

Occupational Health
and Safety Tribunal Canada



Tribunal de santé et
sécurité au travail Canada

Date: 2020-01-30
Case No.: 2019-08

Between:

Menzies Aviation Fuelling Canada Ltd., Appellant

Indexed as: *Menzies Aviation Fuelling Canada Ltd.*

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 confirmed

Decision rendered by: Mr. Jean-Pierre Aubre, Appeals Officer

Language of decision: English

For the appellant: Ms. Melissa Ryan, Human Resources Generalist,
Menzies Aviation Fuelling Ltd.

Citation: 2020 OHSTC 1

REASONS

[1] This appeal has been brought pursuant to subsection 146(1) of the *Canada Labour Code* (*Code*) by Menzies Aviation Fuelling Canada Ltd. (Menzies or the appellant), challenging a direction issued by an official delegated by the Minister of Labour (ministerial delegate), Peter Mahase, on February 8, 2019. The direction was issued at the conclusion of the latter's investigation into a hazardous occurrence that took place on July 16, 2018, at Toronto Pearson International Airport. That occurrence involved the rollover of a fuel truck operated by Menzies, resulting in disabling injuries to the driver of the truck (Mr. Senthuran Sivapalan).

[2] Upon conclusion of his investigation into the occurrence, the ministerial delegate issued a direction to the appellant identifying three contraventions pursuant to subsection 145(1) of the *Code*.

[3] The direction reads:

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

On July 16, 2018, the undersigned Official Delegated by the Minister of Labour conducted an investigation in the work place operated by MENZIES AVIATION FUELLING (CANADA) LTD., being an employer subject to the *Canada Labour Code, Part II*, at 5600 Silver Dart Dr, PO BOX 6058 AMF, Mississauga, Ontario, L5P 1B2, the said work place being sometimes known as Menzies Aviation Fuelling Canada Ltd..

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)(q) – Canada Labour Code Part II,
Subsection 14.23(1)(c) - Canada Occupational Health & Safety
Regulations**

An employee driving a fuel truck identified as T55 (VIN: 2FZHCHCS63ALO3236) has not been trained on its safe operation specific to speed factors in a curve or how to prevent a truck rollover.

No. / No: 2

**Paragraph 125.(1)(k) – Canada Labour Code Part II,
Subsection 14.29(1) - Canada Occupational Health & Safety
Regulations**

A fuel truck identified as T55 (VIN: 2FZHCHCS63ALO3236) that created a health and safety hazard due to several mechanical deficiencies was not taken out of service.

No. / No: 3

Paragraph 125.(1)(k) – Canada Labour Code Part II, Subsection 14.29(2) - Canada Occupational Health & Safety Regulations

A Pitman arm modification on fuel truck T55 (VIN: 2FZCHCS63ALO3236) did not maintain safety factor of the original.

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 February 22, 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 Mississauga, this 8th day of February, 2019

[signed]
Peter Mahase
Official Delegated by the Minister of Labour
Health and Safety Officer

[4] The first contravention, based on paragraph 125(1)(q) of the *Code* and paragraph 14.23(1)(c) of the *Canada Occupational Health and Safety Regulations (Regulations)*, is not the object of the present appeal. The other two contraventions under appeal identify a violation of paragraph 125(1)(k) of the *Code* and, respectively, subsections 14.29(1) and (2) of the *Regulations*. Paragraph 125(1)(k) of the *Code* states that it is an obligation for the employer of an employee(s) to ensure that the vehicles and mobile equipment used by the employees in the course of their employment meet prescribed standards. Both contraventions are based on the unchallenged conclusion by the ministerial delegate that the type of vehicle involved in the accident, an airplane fuelling truck not authorized to circulate on public roads, could be considered a motorized materials handling equipment.

[5] No party has sought to act as respondent in this case and, as a result, the undersigned opted to call the ministerial delegate to testify at the hearing. The appellant called two witnesses, Mr. Brian Keys, a Menzies maintenance supervisor, and Stephen Christopher Missuna, a Menzies engineering technician. The employee who was driving the truck involved in the occurrence was not called to testify, nor was the independent mechanic who examined the vehicle after the accident and provided a report on the state of the vehicle to the ministerial delegate and the appellant, the said report anchoring the decision of the ministerial delegate to issue the direction under appeal.

