

CANADA LABOUR CODE
PART II
OCCUPATIONAL SAFETY AND HEALTH

Review under section 146 of the Canada Labour Code, Part II,
of a direction issued by a safety officer

Applicant: Canadian National Railway Company
97 Front Street West
Union Station, Suite 438
Toronto, Ontario
represented by Kenneth R. Peel, Assistant Regional
Counsel

Respondent: Timothy Gleason
Representative
United Transportation Union (U.T.U.)
905-707-5982

Mis en cause: W. B. Armstrong
Safety Officer #2787
Transport Canada, Surface
Toronto
Ontario

Before: Bertrand Southière
Regional Safety Officer
Human Resources Development Canada

A hearing was held in Toronto on December 5, 1995. In attendance were:

- Timothy Gleason
U.T.U.
- William Glass
CN North America
- Jan F. Polley
CN North America
- W. Maskerine
CN North America
- Robert Bruder
CN North America

- Kenneth Peel
CN North America
- B. Armstrong
Transport Canada

Background

Further to an inspection, safety officer Nathalie Belliveau issued, on January 21, 1994, a direction to CP Rail Ltd., at Boisbriand, Quebec, requiring the employer to supply adequate body covering to transportation employees who were performing duties such as handling switches, uncoupling or riding rolling stock and any other similar tasks which could result in a hazard of injury to the hands. Prior to this direction, it had been customary in the railway industry for the affected employees to supply their own workgloves.

A few months later, in May 1994, at a meeting of the transportation health and safety committee at Hornepayne, CN North America, Northern Ontario District, an employee member of the committee made a request that gloves be provided to running trades employees. His request was essentially based on the order previously issued by Transport Canada to CP Rail Ltd. in Boisbriand. Safety officer W. B. Armstrong who was attending the meeting advised him that the safety and health committee should try to resolve the problem internally before asking the safety officer to become involved.

In the meantime, the direction issued to CP Rail Ltd at Boisbriand had been appealed by the employer to the regional safety officer. The regional safety officer confirmed the direction on July 7, 1994.

On February 10, 1995, safety officer W. B. Armstrong issued a direction verbally to the employer to the effect that, in his opinion, paragraph 125(j) of the Canada Labour Code, Part II and paragraph 8.10(c) of the On Board Trains Occupational Safety and Health Regulations were being contravened: transportation employees that were required to perform duties such as handling switches, uncoupling or riding on rolling stock and any other similar tasks which may result in a hazard of injury to the hands had to be provided with appropriate body cover. The direction was confirmed in writing on February 21, 1995 (appendix 1). The employer appealed the direction on February 23, 1995.

It is pertinent to note that, meanwhile, a similar direction had been issued to CN North America, Laurentian District, Montreal, by Nathalie Belliveau, on February 6, 1995. This direction was appealed by the employer to the regional safety officer. The regional safety officer confirmed this direction on August 21, 1995.

Submission by the employer's representative

A number of arguments were presented by counsel for the applicant to the effect that the direction should be rescinded:

- the risk of injury or disease must result from skin contact and not merely from exposure to natural variations in temperature; the revision of section 8.10 of the Regulations, published in the Canada Gazette Part II under registration SOR/95-105, makes this distinction more evident;
- in the Regulatory Impact Analysis Statement which accompanied the original publication of the On Board Trains Occupational Safety and Health Regulations in the Canada Gazette Part II, in March 1987, under registration SOR/87-184, it was stated under "Anticipated Impact - Costs" that "The Regulations (...) will not impose any new obligations on the operating position of the railway industry." Supplying gloves to running trades employees is a significant new cost;
- it is unusual that a standing operating practice within the running trades, such as the provision of gloves by the employee himself should only now be found to be covered by the Regulations, some eight years after they came into force;
- there should be no finding that the Regulations impose upon the employer an obligation to provide gloves or handwear to protect from seasonal changes and in particular, cold weather conditions;
- the safety officer did not carry out a proper investigation: the safety and health committee was not involved in his investigation; furthermore, he made no inquiry about data regarding injuries to hands or fingers, about worker's compensation or about injury statistics in Northern Ontario District or Southern Ontario District.

Alternatively, if the direction is confirmed, the applic*****pment is also covered with soot, dirt, fuel oil;

- the employees' representative, who is also an employee, stated that gloves were supplied in most regions where he worked except at Hornepayne;
- the On Board Trains Occupational Safety and Health Regulations extend the protection provided by the Canada Labour Code to crew members;
- the issue was discussed at the safety and health committee meeting, but the company did not want to distribute gloves;
- risks to running trades are different from some other occupations but can be as great;
- few injuries are reported because the use of gloves is universal;
- other people with similar duties are supplied with gloves.

Discussion

Section 8.10 of the Regulations which is at issue here reads:

8.10 Where there is a hazard of injury or disease to or through the skin of a person in a work place, the employer shall provide every person granted access to the work place with

- (a) a shield or screen;
- (b) a cream to protect the skin; or
- (c) an appropriate body covering.

