

Case No.: 2006-44

Canada Labour Code
Part II
Occupational Health and Safety

Erb Transport Limited
appellant

and

Donna Dahmer
respondent

Decision No.: CAO-07-010
March 27, 2007

This case was decided by Appeals Officer Katia Néron, based on the written submission provided by the appellant and the documents supplied by the health and safety officer. The respondent did not provide any written argument or reply to the appellant's submission.

For the Appellant

Floyd Gerber, Vice-President Human Resources, Erb Group of Companies

For the Respondent

Donna Dahmer, employee representative, health and safety committee

Health and Safety Officer

Robert L. Gass, Labour Program, Human Resources and Skills Development Canada (HRSDC), Toronto District Office, Toronto, Ontario

- [1] Following the investigation of an accident that occurred at the loading dock of the facility of Erb Transport Limited in Mississauga, Ontario, on June 2, 2006, and resulted in an injury to E. Clement, an employee of Erb Transport Limited, health and safety officer (HSO) Robert L. Gass issued, on June 5, 2006, a direction to the employer under subsection 145(1) of the *Canada Labour Code*, Part II (the *Code*). The direction stated that Erb Transport Limited had made one contravention to subsection 127(1) of the *Code* and ordered the employer to terminate it by June 5, 2006.

[2] HSO Gass' direction read:

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

DIRECTION TO THE EMPLOYER UNDER SUBSECTION 145(1)

On June 02/06, the undersigned health and safety officer conducted an investigation in the work place operated by ERB TRANSPORT LIMITED, being an employer subject to the *Canada Labour Code*, Part II, at 1889 BRITANNIA ROAD, EAST, Mississauga, Ontario, L4W 3C3, the said work place being sometimes known as Erb Transport Limited.

The said health and safety officer is of the opinion that the following provision of the *Canada Labour Code*, Part II, has been contravened:

No./No: 1

127.(1) – *Canada Labour Code* Part II, –

Subject to subsection (2), if an employee is killed or seriously injured in a work place, no person shall, unless authorized to do so by a health and safety officer, remove or in any way interfere with or disturb any wreckage, article or thing related to the incident except to the extent necessary to/Dans le cas où un employé est tué ou grièvement blessé dans son lieu de travail, il est interdit à quiconque, sans l'autorisation de l'agent de santé et de

Subsequent to the accident sustained by Mr. E. Clement the employer removed freight from the immediate area therefore disturbing the accident scene.

Therefore, you are HEREBY DIRECTED, pursuant to subsection 145(1)(a) of the *Canada Labour Code*, Part II, to terminate the contravention no later than June 05/06.

- [3] On June 30, 2006, Floyd Gerber, Vice-President Human Resources, Erb Group of Companies, appealed the direction pursuant to subsection 146(1) of the *Code*, on behalf of Erb Transport Limited.
- [4] I retain the following from HSO Gass' investigation report.
- [5] While E. Clement was reading labels on freight stored on the loading dock, a fork lift operator ran over his right foot with one of the fork lift's wheels. The resulting injury was a severely bruised foot.
- [6] HSO Gass noted that the accident occurred because the freight had been stored on the dock in two rows, which formed an aisle that prevented the driver from seeing E. Clement.

[7] HSO Gass also noted that several pallets of freight at the perimeter edge of the accident area had been removed prior to his arriving.

Appellant's Arguments

[8] I retain the following from the written submission provided by Floyd Gerber on behalf of the appellant.

[9] First aid was given to E. Clement immediately after the accident.

[10] The fork lift involved in the accident and the immediate working area were secured and the authorities (police, ambulance and HRSDC Labour Program) were called within minutes of the occurrence.

[11] The police were first on the scene, took over the security of the site and identified the accident site perimeter with yellow tape. Dock operations continued outside the secured area.

[12] An investigation followed, assisted by the terminal health and safety committee.

[13] Based on the above facts, F. Gerber submitted that every effort was made to protect the integrity of the accident site, as required by the *Code*, until authorities arrived and took over the security of the area.

[14] F. Gerber added that nothing was disturbed and the dock staff confirmed with the attending police officer which items in the immediate area could have been moved.

[15] F. Gerber also questioned whether subsection 127(1) of the *Code* applied considering the type of injury sustained by the employee.

Respondent's Arguments

[16] Donna Dahmer, the employee representative on the terminal health and safety committee, did not reply to F. Gerber's written submission.

[17] Furthermore, the Canada Appeals Office on Occupational Health and Safety obtained her verbal confirmation that she would not submit any reply to the appellant's submission, but was unable to obtain this confirmation in writing even after several phone calls.

Analysis and Decision

[18] The issue to be addressed in this case is whether or not HSO Gass' direction was justified and appropriate.

- [19] To make my decision, I have to consider the factual evidence submitted and the circumstances of the case, as well as the relevant legislation.
- [20] The requirement of subsection 127(1) of the *Code* only applies if an employee is killed or seriously injured. Subsection 127(1) reads:
- 127(1) Subject to subsection (2), if an employee is killed or seriously injured in a work place, no person shall, unless authorized to do so by a health and safety officer, remove or in any way interfere with or disturb any wreckage, article or thing related to the incident except to the extent necessary to
- (a) save a life, prevent injury or relieve human suffering in the vicinity;
- (b) maintain an essential public service; or
- (c) prevent unnecessary damage to or loss of property.
- [21] However, according to the evidence, the injury sustained by E. Clement was a severely bruised foot.
- [22] Even though the injury was no doubt very hurtful, I am of the view that the terms “seriously injured” found in subsection 127(1) should be interpreted as meaning, for instance, a serious fracture or the loss of a body member or part of a body member, the complete loss of the usefulness of a body member or part of it, or a permanent impairment of a body function as defined pursuant to paragraphs 15.1(b) and (c) of the *Canada Occupational Health and Safety Regulations* (COHSR). Paragraphs 15.1(b) and (c) of the COHSR read as follows:
- 15.1 “disabling injury” means an employment injury or an occupational disease that
- [...]
- (b) results in the loss by an employee of a body member or part thereof or in the complete loss of the usefulness of a body member or part thereof, or
- (c) results in the permanent impairment of a body function of an employee;
- [...]
- [23] Therefore, I believe that as painful as it surely is, a severely bruised foot is not the type of “serious injury” considered by subsection 127(1) of the *Code*. For this reason, I find that HSO Gass’ direction was not justified and not appropriate in the present case.

[24] Consequently, as authorized by subsection 146.1(1) of the *Code*, I am hereby rescinding the direction that HSO Gass issued to the employer, Erb Transport Limited.

Katia Néron
Appeals Officer

Summary of Appeals Officer's Decision

Decision No.: CAO-07-010

Appellant: Erb Transport Limited

Respondent: Donna Dahmer

Key Words: Fork lift, bruised foot, loading dock, rescinding

Provisions: *Canada Labour Code*: 145(1), 127(1), 146(1)

Summary:

On June 30, 2006, Erb Transport Limited appealed a direction issued following an injury to an employee of Erb Transport Limited. The direction stated that Erb Transport Limited had made one contravention pursuant to subsection 127(1) of the *Canada Labour Code* (the *Code*). The appeal proceeded by way of written submission. On October 5, 2006, the Office received the appellant's submission. The Office obtained verbal confirmation that the respondent would not reply to the appellant's submission. Based on the file at hand, the Appeals Officer rescinded the direction.