

CANADA LABOUR CODE{PRIVATE }  
PART II  
OCCUPATIONAL SAFETY AND HEALTH

Review under section 146 of Part II (formerly section 103 of Part IV)  
of the Canada Labour Code of a direction issued by a safety officer

Applicant: Loomis Armoured Car Service Ltd.  
Ottawa, Ontario

Interested Party: Canadian Brotherhood of Railway, Transport  
and General Workers (C.B.R.T. & G.W.)  
Local 266A

Before: G.R. McKnight  
Regional Safety Officer

This matter resulted from an investigation following a request for assistance concerning the working procedures used by Loomis employees. The matter did not arise out of a refusal to work because of danger.

**Background**

1. On June 1, 1987, Safety Officer Jacques C. Robert of Labour Canada directed Loomis Armoured Car Service Ltd. (Loomis), 22 Pretoria Avenue, Ottawa, Ontario, pursuant to paragraph 102(2)(a) of Part IV of the Canada Labour Code, to  
  
"take measures immediately:
  - (a) to ensure that in cases where an armoured vehicle with a two-person team is dispatched to carry out the business of the employer, that the vehicle should be parked in such a way as to ensure that the driver of the vehicle is able to keep the messenger in constant visual eye contact while the messenger is carrying out his duties; or
  - (b) to provide a three-man team with instructions that the third person keep the messenger in constant visual contact at all times."
  
2. Safety Officer Robert's intervention in this matter resulted from a request for assistance from Mr. Glen Proulx, President of Local 266A of the Canadian Brotherhood of Railway, Transport and General Workers (C.B.R.T. & G.W.). Mr. Proulx advised that Loomis had recently implemented a practice in the Ottawa area of dispatching two-person crews on certain armoured car runs. The norm had been three-person crews.

3. On May 7, 1987, Safety Officer Robert observed a Loomis two-person crew (consisting of a driver and a messenger) in operation at a shopping centre in Ottawa. He noted that the driver remained in the vehicle, and the messenger entered the building alone and returned some 14 minutes later. During all of this period, there was no visual or other contact between the messenger and the driver.
4. On May 11, 1987, five employees of Loomis exercised their right under the Code to refuse dangerous work (i.e. being dispatched on two-person crews). Safety Officer Robert responded, and ruled that no danger was present since the employees had refused to work at the company's terminal, and the alleged danger was elsewhere. Loomis' local manager resolved the problem by agreeing to add a third person to the various crews.
5. On the following two days, employees again exercised their right-to-refuse dangerous work, and on each occasion the matter was resolved, without Labour Canada intervention, by the local manager adding a third person to the crews.
6. On the basis that this scenario would likely be repeated daily, and would eventually require a Safety Officer decision, it was decided that Safety Officer Robert should bring the parties together to attempt to resolve the matter. A meeting took place on May 14, 1987. In attendance were Mr. Proulx from the C.B.R.T. & G.W., Messrs Archambault, Waterson and McKeen from Loomis, Safety Officer Robert, and Simon Potvin, District Manager, Capital Region, Labour Canada. Mr. Proulx maintained his concerns that the reduction to two-person crews on certain runs was an unsafe situation for the messenger who proceeded outside of the armoured vehicle with no back-up or observer protection. The Loomis representatives maintained that the crew-size reduction was an economic necessity to match their competition in a highly-competitive, labour-intensive industry. Their view was that, on the runs selected for two-person crews, the situation was not unsafe. At Safety Officer Robert's request, Loomis agreed that they would maintain three-person crews for a period of time during which an investigation would be undertaken.
7. Following his investigation, Safety Officer Robert advised the parties verbally, by a combined meeting and teleconference on June 1, 1987, that it was his decision that a direction would be issued to Loomis to the effect that two-person crews would be acceptable only where the armoured vehicle driver could maintain the messenger in constant visual contact, and that three-person crews would be required where constant visual contact was not possible. The formal direction was issued to Loomis on that same date.

### **The Employer's Position**

8. Loomis made written submissions on three occasions, in each case from their legal representative, Alan J. Hamilton of Farris, Vanghan, Will & Murphy of Vancouver by letter dated June 8, 1987 (which requested this review), by letter dated July 21, 1987 and by letter dated May 4, 1988. Copies of all submissions were provided to the C.B.R.T. & G.W.

9. The essence of Loomis' position is that the evidence that the Safety Officer had before him at the time he issued the direction did not support his conclusion. Their position is that the fact that the messenger was alone for fourteen minutes in a shopping centre does not, in itself, constitute a danger, and the Safety Officer had no evidence to show or lead him to conclude that the messenger was, at any time during his fourteen-minute assignment, actually exposed to danger.
10. Loomis also submitted that their proven history and record, in terms of number of hold-ups, injuries and deaths had been comparable to or better than, those of its competitors. The practice of assigning two-person crews, after appropriate assessment of risk by expert personnel of the danger at diverse customer establishments, had become an industry standard, and requiring only Loomis to use three-person crews put them at a competitive disadvantage.
11. Loomis was of the view that the Safety Officer did not take into account the diversity of the customers served by Loomis, and the varying degrees of risk associated with those customers' establishments. The nature of the customer, the nature of the property entrusted to Loomis and the nature of the internal security procedures operated by the customer are all factors in the decision to constitute two- or three-person crews.
12. Loomis also submitted that the Safety Officer did not appear to have considered other alternatives to his direction, such as their practice of supplying a roving guard to attend at various customer premises to provide support to messengers, or communication devices which would allow the driver to remain in contact with the messenger.

