Ginette Brazeau, Appeals Officer

Language of decision: English

For the appellant: Brian Topping, Director, Rosedale Transport Limited

Citation: 2019 OHSTC 21

REASONS

[1] These reasons concern an appeal brought under section 146(1) of the *Canada Labour Code* (*Code*), by Rosedale Transport Limited (the appellant), of a direction issued on May 3, 2019, by Ms. Michelle Sterling in her capacity as an official delegated by the Minister of Labour (ministerial delegate).

Background

[2] On July 6, 2018, the ministerial delegate attended the work place operated by the appellant in order to conduct a general inspection. Following her inspection, the ministerial delegate identified eleven violations to the *Code*. One of the violations identified by the ministerial delegate was the appellant's failure to submit the 2017 Work Place Committee Report (WPCR) by March 1, 2018. On July 19, 2018, the ministerial delegate met with the appellant and obtained an Assurance of Voluntary Compliance (AVC) for the violations identified. The AVC, signed by the appellant, specified that the WPCR had to be submitted by March 1st of every year.

[3] On April 23, 2019, the ministerial delegate conducted a follow-up inspection with the appellant. She concluded that the appellant had failed to submit the WPCR by the prescribed date of March 1, 2019. Since an AVC concerning the same violation had been received from the appellant the year before, the ministerial delegate issued a direction under subsection 145(1) of the *Code*. The direction reads 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 April 23, 2019, the undersigned Official Delegated by the Minister of Labour conducted an investigation in the work place operated by Rosedale Transport Limited, being an employer subject to the *Canada Labour Code*, Part II, at 3960 Commerce Road, London, Ontario, N6N 1P8, the said work place being sometimes known as Rosedale Transport.

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

Paragraph 135.2(1)(g) - *Canada Labour Code*, Part II
Subsection 9(1) – *Policy Committees, Workplace Committees and Health and Safety Representatives Regulations*

The employer failed to submit the Work Place Committee Report to the Minister by March 1, 2019 for the activities of the committee during the 2018 calendar year.

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 May 17, 2019.

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

Issued at London, this 3rd day of May, 2019.

[signed]
Michelle Sterling
Official Delegated by the Minister of Labour

[4] The appellant filed an appeal of this direction on May 6, 2019, alleging that the direction was unnecessary and that the ministerial delegate was biased against the appellant. Further to a review and consideration of this file, I invited the appellant to provide full written submissions in support of the appeal by September 16, 2019.

Submissions of the Appellant

[5] The appellant submits that the 2018 WPCR was completed in early 2019, but that Mr. Greg Tonelli, the London Terminal Manager, had forgotten to submit it. The appellant states that, once notified of the omission, the WPCR was submitted immediately. The appellant claims that this error was an oversight and not an attempt to circumvent the requirements of the *Code*.

[6] The appellant believes that the direction was not required because it has an impeccable record of compliance with all rules and regulations, specifically with Part II of the *Code*. The appellant is of the opinion that the direction was issued following friction with the ministerial delegate at a meeting that took place on July 6, 2018.

[7] The appellant asks that the direction be rescinded.

Analysis

[8] Subsection 146.1(1) of the *Code* sets out the authority of an appeals officer when a direction issued by a ministerial delegate is appealed:

146.1(1) 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;

[9] In order to determine whether I will vary, rescind or confirm the direction issued by the ministerial delegate on May 3, 2019, I must first determine whether the appellant was in contravention of section 9(1) of the *Policy Committees, Workplace Committees and Health and Safety Representatives Regulations (Regulations)*.

[10] Paragraph 135.2(1)(g) of the *Code* reads as follows:

135.2(1) The Governor in Council may make regulations:

(g) requiring a committee to submit an annual report of its activities to a specified person in the prescribed form within the prescribed time;

[11] Pursuant to paragraph 135.2(1)(g) of the *Code*, the Governor in Council enacted the *Regulations*. Section 9(1) of the *Regulations* reads as follows:

9(1) On or before March 1 each year, the chairperson selected by the employer members of the work place committee must submit to the Minister an annual report of the committee’s activities during the 12-month period ending on December 31 of the preceding year.

[12] What section 9(1) of the *Regulations* requires, is for an employer to produce an annual WPCR to the Minister on or before March 1st of each year. In the case at hand, the appellant acknowledges that it did not submit the annual WPCR by March 1, 2019.

[13] I am not convinced, as suggested by the appellant, that the direction was issued because there was friction between the ministerial delegate and the appellant during a meeting that occurred on July 6, 2018. A review of the information on file, including the ministerial delegate report, indicates that the direction was issued because the appellant had failed to produce its annual WPCR on time for two years in a row. The direction meant to correct the appellant’s conduct with respect to filling timely reports, as required by the statutory framework of the *Code*. It is my conclusion that the appellant has contravened section 9(1) of the *Regulations*.