(as amended in Canada Gazette Part II, SOR/95-105)

The employer's argument appears to consider that running trades employees wear gloves essentially for protection from temperature or climate extremes. Consequently, because the temperature or climate variations are not inherent to the work activities, but are due to the fact that work is carried on outside, section 8.10 of the Regulations does not apply and the direction should be rescinded. If this was truly the case, I would tend to agree with the employer.

Actually, gloves are worn by running trades employees for protection of their hands from rough and dirty surfaces when they perform duties such as handling switches, coupling and uncoupling rolling stock, riding rolling stock, tightening or releasing handbrakes and other similar tasks. As a matter of fact, gloves are worn during the summer, which demonstrates that gloves are not worn for protection from temperature or climate extremes, but for protection of the hands from abrasion due to rough surfaces and from contamination due to dirty or contaminated surfaces.

Two other arguments raised by the employer have to do, one with the Regulatory Impact Analysis Statement which was an appendix to the original publication of the Regulations in the Canada Gazette Part II, in March 1987 (SOR/87-184), the other with the delay between the issuance of the Regulations and the issuance of the direction. In the case of the Regulatory Impact Analysis Statement, the only explanation I have was that this point was neglected, either through ignorance or because it was considered a minor factor. In any event, even though this is reasonable argument, the Regulatory Impact Analysis Statement is not part of the Regulations and it cannot be used to limit the application of the Regulations. It is recognized that there is a contradiction between the two documents, but the Regulations take precedence. Regarding the delay between the issuance of the Regulations and the issuance of the direction, I would propose that the safety officers were informed of the situation at a late date. But again, the delay is no argument against the issuance of the direction. As an example, the fact that someone has been speeding for ten years without ever being caught does not make it legal and does not exempt him from citation.

In the end, I believe that running trades employees wear gloves to protect their hands from abrasion and from contamination when they carry out duties such as handling switches, coupling and uncoupling rolling stock, riding rolling stock, tightening or releasing handbrakes and other similar tasks. Temperature is only a factor in the sense that it is probably more convenient to use insulated work gloves during the winter rather than removing winter mitts or gloves, putting on work gloves to carry out a given duty and then, putting the gloves or mitts back on.

As written, the direction properly emphasizes that it is the hands that must be protected and they have to be protected from injuries that may occur as a result of performing duties such as handling switches, coupling and uncoupling rolling stock, riding rolling stock, tightening or releasing handbrakes and other similar tasks. Consequently, I believe the direction is specific enough to satisfy the employer. Finally, it is only good management practice for the employer to exercise adequate control over the supply process to prevent abuse and it is not the purpose of this revision to prohibit such control.

Decision

For the reasons outlined above, I HEREBY CONFIRM the direction issued by Safety Officer W. B. Armstrong to CN North America at Hornepayne, Ontario, on the tenth of February 1995.

Decision given on February 27, 1996.

Bertrand Southière
Regional Safety Officer

TRANSPORT CANADA

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

DIRECTION TO THE EMPLOYER UNDER SUBSECTION 145(1).

On February 10, 1995, the undersigned safety officer, following a complaint from a transportation employee, conducted an inquiry in the work place operated by CN North America, being an employer subject to the Canada Labour Code Part II at Hornepayne, Ontario.

The said safety officer is of the opinion that the following provision of the Canada Labour Code, Part II is being contravened:

Paragraph 125(j) of the Canada Labour Code, Part II and Paragraph 8.10(c) of the On Board Trains Occupational Safety and Health Regulations.

Transportation employees that are required to perform duties such as handling switches, uncoupling or riding on rolling stock and any other similar tasks which may result in a hazard of injury to the hands must be provided with appropriate body cover.

Therefore, CN North America is **HEREBY DIRECTED**, pursuant to subsection 145(1) of the Canada Labour Code, Part II, to terminate the contravention no later than February 24, 1995.

Issued at Toronto, this 10th day of February 1995.

W.B. Armstrong
Safety Officer No. 2787

SUMMARY OF REGIONAL SAFETY OFFICER DECISION

Applicant: Canadian National Railway Company
Ontario Region

KEYWORDS

Running trades employees; hand protection; responsibility for supplying work gloves

PROVISIONS

Code: 125(j)
Regulations, On Board Trains Occupational Safety and Health Regulations: 8.10(c)

SUMMARY

A safety officer issued a direction to CN North America, at Hornepayne, Ontario, that appropriate body cover had to be provided to transportation employees that were required to perform duties such as handling switches, uncoupling or riding on rolling stock and any other similar task which could result in a hazard of injury to the hands. The regional safety officer confirmed the direction.

The direction was originally issued following a similar direction which had been issued to CP Rail in Montreal on January 21, 1994, and which had been confirmed by the regional safety officer on July 7, 1994.