Background

[6] The appellant is a federal undertaking whose activities involve the fuelling or refuelling of aircraft. For that purpose, it operates a fleet of fuel trucks at the Toronto Pearson International Airport, one of those vehicles (T55) having been involved in the workplace hazardous

occurrence that is at the root of the present appeal, since it led to the investigation and the issuance of the direction mentioned above.

[7] The circumstances of the hazardous occurrence are quite simple, clearly described in the ministerial delegate's investigation report, and are not contested. As such, on July 16, 2018, a hazardous occurrence at Toronto Pearson International Airport was reported to Employment and Social Development Canada's Labour Program by a member of Peel Regional Police. It involved a vehicle and an employee of the appellant. Employee Senthuran Sivapalan, the driver/fueller, was interviewed by the ministerial delegate. The investigation report as well as the ministerial delegate's testimony indicate that Mr. Sivapalan was operating Menzies fuel truck T55 (a 2002 Sterling Acterra with 146,919 km on the odometer) on July 16, 2018. He had finished fuelling an aircraft at the Federal Express (Fed Ex) airport apron and proceeded to drive the said truck away from the aircraft to a staging area to wait for another flight to service. Doing so, he followed a marked laneway to the staging area and attempted to manoeuvre the truck to face the aircraft. The employee thus attempted to make a left-hand U-turn and the truck rolled on its right side. Interviewed by the ministerial delegate after the fact, the employee who was driving the truck stated that he was turning the truck left to face the aircraft when it began to tip over on its right side. It would appear that he attempted to correct the steering wheel but it was stuck (locked) and could not be turned to the right.

[8] As stated above, the ministerial delegate was called to testify by the Tribunal and essentially reiterated the information in his investigation report. Ministerial Delegate Mahase established that he has been an occupational health and safety officer for three years and has received all requisite training for Part II of the *Code*, particularly with respect to accident investigation, industrial health and fire safety training and interviewing skills. A part of his duties involves responding to notices of hazardous occurrences and this is how he came to conduct an investigation in the present case.

[9] Upon his arrival on scene, the ministerial delegate was escorted to the air side of the airport where he saw the fuel truck on its right side, and he was met there by the air side safety officer for the airport. That person had apparently been first on site and had taken a statement from the driver, which he passed on to the ministerial delegate.

[10] Ministerial Delegate Mahase took numerous pictures of the vehicle, that being part of the investigation report in evidence, as well as a number of video sequences, also in evidence. He instructed employer Menzies to secure and tag-out (take out of service) the truck and have it towed to its tank farm. He also requested that the appellant provide a number of documents (maintenance and training records, operator manual, tanker rollover training and minutes of the work place committee meetings for the last six months) as well the Fed Ex surveillance videos of the area where the incident occurred.

[11] In the course of his interview of the driver on July 18, 2018, two days after the occurrence, the driver indicated that he believed there was a mechanical issue with the steering system of the fuel truck. He stated that the steering wheel locked when fully turned to the left in order to make a U-turn, that the vehicle began tipping to the right and he could not bring back the

steering wheel to a straight line position and thus applied the brakes, with the fuel truck then rolling over on its right side.

[12] When the ministerial delegate reviewed the truck operator manual, he noted that, in a warning under the title "Power Steering System", it indicated that at low speed or when making sharp turns (such as a U-turn), greater effort would need to be expended to turn, even with the power steering. In the ministerial delegate's opinion, this information did not entirely align with the driver's statement. The ministerial delegate examined the vehicle but is not a licensed mechanic and thus eventually sought that the appellant obtain an assessment of the vehicle from an independent mechanical expert source. The services of such a mechanic were obtained by the appellant at the request of the ministerial delegate. The inspection was conducted by employees of Mississauga Bus, Coach and Truck Repairs Inc. (Messrs. Persaud, Inspecting Technician, and Varasammy, Licensed Mechanic) between September 20 and 21, 2018, and a total of 21 deficiencies were identified.