[14] In light of this contravention, the ministerial delegate directed the appellant to terminate the contravention no later than May 17, 2019, pursuant to section 145(1)(a) of the *Code*. Section 145(1) of the *Code* reads as follows:

145 (1) If the Minister is of the opinion that a provision of this Part is being contravened or has recently been contravened, the Minister may direct the employer or employee concerned, or both, to

(a) terminate the contravention within the time that the officer may specify; and

(b) take steps, as specified by the officer and within the time that the officer may specify, to ensure that the contravention does not continue or re-occur.

145 (1) S’il est d’avis qu’une contravention à la présente partie vient d’être commise ou est en train de l’être, le ministre peut donner à l’employeur ou à l’employé en cause l’instruction :

a) d’y mettre fin dans le délai qu’il précise;

b) de prendre, dans les délais précisés, les mesures qu’il précise pour empêcher la continuation de la contravention ou sa répétition.

[Je souligne]

[my underlining]

[15] On its face, section 145(1) of the *Code* gives the Minister the power to direct an employer to a) terminate a contravention of Part II of the *Code*; and b) take steps to ensure that a contravention does not continue or re-occur. The wording of section 145(1) does not preclude the Minister from doing one *or* the other. In order to give this particular section a logical interpretation, the conjunction “and” after paragraph 145(1)(a) must be read in a disjunctive way in order to give the Minister the power to issue a direction to an employer

under paragraph 145(1)(a), 145(1)(b), or a combination of the two paragraphs. The absence of the word “*et*” from the French version of the provision reproduced above supports this interpretation of the relationship between the *chapeau* of section 145(1) and the paragraphs that follow. If the Minister is of the opinion that a provision of Part II of the *Code* is or has recently been contravened, she may direct the employer to terminate the contravention, to take steps to ensure the contravention does not continue or reoccur, or both.

[16] In the case at hand, the appellant had not submitted the 2018 annual WPCR before March 1, 2019, and had therefore recently been in contravention of the *Code* and *Regulations*. This was a second failure by the appellant to submit the WPCR in a timely fashion. The ministerial delegate informed the appellant of the violation on April 23, 2019. The appellant terminated the contravention later that same day by submitting its 2018 WPCR. The ministerial delegate was made aware of the appellant’s compliance on May 2, 2019, but nonetheless opted to issue the direction on May 3, 2019 that is now the subject of this appeal.

[17] The direction issued by the ministerial delegate to take steps to ensure the violation does not reoccur is well founded. Section 145(1) of the *Code* allows the Minister to issue a direction if a provision of Part II of the *Code* is, or has recently been, contravened. It was therefore within the ministerial delegate’s powers to issue the direction on May 3, 2019, although the contravention had happened in the past and was not ongoing.

[18] However, the ministerial delegate had no basis to direct the appellant to terminate a contravention that was not ongoing. It appears to me to go beyond what was necessary in this case to direct an employer to terminate a contravention that had already been terminated at the time the direction was issued. When a provision of Part II of the *Code* has recently been contravened, the Minister has the power to direct the employer to take steps to ensure that the contravention does not re-occur.

[19] Since the contravention was already terminated when the ministerial delegate issued the direction, I will use the discretion conferred upon me to vary the direction in order to remove the reference to section 145(1)(a) of the *Code* and the compliance date of May 17, 2019. The varied direction is attached to these reasons.

Decision

[20] For the above reasons, the direction is varied.

Ginette Brazeau
Appeals Officer

Occupational Health
and Safety Tribunal Canada



Tribunal de santé et
sécurité au travail Canada

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

VARIED DIRECTION TO THE EMPLOYER UNDER SUBSECTION 145(1)

On April 23, 2019, Ms. Michelle Sterling, in her capacity as official delegated by the Minister of Labour, conducted an investigation in the work place operated by Rosedale Transport Limited, being an employer subject to the *Canada Labour Code* (the *Code*), at 3960 Commerce Road, London, Ontario, N6N 1P8, the said work place being sometimes known as Rosedale Transport. The said official delegated by the Minister of Labour was of the opinion that the following provisions of the *Code*, had been contravened:

Section 135.2(1)(g) - *Canada Labour Code*

Section 9(1) – *Policy Committees, Workplace Committees and Health and Safety Representatives Regulations*

The employer failed to submit the Work Place Committee Report to the Minister by March 1, 2019 for the activities of the committee during the 2018 calendar year.

Following an appeal brought under section 146 of the *Code*, the undersigned appeals officer conducted an inquiry pursuant to section 146.1 of the *Code* with respect to the direction issued. As a result of her inquiry, the undersigned appeals officer is of the opinion that the above mentioned provision has been contravened.

Therefore, you are **HEREBY DIRECTED**, pursuant to section 145(1)(b) of the *Code*, to take steps to ensure that the contravention does not reoccur.

Varied at Ottawa, this 6th day of November 2019.

Ginette Brazeau
Appeals Officer