

Occupational Health
and Safety Tribunal Canada



Tribunal de santé et
sécurité au travail Canada

Ottawa, Canada K1A 0J2

Case No. 2007-24
Decision No. OHSTC-09-008

CANADA LABOUR CODE
PART II
OCCUPATIONAL HEALTH AND SAFETY

Canada Post Corporation
appellant

February 24, 2009

This case was decided by Appeals Officer Douglas Malanka.

For the appellant

Stephen Bird, Counsel for Canada Post Corporation

For the respondent

No one appeared as respondent in this appeal.

- [1] This case concerns an appeal made by Canada Post Corporation on August 20, 2007, of the direction that health and safety officer (HSO) R. Gass issued to the Corporation on August 7, 2007, following his investigation of a refusal to work by C. Pollard, a rural and suburban mail carrier (RSMC). On June 14, 2007, C. Pollard refused to deliver or pickup mail at rural mail boxes (RMBs) on her route where it was not possible to drive her vehicle completely off the travelled portion of the roadway. She stated that it is unsafe to do so where the speed limit is 60 or more kilometres per hour, there is a solid yellow centre line on the roadway and it was not possible to drive her vehicle completely off the travelled portion of the roadway.
- [2] HSO Gass investigated the refusal to work by C. Pollard and decided that a danger existed for C. Pollard in the case of nine RMBs. HSO Gass issued a direction to Canada Post Corporation on August 7, 2007 and stated that a danger exists when C. Pollard's vehicle is not able to completely pull off the travelled portion of the roadway while she is stopped to deliver mail to nine rural mail boxes. He stated that this results in her being exposed to being struck by cars or trucks travelling at speeds of 70 km/hour or more. Copy of the direction is attached. In making his finding HSO Gass had a copy of the Traffic Safety Assessment Tool (TSAT) used by Canada Post to assess the safety at RMBs and conducted an on-site investigation.
- [3] An appeal hearing was held on January 14 and 15, 2009, at which Canada Post called 3 witnesses, submitted 6 documents and make final submissions. A view was also conducted of the RMBs in question.
- [4] Following my review and analysis of the testimony and evidence submitted at the January 14 and 15, 2007 hearing, I found that the evidence was insufficient in order to make an informed decision. I wrote to Counsel for Canada Post on January 26, 2009 and requested that further evidence be provided. A copy of the letter is attached.
- [5] Canada Post responded in writing through its Counsel by withdrawing its appeal of the direction of HSO Gass. A copy of Mr. Bird's letter dated February 3, 2009 is attached.
- [6] In light of the fact that Canada Post has withdrawn its appeal, I no longer have jurisdiction and must close the file. However, in closing the file, Canada Post is reminded that its withdrawal requires the Corporation comply with the direction issued by HSO Gass. This would include national compliance with his direction where similar conditions and circumstance at RMBs make it applicable.

[7] In this regard, the questions of clarification and illumination that I posed to Canada Post relative to the adequacy of the TSAT tool for ensuring safety are unanswered and are, I suggest, worthy of review and consideration by HRSDC and its HSOs if they have not done so already.



Douglas Malanka
Appeals Officer



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

DIRECTION TO THE EMPLOYER UNDER PARAGRAPH 145(2) (b)


On June 14/07, the undersigned health and safety officer conducted an investigation following a refusal to work made by Ms C. Pollard in the work place operated by CANADA POST CORPORATION, being an employer subject to the *Canada Labour Code*, Part II, The work place was part of a rural route that Ms. Pollard delivered mail to.

The said health and safety officer considers that a danger exists when Ms. Pollard's vehicle is not able to completely pull of the travelled portion of the roadway while she is stopped to deliver mail to nine rural mail boxes . This results in her being exposed to being struck by cars and trucks travelling at speeds of 70 km or more

Therefore, you are **HEREBY DIRECTED**, pursuant to paragraph 145(2)(a) (i) of the *Canada Labour Code*, Part II, to take measures to correct the hazard or condition that constitutes the danger immediately.

Furthermore you are **HEREBY DIRECTED** , pursuant to paragraph 145 (2) (b) of the *Canada Labour Code* Part II, to cease RSMC in vehicle RMB delivery carried out by Ms. Pollard or any other employee until such times as you have complied with the present direction , which does not prevent you from taking all measures necessary for the implementation of this direction.

Issued at Toronto, this 7th day of August, 2007.


Robert L. Gass
Health and Safety Officer
Certificate Number: ON7536

To: CANADA POST CORPORATION
171 Vankirk Road
Brampton, Ontario
L7A 1A4

Attachment
1

DI
3/7

Attachment
2

Priority Post

January 26, 2009

**File name: Canada Post Corporation
Case No.: 2007-25**

Mr. Stephen Bird
Counsel
Bird & Richard
72 Chamberlain Avenue
Ottawa, Ontario
K1S 1V9

Subject: Appeal under **subsection 129(7)** of the
Canada Labour Code, Part II

Mr. Bird,

This letter is to inform you that I wish to reconvene the hearing on the above noted case for the purpose of receiving further evidence and clarification related to the evidence you submitted during the hearing held recently at the Valhalla Inn, Toronto, Ontario, on January 14 and 15, 2009.