[13] The ministerial delegate attended part of the independent vehicle inspection that lasted eight hours and thus has direct knowledge of the findings by the inspecting mechanic. It appears that Mr. Mahase was also presented with a list of mechanical deficiencies of the vehicle. At testimony, the ministerial delegate indicated having been recalled to the site of the inspection to observe a major deficiency, consisting of the Pitman arm making contact with the inner front bumper frame when the wheel was turned entirely to the left, a situation consistent with performing a U-turn. Mr. Mahase was shown by the mechanic that the inner front bumper had been modified, cut out (as per photographs in evidence) to accommodate the Pitman arm and that the latter was not an original equipment part.

[14] According to the ministerial delegate, the mechanic showed him that, even with such modification, there was still contact when the wheel was fully turned. He was also provided by the mechanic with a drawing (sketch) of an original Pitman arm showing a slight bend at one end, with the comment that "according to the breakdown the Pitman arm looks different" from the one on the T55 truck, which has no such bend. Ministerial Delegate Mahase thus accepted and shared the opinion of the inspecting mechanic that the Pitman arm on the vehicle was not the same as an original part, and that the truck frame or bumper mount had been modified, as shown by photographs in evidence. This modification was made to fit the part, something that was not achieved entirely since, when steering fully to the left, a situation consistent with a U-turn, there was still contact, as demonstrated to the ministerial delegate by the mechanic at the time of the inspection and as is made evident by a video in evidence. It was the inspecting person's opinion, passed on to the ministerial delegate, that the Pitman arm impacting the frame could interfere with steering operations, as the ball joint could hang up on the frame, rendering this consistent with the driver's statement of steering lock, as the steering wheel would have been turned to the left in making a U-turn. Having shown the ministerial delegate that a piece of the frame had been cut out to accommodate the movement of the Pitman arm, the inspecting mechanic deemed the said Pitman arm not to meet original manufacturer equipment specifications.

[15] At the conclusion of the inspection, the mechanic, Mr. Varasammy, provided Ministerial Delegate Mahase with an inspection report which is part of the ministerial delegate's investigation report filed, and which confirmed, in addition to other deficiencies,

that the Pitman arm on truck T55 was not a manufacturer's original equipment part. He provided the ministerial delegate with a printed sketch of an original Pitman arm from a parts provider showing the shape of an original with a bend at one end, a characteristic not present on the Pitman arm on T55, as is evident from the photos collected by the ministerial delegate and which form part of the evidence. The said inspection report, signed by both Mr. Persaud and Mr. Varasammy, that the inspector "found front bumper modified for new Pitman arm" and, as testified to by the ministerial delegate at the hearing, indicated that the Pitman arm on T55 was not aligned correctly and, as a result, was striking a structural component of the front bumper/frame, even though the said component had a piece cut out to accommodate the misalignment. On its reverse side, as part of the list of identified deficiencies, the report indicates the following:

19. Frame cut for [P]itman arm movement (arm hooks on frame) steering ball joint hangs up
20. Front bumper left side bumper mounts loose (bumper dropped)
21. Pitman arm has been replaced

[16] When questioned by the appellant, Ministerial Delegate Mahase recognized that he had been the one requiring that the inspection be conducted by an independent qualified mechanic retained by the employer, but that he had not sought to see the mechanic's credentials, although he was provided verbally with information as to the latter's experience. Furthermore, he was informed by the licensed mechanic as to the extent of an inspection in the case of a rollover, which would involve the following items: ABS system, brake components and system, complete steering system, structure failure, engine ECM upload, suspension, wheels inflation, stabilizers and anti-roll bar, load dynamics, logistics surfaces.

[17] The ministerial delegate also recognized that when meeting with the mechanic, the latter could not distinguish the condition of the vehicle before and after the accident, that two months had elapsed between the accident and the actual inspection on September 20, 2018, and that he could not say if the rollover had caused the damage to the truck bumper. Also, he recognized that a different diagram taken out of the owner's manual appeared to show a straight Pitman arm, although the diagram's purpose was to illustrate "steering gear fasteners" and not a Pitman arm *per se*. In the end, Ministerial Delegate Mahase reiterated that the inspecting technician report concluded that the "front bumper [was] modified for new Pitman arm" and that the photographs provided in the ministerial delegate's investigation report, as well as a video, showed contact between the Pitman arm and the bumper mount, even where modified, when fully steering left. The video also shows that when such contact occurs, the bumper mount does move slightly.

Issue

[18] The issue that I have to determine in the present appeal is whether the direction issued by the ministerial delegate identifying contraventions of paragraph 125(1)(k) of the *Code* and subsections 14.29(1) and (2) of the *Regulations* is well founded.

