

Case No.: 2007-27

Interlocutory decision  
Application for suspension: CAO-08-002 (I)

**Canada Labour Code**  
**Part II**  
**Occupational Health and Safety**

Maritime Employers Association  
*appellant*

and

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

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January 30, 2008

Application for suspension of the present case, heard via conference call by Appeals Officer Katia Néron, Montréal, Quebec, January 22, 2008.

**For the appellant**

Robert Monette, Counsel, Ogilvy Renault

**For the respondent**

Not represented

- [1] The present case is an appeal filed on August 6, 2007 by Robert Monette, counsel for the Maritime Employers Association (MEA), pursuant to subsection 146(1) of Part II of the *Canada Labour Code* (the *Code*) of the direction issued on September 7, 2007 by Health and Safety Officer (HSO) Denis Briffaud pursuant to paragraph 141(1)(a) of the *Code*.
- [2] In his application, Mr. Monette alleges that HSO Briffaud erred in fact and in law in deciding to designate, in the direction he issued, the MEA as the employer within the meaning of the *Code*, an employer that, pursuant to the *Code*, HSO Briffaud was authorized to direct to investigate the situation of danger noted on August 28, 2007 in area 46 of the port of Montréal in the work place operated by Logistec Stevedoring Inc., where employees working in the hold of the vessel *Orsula* were exposed to the danger of collapse of cargo, specifically sugar, onto them. According to Mr. Monette, HSO Briffaud should have designated, in the direction he issued, Logistec Stevedoring Inc., and not the MEA, as the employer.

- [3] On November 2, 2007, Vincent Thomin, health and safety union advisor for the Longshoremen’s Union, Canadian Union of Public Employees, local 375, informed the Canada Appeals Office on Occupational Health and Safety in writing that the union would make no representation in the present case.
- [4] On January 22, 2008, at the beginning of the hearing of the present case, Mr. Monette filed an application to suspend the present case given that before the Federal Court is an application for judicial review filed by the MEA in order to obtain a declaratory judgement . That application, file T-643-07, challenges an official request by HSO Sylvie Gaudreau to the MEA for an assurance of voluntary compliance in establishing a policy health and safety committee pursuant to subsection 134.1(1) of the *Code*. That application also challenges the new direction taken by the Labour Directorate, Human Resources and Social Development Canada, of now systematically designating the applicant as the employer of longshoremen working in the port of Montréal for the purposes of the application of the *Code*. According to Mr. Monette, the purpose of the application filed by the MEA with the Federal Court is to have determined who, of the MEA and the longshoring companies operating in the port of Montréal including Logistec Stevedoring Inc., or in what circumstances the MEA or the longshoring companies, is the “employer”, within the meaning of the *Code*, of the longshoremen and checkers working in the port of Montréal, for the purposes of the application of the *Code*.
- [5] In the application filed with the Appeals Officer, however, Mr. Monette adduced in evidence the measures taken by Logistec Stevedoring Inc. in order to offset the danger of collapse of cargo, such as sugar, onto employees working in the hold of a vessel. These measures were approved by that company’s local health and safety committee. As well, HSO Briffaud indicated orally to the Appeals Officer that these measures complied with the direction he issued.
- [6] After reading these documents, given that two parallel proceedings are being pursued on what appears to the Appeals Officer to be a similar matter (if one originally based on different circumstances); given that one of these proceedings has been brought before the Federal Court—a court higher than the Canada Appeals Office—; given the potential effects of the decision by that court on the present case; and in order to avoid any inconsistency of decisions or proliferation of costs and proceedings for the parties, pursuant to paragraph 146.2(e) of the *Code* the Appeals Officer decides to suspend the proceedings in the present case until the Federal Court has rendered a decision on the above-noted application for judicial review filed by the MEA.
- [7] However, as was indicated to Mr. Monette on January 30, 2008, the Appeals Officer asks him for notification as soon as the Federal Court decision in the above-cited case is received, so that hearing dates for the present case can be set promptly.

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Katia Néron  
Appeals Officer