

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: Cape Breton Development Corporation
Phalen Mine
New Waterford, N.S.
Represented by: Mr. Ray Ward, Colliery General Manager

Respondents: United Mine Workers of America (UMWA)
Represented by: Mr. Stephen Drake

Canadian Auto Workers (CAW)
Represented by: Mr. Angus Grant

Canadian Union of Public Employees (CUPE)
Represented by: Mr. Angus MacEachern

Mis en cause: Kevin Beaton
Safety Officer
Human Resources Development Canada

Before: Serge Cadieux
Regional Safety Officer
Human Resources Development Canada

On December 2, 1996, two employees of the Cape Breton Development Corporation, (the Corporation) Mr. Kanary and Mr. O=Handley, exercised their right to refuse to work. They refused to go in the rake of the Phalen mine and travel to their place of work. The Statement of the refusal to work signed by the employees reads as follows:

AThere is a danger because the chain runners are not qualified to conduct an inspection as per Section 91(1) of the CBDC Regs. Further that the inspection under Section 67 is not being followed.@

The safety officer investigated the refusal and decided that this situation did not constitute a danger to the refusing employees. Nonetheless, the safety officer found the Corporation to be in contravention of three specific provisions of the Coal Mines (CBDC) Occupational Safety and Health Regulations. A direction (see APPENDIX) was issued under subsection 145(1) of the Canada Labour Code.

The Corporation requested a review of item number three (3) of the direction on December 10, 1996. A hearing was scheduled to take place in Sydney, Nova Scotia, on January 29, 1997. On January 27, 1997, the Office of the Regional Safety Officer was formally informed that, following discussions amongst the parties, the Corporation was withdrawing its request for review of item number three (3) of the above-noted direction.

As the Regional Safety Officer responsible to review this direction, I am confirming that the Cape Breton Development Corporation has withdrawn its request for review of item number three (3) of the direction issued by safety officer Kevin Beaton on December 3, 1996. This file is closed.

Issued on February 5, 1997.

Serge Cadieux
Regional Safety Officer

APPENDIX

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

DIRECTION TO EMPLOYER UNDER SUBSECTION 145(1)

On December 3rd, 1996, the undersigned safety officer conducted an inquiry in the work place operated by CAPE BRETON DEVELOPMENT CORPORATION, being an employer subject to the Canada Labour Code, Part II, at PHALEN MINE, NEW WATERFORD, NOVA SCOTIA, the said work place being sometimes known as Phalen Mine.

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

1. 125(q)

The persons conducting inspections as per Section 91(1) of the CBDC Coal Mine Regulations were not trained.

2. 125(u), Section 91(4) of the CBDC Coal Mine Regulations.

There were no records of inspection.

3. 125(u), Subsection 67(a) of the CBDC Coal Mine Regulations.

Mechanics were not inspecting all mine cars that were in use in the coal mine at least once every 24 hours.

Therefore, you are HEREBY DIRECTED, pursuant to subsection 145(1) of the Canada Labour Code, Part II, to terminate contraventions Numbers 1 and 2 no later than December 10th, 1996 and contravention Number 3 no later than December 17, 1996.

Issued at New Waterford, this 3rd day of December 1996.

A.K. Beaton
Safety Officer
3106

To: CAPE BRETON DEVELOPMENT CORPORATION
PHALEN MINE
NEW WATERFORD
NOVA SCOTIA
B1H 2M4

SUMMARY OF REGIONAL SAFETY OFFICER DECISION

Applicant: Cape Breton Development Corporation, Phalen Mine

Respondent: UMWA, CAW and CUPE

KEYWORDS

Rake, coal mine, mine cars, training.

PROVISIONS

Code: 125(q), 125(u), 145(1)

CBDC Coal Mine Regulations: 67(a), 91(1), 91(4)

SUMMARY

A safety officer gave a direction to Cape Breton Development Corporation in which three specific contraventions were identified. The Corporation requested a review of the third item of the direction but withdrew its request shortly before the hearing. The file was closed.