Appellant's Submissions

[19] The appellant's submissions are built on two arguments that derive from the testimony of its two witnesses, those being Menzies maintenance supervisor Brian Keys and Menzies engineering technician Stephen Christopher Missuna.

[20] Mr. Keys put forth that there were no modifications made to the vehicle, that it had been examined shortly before the accident as part of the employer's monthly preventative maintenance program, that all deficiencies identified by the independent inspecting technician would have resulted from the accident itself, that there had been no indication of a steering problem at the time of the monthly employer inspection (although no road test had been conducted) and that, having looked at the Pitman arm on truck T55, it was the same as for the two other Sterling sister trucks in use at Menzies. Mr. Keys could not say, however, whether the steering mechanism at issue had been tested or examined during maintenance. He stated that when parts need to be changed, they are ordered from the vehicle manufacturer and are thus manufacturer original parts. As for the "loose" bumper or bumper mount, Mr. Keys noted that condition when examining the vehicle after the accident and offered the opinion that it was the result of the rollover, as was every other deficiency noted by the inspecting mechanic.

[21] Testimony by Mr. Missuna was to the effect that speed, combined with a turning radius that was too short, was the main factor in the vehicle rollover. The conclusion of the witness was based on data retrieved from the vehicle's engine control module (ECM), data not obtained by Ministerial Delegate Mahase, which Mr. Missuna claimed showed the truck travelling at 35 km/h at the time of the accident. Based on the turning radius demonstrated by the skid marks of the vehicle, a radius measured at 10 metres, Mr. Missuna calculated that a turning speed of 20 km/h would not have caused a rollover, but that at 35 km/h a turning radius of at least 30/31 metres was necessary to avoid such an accident. It was thus the witness's opinion that such a combination of turning radius and speed would have been a very important factor in the accident, all other matters being equal and there being no deficiency in the vehicle. He could not, however, offer a conclusive opinion that this had been the cause of the rollover, and he did not formulate any opinion about deficiencies of the vehicle.

[22] It is the position of the appellant that there were no modifications to the Pitman arm on the vehicle T55 involved in the accident, and that the deficiencies identified by the mechanic who inspected the vehicle after the accident were a direct result of the accident and not a cause thereof.

[23] One of the post-incident deficiencies identified by the inspecting mechanic was a "hanging bumper" which the ministerial delegate stated had not, "to the best of his knowledge", been reinstated prior to testing. It is put forth by the appellant that if, in fact, the bumper had not been reinstated, it would not only cause the loose bumper to make contact with the Pitman arm, but would also make it difficult to test the turning ratio with the bumper out of place. In this regard, the appellant contends that there is no evidence to support contact prior to the incident as neither the Pitman arm nor the bumper or bumper mount had any visible "rub/wear" damage. As to the front bumper or front bumper mount "cut out" noted by the undersigned in the course of the hearing, the appellant submits that the "cut out" was made at the time of manufacturing and was part of the process to accommodate the rerouted exhaust for specialized equipment, such as the T55 truck, that runs under and near aircraft engines. The appellant submits that the purpose

of such a "cut out" is not to make room for a modified Pitman arm and that all equipment and parts purchased by the employer are OEM (Original Equipment Manufacturer) and obtained directly from the dealer.

[24] Referring to exhibit E-3, which shows side-by-side photos of two different vehicles that the appellant describes as "sister" trucks, one involved in the accident (T55) and a second one said to be on site in working order (T54), the appellant submits that the Pitman arms in both are identical. He notes, however, that in the case of the vehicle involved in the accident, the photo was taken when the truck was still on its side at the scene of the accident whereas in the case of the "sister" vehicle, the picture was taken with the truck in the upright position, thus from a different angle.

[25] The appellant agrees with the reported statement by the driver involved in the accident to the effect that it proved impossible for the latter to counter-steer the vehicle once into the left-hand turn. However, the appellant maintains the view that this cannot be linked to the Pitman arm issue, but rather to the "escalated" rate of speed at which the truck was travelling in making the turn, a factor to which would be added the effect of a quarter tank full of sloshing fuel, the combined effect resulting in the vehicle tilting on the tires' side walls, making it impossible for the driver to make any correction to his rate of speed and turning ratio.