Specifically, it would be helpful to hear expert witness testimony from iTRANS Transportation Planning and Traffic Consultants (iTRANS) regarding the Traffic Safety Assessment Tool (TSAT). This testimony should include the selection and rationale of the safety criteria used therein, and the resulting safety thresholds. It should also address, but not be limited to, how "average speed" is determined and why a strict fifteen minute interval for determining traffic volume was selected during mail delivery time.

In connection with this, I wish to have clarification evidence on what hazard TSAT specifically addresses. For example, does TSAT address safety issues related to other drivers sharing the road with Rural Suburban Mail Carriers (RSMCs). Specifically, what protection does TSAT afford to RSMCs to protect them against driver inattention or distraction, driver error, driver non-compliance with traffic laws related to speeding and tailgating? If it does, how does it? I would also like to have evidence and statistics on traffic accidents involving RSMCs whether or not injury occurred, e.g., near misses.

Clarification is also needed on the rationale why TSAT does not prohibit stopping on roadway where the speed limit equals or exceeds 70 kilometres per hour as it does in the Province of Quebec where that Province's traffic laws prohibit stopping in such circumstance. Does this result in less protection for RSMCs

who work outside of Quebec?

Finally, with regard to the TSAT, how does it address seasonal conditions which can affect visibility such as fog, heavy rain, heavy snow, and road conditions affecting manoeuvrability and stopping?

I further wish to receive evidence regarding the specific and detailed involvement of the RSMC Policy Health and Safety Committee in the development of the TSAT and its application in the field. This should include evidence of the RSMC Policy Health and Safety Committee written acceptance of the TSAT.

In light of the serious issue before me, I am of the view that the hearing must be reconvened as soon as possible. I am therefore setting a hearing date for February 11 and 12, 2009 to complete my inquiry into your appeal. You will be notified shortly regarding the location and start time.

Please note, as a post script, that I will be subpoenaing Health and Safety Officer Gass when the hearing is reconvened

Yours truly,

Douglas Malanka
Appeals Officer

#3

BIRD RICHARD
LAWYERS FOR EMPLOYERS

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Ottawa, ON K1S 1V9

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To: Fida Abboud, Occupational Health and Safety Tribunal Canada
From: Stephen Bird

Fax: 954-6404
Pages: 2

File #: 112-1086
Date: 2/3/2009

Re: Carolyn Pollard Work Refusal - Brampton ON, Rural Route 403

Appeal No.: 2007-24

Original to follow by mail: Yes No

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BIRD RICHARD
LAWYERS FOR EMPLOYERS

Stephen Bird

Of the Bars of Alberta, Ontario,
Northwest Territories and Nunavut

Via Facsimile (613-954-6404)

February 3rd, 2009

Occupational Health and Safety Appeals Tribunal Canada
47 Clarence Street, Suite 200,
Ottawa, Ontario
K1N 9K1

Attention: Fida Abboud, Registrar

Dear Ms. Abboud:

**Re: Canada Post and Carolyn Pollard
Work Refusal - Brampton ON, Rural Route 403
Appeal No: 2007-24**

I am writing to you in respect of Canada Post's appeal in this matter.

On January 26th, 2009, Appeals Officer Malanka wrote to me making detailed and specific requests for evidence and witnesses to be produced at a further hearing date which he unilaterally proposed to schedule on February 11th and 12th, 2009. Appeals Officer Malanka also indicated that he was unilaterally intending to subpoena HSO Robert Gass, even though Canada Post did not seek to elicit any testimony from him at the earlier two days of hearing.

I am now in receipt of correspondence from you indicating that if Canada Post does not indicate its availability for a hearing in the first two weeks of March, the Tribunal will schedule the matter unilaterally.

Canada Post is extremely concerned by the actions of the Appeal Tribunal in this matter, its statement that it will unilaterally schedule Canada Post's appeal and its attempt to turn the proceedings from an appeal of an HSO decision into an inquisitorial investigation. We believe this approach to be in excess of the Appeals Tribunal's jurisdiction. We are also concerned that much if not all of the information requested was

provided in the oral and documentary evidence already before the Appeals Officer.

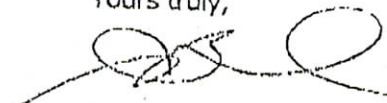
The TSAT tool is being employed across Canada and has received acceptance from employees, their union representatives and every other HRSDC Health and Safety Officer who has had occasion to review its usage.

Given this, Canada Post's concerns regarding the present conduct of the hearing by the Appeals Officer which might entail multiple levels of Court review, the fact that those rural mail boxes have been out of service for over 1 year and the HSO in question has retired, Canada Post is of the opinion that no purpose is being served by continuing this appeal.

Accordingly, without prejudice to its position that HSO Gass wrongly decided the issue before him and to any position that Canada Post may subsequently take in matters raising similar or like circumstances, Canada Post wholly withdraws this appeal.

Please send confirmation of this withdrawal to me at your earliest convenience.

Yours truly,



Stephen Bird

cc: Jeff Fraser, Canada Post