

Occupational Health
and Safety Tribunal Canada



Tribunal de santé et
sécurité au travail Canada

Ottawa, Canada K1A 0J2

Case No.: 2009-12

Interlocutory Decision

Stay request: OHSTC-09-011 (S)

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

*Transport G.N.D. Inc. & Transport
Gaston Nadeau Inc.
appellant /applicant*

and

**TRANSLATION/
TRADUCTION**

Association des employés de Transport
Gaston Nadeau Inc.
respondent

April 2, 2009

This request for a stay of direction was heard by Appeals Officer Katia Néron during a teleconference held on March 31, 2009.

For the appellant

Jean Robert Laporte, Counsel for Transport G.N.D. Inc. & Transport Gaston Nadeau Inc.

For the respondent

Patrick Beauséjour, union representative for the Association des employés de Transport Gaston Nadeau Inc.

- [1] This decision concerns a request for a stay of execution of a direction issued pursuant to the *Canada Labour Code, Part II (Code)*, subsection 146(2). The direction addressed in this request was issued on February 27, 2009 pursuant to subsection 145(1) of the *Code* by Health and Safety Officer (HSO) Normand Gervais to Transport G.N.D. Inc. & Transport Nadeau Inc.
- [2] On March 26, 2009, Jean-Robert Laporte, on behalf of Transport G.N.D. Inc. & Transport Nadeau Inc., requested the stay of said order until the appeal against the latter could be heard and a decision made by an appeals officer.
- [3] Given that Transport G.N.D. Inc. & Transport Nadeau Inc. were to immediately comply with said order, I decided to hear the request for stay of execution by teleconference. This teleconference was held on March 31, 2009 in the presence of the parties and the HSO Gervais.
- [4] At the start of this teleconference, HSO Gervais indicated that his intention in making the direction of February 27, 2009 pursuant to subsection 145(1) of the *Code* was not to prohibit the transportation operations conducted by the two applicants with the use of trailers, but rather to order them—further to an accident in the workplace that involved one of their employees—to immediately take the necessary steps to improve their working practices in accordance with the provisions under the *Code* in regard to the risk of an employee falling while working on a trailer at a height of more than 2.4 metres.
- [5] In view of these clarifications, Mr. Laporte indicated that the request for a stay of direction no longer had any practical purpose because its initial purpose was to ensure that if they continued using their trailers to transport poultry, Transport G.N.D. Inc. & Transport Nadeau Inc. were violating the direction made by HSO Gervais and the provisions of the *Code*. Mr. Laporte also indicated that Transport G.N.D. Inc. & Transport Nadeau Inc. were currently trying to find technical solutions and to develop better working procedures in order to protect the safety of their employees and reduce the risk of accident involving drivers having to work on the vehicles.
- [6] On March 31, 2009, Mr. Laporte confirmed in writing his request to withdraw the request for the stay of execution of the direction of February 27, 2009 by HSO Gervais. The respondent did not raise any objection regarding this request for withdrawal.
- [7] After hearing the parties and HSO Gervais concerning this request, and reviewing the request to withdraw it, I accept the withdrawal of the request for the stay of execution of the direction in this case as formulated by Mr. Laporte.

Katia Néron
Appeals Officer