

Tribunal de santé et  
sécurité au travail Canada



Occupational Health  
and Safety Tribunal Canada

Ottawa, Canada K1A 0J2

**Case No.: 2008-04**  
**Decision No.: OHSTC-09-06**

**CANADA LABOUR CODE**  
**PART II**  
**OCCUPATIONAL HEALTH AND SAFETY**

Canada Post Corporation  
*appellant*

and

Doreen J. Radcliffe  
*respondent*

and

Canadian Union of Postal Workers  
*Intervenor*

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February 12, 2009

**For the appellant**

Stephen Bird, Counsel

**For the respondent**

Heather D. Neun, Counsel  
Stan Guenther, Counsel

**For the intervenor**

Heather D. Neun, Counsel  
Stan Guenther, Counsel

- [1] This case concerns an appeal made on February 21, 2008, under the *Canada Labour Code, Part II (Code)*, subsection 146(1), by Stephen Bird, on behalf of Canada Post Corporation (Canada Post). The appeal was made against a direction issued on January 28, 2008, by health and safety officer (HSO) Betty Ryan.
- [2] On November 15, 2007, D. Radcliffe, a Rural and Suburban Mail Couriers (RSMC) helper, and Eric Christopher Adams, an RSMC, were working at the Canada Post depot in Parksville, British Columbia, when an occupational accident occurred resulting into a disabling injury to them.
- [3] Further to her investigation, HSO Marlene Yemchuk noted the following:
- the hazardous occurrence was not reported by Canada Post to a health and safety officer;
  - no hazardous occurrence investigation report was submitted by Canada Post to a health and safety officer.
- [4] On December 4, 2007, Andrew Johnston, safety officer with Canada Post, Pacific Division, told HSO Yemchuk that RSMC helpers are not considered employees of Canada Post. Therefore, D. Radcliffe not being a Canada Post employee, Canada Post was not bound by the requirements of the *Code* relative to reporting and submitting an investigation report to a health and safety officer with respect to D. Radcliffe's accident.
- [5] The on-going investigation was assigned to HSO Betty Ryan on December 7, 2007, because of the complexity of the case.
- [6] HSO Ryan conducted an analysis concerning D. Radcliffe's employer/employee relationship and concluded that RSMC helper D. Radcliffe is an employee of Canada Post for the purposes of the *Code*. Consequently, she requested Canada Post to investigate the hazardous occurrence and to send her a copy of the investigation report as prescribed under paragraph 125(1)(c) of the *Code* and paragraphs 15.8(1)(a) and 15.8(2)(b) of the *Canada Occupational Health and Safety Regulations (COHSR)*. She did receive an investigation report with respect to E. C. Adams but not one with respect to D. Radcliffe. As a result, she issued a direction to Canada Post on January 28, 2008. This direction reads in part as follows:

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. 1

Paragraph 125(1)(c) *Canada Labour Code Part II*, and paragraph

15.5(c) – Canada Occupational Health and Safety Regulations

The employer failed to report within 24 hours the hazardous occurrence that resulted in a disabling injury to two employees. This accident occurred on November 16, 2007 to Rural and Suburban Mail Carrier (RSMC) Eric Christopher, and RSMC helper Doreen (Jan) Radcliffe at Parksville, BC.

No. 2

Paragraph 125(1)(c) Canada Labour Code Part II, and paragraph 15.8(1)(a) – Canada Occupational Health and Safety Regulations

Canada Post Corporation did not complete a Hazardous Occurrence Investigation Report, or other form containing the required information regarding Ms. Radcliffe's accident on November 16, 2007.

No. 3

Paragraph 125(1)(c) Canada Labour Code Part II, and paragraph 15.8(2)(b) – Canada Occupational Health and Safety Regulations

The employer failed to submit a complete hazardous occurrence investigation report for Ms. Radcliffe's accident on November 16, 2007, within 14 days of the occurrence.


The Rural and Suburban Mail Carrier (RSMC) helpers are employees for the purposes of the *Canada Labour Code*, Part II and the hazardous occurrence reporting and investigating requirements apply.  
[...]

- [7] On November 5, 2008, I rendered an interlocutory decision<sup>1</sup> in regards to CUPW's request in relation to its standing in this appeal. I granted intervenor status to CUPW in this appeal.
- [8] On February 3, 2009, S. Bird sent a letter to the Registrar of the Occupational Health and Safety Tribunal Canada in which he notified the Appeals Officer that he is withdrawing the appeal. He stated in his letter that no purpose is being served by continuing this appeal as the issue is isolated to a single individual in respect of an underlying event which Canada Post exercised its reporting obligations in conformity with HSO Ryan's direction.
- [9] On February 6, 2009, Stan Guenther, on behalf of D. Radcliffe and CUPW, sent a letter to the Occupational Health and Safety Tribunal indicating that neither Ms. Radcliffe nor CUPW objected to the withdrawal of Canada's Post appeal.

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<sup>1</sup> *Canada Post Corporation and Doreen J. Radcliffe and Canadian Union of Postal Workers*, OHSTC Decision No. 08-029(1), November 5, 2008

- [10] Considering the written request to withdraw the appeal and having reviewed the file, I accept this request for withdrawal and declare this case closed.



Katia Néron  
Appeals Officer