

Occupational Health  
and Safety Tribunal Canada



Tribunal de santé et  
sécurité au travail Canada

Ottawa, Canada K1A 0J2

Case No.: 2006-25

**Decision**  
Withdrawal: TSSTC-09-016

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

Montreal Gateway Terminals  
Partnership  
*appellant*

**TRANSLATION/  
TRADUCTION**

and

Longshoremen's Union, Canadian  
Union of Public Employees, local 375  
*respondent*

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April 29, 2009

This case was decided by Appeals Officer Katia Néron.

**For Montreal Gateway Terminals Partnership**  
Philippe C. Vachon

**For the Longshoremen's Union, Canadian Union of Public Employees, local  
375**  
Not represented

**Canada**

- [1] This case concerns an appeal filed on September 30, 2003, under the *Canada Labour Code, Part II* (Code), subsection 146(1) by Meguerditch Kanondjian, Director General of Operations, and Wayne Smith, health and safety and environment expert, on behalf of the Société de Terminus Racine (Montréal) Ltée, now called Montreal Gateway Terminals Partnership.
- [2] This appeal was filed in response to a direction issued on August 14, 2003 by Health and Safety Officer (HSO) Pierre Bouchard following his investigation of the occupational accident involving a longshoreman who was a member of the Longshoremen's Union, Canadian Union of Public Employees (CUPE), local 375—Vincent Thomin—on August 13, 2003 in section 57-64 of the Port of Montreal, the workplace operated by Montreal Gateway Terminals Partnership.
- [3] This case was referred to appeals officer Pierre Guénette.
- [4] On January 20, 2005, Appeals Officer Guénette made his decision on this case. This decision essentially confirmed the direction issued by HSO Bouchard.
- [5] Following this decision, a request for judicial control was filed by the appellant with the Federal Court. On March 14, 2006, the Honourable Yves de Montigny issued his order<sup>1</sup> on the case.
- [6] Mr. Justice de Montigny quashed the decision of Appeals Officer Guénette and referred this case to another appeals officer, taking into consideration the reasons for his order. One of the reasons reads as follows:
- [translation]  
[...]  
WHEREAS the direction issued by the health and safety officer is as vague as could be, and does not identify the danger faced by employees or the measures that the employer should take to correct for them;  
[...]
- [7] On November 2, 2007, after several attempts to set a date for the hearing into the case, Philippe C. Vachon, on behalf to the appellant, submitted a request to suspend the procedures in view of an application for judicial review filed with the Federal Court in another matter, *Association des employeurs maritimes et Sa Majesté La Reine du Canada (Ressources Humaines et Développement social Canada) et Syndicat des débardeurs S.C.F.P. Section locale 375 et Association Internationale des débardeurs, ILA, Section locale 1657 et Logistec Stevedoring Inc. et Montreal Gateway Terminals Partnership et Termont Montréal Inc. et Empire Stevedoring Co.*

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<sup>1</sup> *Terminus Racine (Montréal) Ltée et Syndicat Canadien de la fonction publique, section locale 375*, 2006 CF T-302-05, decision made on March 14, 2006

*Ltd et Cerescorp Inc.*<sup>2</sup>. Mr. Vachon's request was to have the process adjourned until the outcome of the application for judicial control in the above-noted matter because this decision could have an impact on this case in that, if the Federal Court finds that the Maritime Employers' Association (MEA) is the employer of the longshoremen working in the Port of Montréal, this would raise an issue regarding the very admissibility of the direction issued by HSO Bouchard on August 14, 2003.

- [8] On November 2, 2007, Normand Léonard, on behalf of the Longshoremen's Union, CUPE, local 375, informed the Canada Appeals Office on Occupational Health and Safety (the Office)<sup>3</sup> that his client did not intend to make any representations in this matter.
- [9] On November 9, 2007, the Office informed Mr. Vachon of my decision to accept the request to adjourn the process in this case until the Federal Court made its decision on *Association des employeurs maritimes, supra*.
- [10] On January 15, 2009, the Honourable Max M. Teitelbaum of the Federal Court made his order in the above case.
- [11] Further to this decision, the hearing on this case was set for April 14, 2009.
- [12] During a teleconference held on March 27, 2009 to inform Mr. Vachon of the procedure for the hearing on this matter, he raised a question about the relevance of pursuing the case, alleging that the working conditions that existed at the time of the accident on August 13, 2003 had changed. Given that none of the information—whether on file or in the report of HSO Bouchard—indicated to me what had actually occurred in connection with accident on August 13, 2003 or what had changed in terms of the circumstances surrounding it, I decided to hold a teleconference to give Mr. Vachon the opportunity to question HSO Bouchard on this point.
- [13] Two teleconferences, one on April 1, 2009 in the presence of Mr. Vachon and HSO Bouchard, the other on April 7, 2009 in the presence of only Mr. Vachon, were held on this issue.
- [14] On April 9, 2009, Mr. Vachon informed the Registrar of the Office that Montreal Gateway Terminals Partnership was going to withdraw their appeal in this matter.

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<sup>2</sup> *Association des employeurs maritimes et Sa Majesté La Reine du Canada (Ressources Humaines et Développement social Canada) et Syndicat des débardeurs S.C.F.P. Section locale 375 et Association Internationale des débardeurs, ILA, Section locale 1657 et Logistec Stevedoring Inc. et Montreal Gateway Terminals Partnership et Termont Montréal Inc. et Empire Stevedoring Co. Ltd et Cerescorp Inc.*, 2009 CF T-643-07, order issued on January 15, 2009

<sup>3</sup> Now called Occupational Health and Safety Tribunal Canada

[15] Considering the written request to withdraw the appeal, I confirm this withdrawal and the closure of the case.

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Katia Néron  
Appeals Officer