[26] The appellant is, consequently, of the opinion that a review of the facts would bring to a conclusion that the directions issued by the ministerial delegate are based on inconclusive elements. Furthermore, the appellant suggests that, while the ministerial delegate asked the inspecting mechanic to list "everything" that was wrong with the vehicle; this list did not distinguish between pre and post-accident deficiencies. As to the maintenance record that precedes the accident, this being part of the evidence and having also been received by the ministerial delegate, the appellant draws particular attention to the fact that those records make no mention of a loose or hanging bumper, as well as to the absence of any trace of the bumper making contact with the Pitman arm.

[27] It is the conclusion of the appellant that, given the above, the direction issued by Ministerial Delegate Mahase should be found without merit and rescinded.

Analysis

[28] It needs to be pointed out when first considering a decision in this matter that examination of the contraventions identified by the ministerial delegate in his direction is not contingent on finding that any one was the cause of the accident. It is important to note that, while he may have commented that the violations to the *Code* and its *Regulations* on which the direction under appeal is based may have been a factor or factors in the rollover occurring, Ministerial Delegate Mahase never offered the opinion or conclusion that there was a direct causal link between the contraventions and the rollover accident and thus my consideration of the validity of the direction needs to be, and has effectively been, conducted independently of this occurrence, while recognizing that the actual occurrence of the rollover would have been the triggering point of the investigation by the ministerial delegate. I am reinforced in this position by the wording of one of the *Code* provisions that form the basis

of the contraventions in the direction being appealed, paragraph 125(1)(k), which speaks of the vehicles or mobile equipment themselves meeting prescribed standards and not their use needing to meet prescribed standards.

[29] The undersigned also wants to note that, while an important part of the evidence submitted by the appellant at the hearing centered on the speed of the vehicle and its turning radius at the site of the accident, such evidence is of no relevance to the consideration of the contraventions under review at appeal, those being that: (1) fuel truck T55, which created a health and safety hazard due to several mechanical deficiencies was not taken out of service, and (2) a Pitman arm modification on the said fuel truck did not maintain the safety factor of the original.

[30] It is also important to note that, while a major part of the appellant's case does, in fact, challenge the conclusions arrived at by the independent inspecting mechanic/firm Menzies itself retained to conduct the inspection, the appellant did not see fit to actually call the inspecting mechanic/firm to testify, so as to actually seek to put the latter at odds or in contradiction with the inspection conclusions, nor to call to testify the driver/fueller involved in the accident, leaving the undersigned to decide this matter essentially on the evidence drawn from the Ministerial Delegate's report and testimony, save for the statements by the witness Keys. Having said that, it is noted that the ministerial delegate has himself recorded the driver statement and, more importantly, has attended the inspection and been made privy in person to the conclusions of the inspecting mechanic.

[31] Arriving at a determination in the present case does not entail consideration of questions of law and can be arrived at solely on evaluating the facts before the undersigned, assessing all of the evidence, and applying the usual criterion of balance of probabilities.

A) Contravention No. 3: The Pitman arm modification on fuel truck T55

[32] Regarding the contravention concerning the Pitman arm modification, the entire argument by the appellant is that it uses only original manufacturer's parts, that all its vehicles of the same model are identical (see picture of sister truck T54) and that what may appear as differences between vehicles is explainable by the different angles at which the comparative photos were taken. The applicant adds that what is referred to as the front bumper cut out on T55, presented as having been made to accommodate for additional room for a modified or different Pitman arm, was made during the manufacturing process to accommodate a rerouted exhaust.

[33] I have considered these claims and all the evidence emanating from the report and the testimony by Ministerial Delegate Mahase, as well as that which was offered at the hearing by the appellant, particularly a comparative photo (E-2) of the truck involved in the accident with what is described by the appellant's witness, Keys, as a "sister" truck (T54). It needs to be clarified here that, contrary to what was claimed by the appellant, many of the photos and videos taken at the investigation of the Pitman arm and its functioning on truck T55 were taken while the vehicle was on its wheels, including at the site of the independent inspection.