### **The Union's Position**

13. The union representing Loomis' employees in Ottawa, the Canadian Brotherhood of Railway, Transport and General Workers (C.B.R.T. & G.W.), was invited and did make written submissions on this matter, on at least two occasions, by letters dated July 21, 1987 and May 13, 1988. Copies of these submissions were provided to Loomis.
14. The C.B.R.T. & G.W. submitted that the change to two-person crews, which Loomis had instituted a short time prior to the direction from Safety Officer Robert, was undertaken for economic reasons only, and without regard for safety factors. They disputed that Loomis undertook risk assessments of customer establishments, or that they had a roving guard practice in effect.
15. The union was also of the view that communications devices had not been proven to be very effective, especially in concrete buildings. They also stated that radio equipment on Loomis vehicles did not function well. In addition, they felt that training at Loomis was minimal (four hours of handgun training by the Ottawa Police Department, and then on-the-job learning as a regular crew member).
16. The C.B.R.T. & G.W. submitted that two-person crews are an unnecessary risk to human lives. They also stated that police departments in the Ottawa-Carleton area unanimously agreed that "running two man crews is only inviting trouble".

17. Submissions were also received gratuitously from a number of other unions and employee representatives. Those submissions were both for and against allowing two-person crews. One employer in the industry also made a submission, in favour of requiring three-person crews.

### **Considerations**

18. A considerable period of time has passed since the matters giving rise to this review took place -- some six years since the direction, and over five years since the last submissions were received. This delay has been a source of concern and uncertainty for a number of interested parties, not the least of which have been Labour Canada Safety Officers faced with having to decide on refusals-to-work in the armoured car industry.
19. The delay, however, has not been a situation of neglect, nor reluctance to make a decision. It has, rather, provided an opportunity to seek experience and reflect on a matter of considerable consternation for occupational safety and health (OSH) practitioners, i.e. how many people does it take to safely and in a healthy manner carry out a task, perform a function, etc. Labour Canada and, no doubt, other OSH regulators, have been requested on a number of occasions to make rulings on this issue. To the knowledge of this reviewer, Labour Canada has declined on every occasion to do so, on the basis that no one knows better the answers to those questions than the parties in the workplace. The efforts, therefore, have been towards assisting the parties to make those decisions.
20. Over the last several years, a number of decisions have been made relating to the issue of crew size in the armoured car industry, by Safety Officers (in cases of refusal-to-work because of danger), by Regional Safety Officers (reviewing directions issued by Safety Officers), and by the Canada Labour Relations Board (reviewing Safety Officer decisions). With one exception, which is currently the subject of reconsideration, the ultimate decisions have been that two-person crews, per se, are not a danger as defined in Part II of the Canada Labour Code. It should also be noted that the Newfoundland Department of Labour declined, in 1988, to investigate the safety of two- versus three-person crews at an armoured car company in that province, as had been requested by the union representing the employees. The Supreme Court of Newfoundland, Trial Division, upheld that position, in a decision on an application for an Order of Mandamus sought by the union (Newfoundland Association of Public Employees vs Her Majesty The Queen in Right of Newfoundland, 1988 St.J. No. 2803, dated October 23, 1989).

### **The Decision**

21. No one would disagree, I would venture, with the premise that persons employed in the operation of armoured cars are exposed to risks on a daily basis. In a recent decision, related to a review of a safety officer's decision in a refusal-to-work because of danger situation (Decision No. 916, dated February 4, 1992), the Canada Labour Relations Board noted that "the risk of robbery or assault is part of armoured car service

## **The Decision (Cont'd)**

employees' lives" (paraphrased). One can therefore conclude that danger is inherent in the operation of armoured cars, a situation which is recognized by the Code and which precludes employees from refusing to work solely because of the risk of robbery or criminal attack. However, one must also ask at what level or under which circumstances does this inherent danger become unacceptable?

22. To prepare them for this exposure to danger, it is reasonable to expect that armoured car service workers will be adequately informed, trained, supervised and provided with the proper equipment. Ensuring constant communication between the driver of the armoured vehicle and the messenger (i.e. visual, electronic or otherwise), combined with adequate training and the appropriate protective equipment, are key factors in reducing the risk. Other factors to be considered would no doubt include the type of client being served, the amount of valuables, the distance from the vehicle, the configuration of the client's premises or the route thereto, the security available from the client, etc.
23. All of these and other factors must weigh in the decision by the workplace parties as to the appropriate size of an armoured car crew for a given assignment. Hence, the size of the crew would have to be decided on a case-by-case basis, and only after having given consideration to the above-referred elements.
24. It is also a factor that communications devices have significantly evolved in terms of availability, reliability and cost since Safety Officer Robert's direction was issued in 1987.
25. In light of the evidence given to me, I have come to the conclusion that constant communication is essential to reducing the risk to an acceptable level, and it is therefore my decision that the direction issued to Loomis Armoured Car Service Ltd. on June 1, 1987, by Safety Officer Jacques Robert will be varied, as provided by subsection 146(3) of Part II of the Canada Labour Code, by replacing paragraphs (a) and (b) with the following paragraph:

**to ensure that employees while outside of the vehicle in the course of carrying out their duties are, at all times, in constant visual or audible contact with another employee or other person, such as a customer security representative, who is appropriately qualified.**
26. I would prevail upon Loomis and the C.B.R.T. & G.W., and indeed all workplace parties in the armoured car industry, to undertake discussions, through safety and health committees, to explore solutions for and resolve the issue of crew size. I suggest that the energy being devoted to convincing Government to intervene could be more usefully directed towards resolving the problem within the industry.

27. Decision issued at Ottawa, June 23, 1993.

G.R. McKnight  
Regional Safety Officer