[34] I consider that the entirety of the evidence, including that provided by the appellant (side-by-side photo), leads me to conclude that the Pitman arm on T55 at the time of the accident and the inspection was not the proper part for the model and that, as such, represented a modification or replacement part that did not maintain the safety factor of the equipment. I have come to this conclusion not only based on the conclusions of the inspecting mechanic, untested at hearing, but also on the basis of the actual cut out to the structural component that is the frame/bumper mount to accommodate realignment, this not preventing contact, in my opinion, regardless of the looseness or not of the mount, as shown on video and photos in evidence, which, contrary to claims by the appellant, were also made or taken when the vehicle was back on its wheels.

[35] My conclusion is also based on my own examination of the side-by-side photos (E-3) of the so-called sister trucks where, contrary to the claim of similarity between the two Pitman arms, there is an easily perceivable difference in the case of sister truck T54, with one end appearing indented and no part of the frame/bumper mount being cut out. This also leaves no credibility to the appellant's claim that the cut out on T55 had been made at manufacturing to accommodate exhaust rerouting, since on T54 the exhaust pipe is easily seen as passing under the uncut mount, whereas on T55, the exhaust pipe is seen on that photo and others as directed to the other side.

[36] The only conclusion that the photo (E-3) allows is that there is a similarity between the Pitman arms on T55 and T54, not that the part is the proper, manufacturer's original, as claimed by witness Keys' simple statement that the appellant only uses original manufacturer's parts.

[37] To arrive at the conclusion sought by the appellant in this regard would have required much more evidentiary-wise and certainly to have the inspecting mechanic retained originally by the appellant, whose conclusion is diametrically opposed to that of the appellant, called to testify and put in contradiction with his conclusion. That did not occur and, on balance, I am of the view that the mechanic's conclusion, demonstrated to the ministerial delegate *in persona* with supporting documentation, needs to be retained. Doing so, I also remain cognizant of the recorded statement by the driver that was given to the ministerial delegate in the course of the latter's investigation. This statement is part of the evidence, has been listened to by the undersigned, and his statement regarding the presence of a mechanical deficiency was never tested at the hearing.

B) Contravention No. 2: The fuel truck T55 that created a health and safety hazard due to several mechanical deficiencies was not taken out of service.

[38] As to the second contravention noted in the direction and which concerns mechanical deficiencies that would result in T55 creating a health and safety hazard that would have required the vehicle to be taken out of service, I am of the opinion that my finding relative to the Pitman arm above represents such a mechanical deficiency, this deficiency being present on the vehicle prior to the accident. While I agree, however, with the position of the appellant that other deficiencies may have resulted from the accident as opposed to preceding it, I am not of the view that it is the case for all of the deficiencies listed in the inspecting mechanic's report. While one can readily accept without question that damage to the right

side, door and mirror of the vehicle may have been the result of the rollover, this is not the same for a number of other deficiencies that appear on the list and attest to considerable wear and tear to the equipment that is less than likely to have appeared with the accident.

[39] I also recognize that the independent inspecting mechanic was not in a position to distinguish between what existed prior or as a result of the accident, but the latter was never called to testify by the appellant and, therefore, his conclusions never tested or explained. This being said, the sole evidence in this regard, apart from a number of maintenance reports that are part of the ministerial delegate's report, is the last maintenance report that preceded the accident and the submission by a witness for the appellant that the employer has a preventative maintenance program in place that sees the trucks examined once a month. In the case of T55, the last maintenance appears to have occurred thirteen days prior to the accident. That report was filed as evidence and bears the signature and initials of two individuals. However, neither was called to testify regarding their conclusions that essentially everything was OK with the vehicle and to explain the how and extent of the said preventative maintenance, information that could have led the undersigned to align himself with the claims and conclusions of the appellant. The undersigned can only arrive at a conclusion on the basis of a claim by a person who did not proceed to such maintenance and whose sole claim in regard to the second contravention is that the employer has a preventative maintenance program and that all the deficiencies must be the result of the accident. On balance, this is insufficient to bring the undersigned to determine that the conclusion by the ministerial delegate that a contravention occurred is unfounded, as claimed by the appellant.

[40] This being said and in light of my conclusions above, I find that the direction issued by Ministerial Delegate Mahase concerning the two contraventions previously noted is well founded and the appeal is dismissed.

Decision

[41] For these reasons, I confirm the direction issued by Ministerial Delegate Peter Mahase on February 8, 2019.

Jean-Pierre Aubre
Appeals Officer