

CANADA LABOUR CODE{PRIVATE }
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: Air Canada Ltd.
Montreal International Airport, Dorval, Quebec
Represented by: Louise-Hélène Sénécal, Counsel

Respondent: Occupational Safety and Health Committee
Air Canada Aircraft Services
Represented by: Denis Audet, Employee Member

Mis en Cause: Yves Jégou
Safety Officer
Human Resources Development Canada

Before: Serge Cadieux
Regional Safety Officer
Human Resources Development Canada

A hearing was held in Dorval, Quebec, on May 13, 1997. It should be noted that when the request for review of the direction was made (see APPENDIX), Air Canada requested that a hearing be held immediately since the safety officer was demanding immediate compliance with the direction. Air Canada was informed that the application for review of a direction would follow the normal procedure and that the date of compliance would be amended if necessary.

Background

The safety officer conducted the initial investigation in this matter on March 2, 1996 in response to a formal complaint filed by Mr. Audet, employee member of the occupational safety and health committee. He found that a number of pieces of motorized handling equipment, commonly called tractors, were not fitted with structures to protect employees from exposure to adverse weather conditions. During his discussions with the parties, the safety officer explained the regulation concerning protection from the elements.

Mr. Jégou pointed out to the employer that the tractors in question were originally fitted with weather protection. It appears that the cabs of certain tractors were removed because some of the doors were broken and had become hazardous for employees, because the windshields were scratched, causing visibility problems, etc. Mr. Jégou reportedly received assurances that the situation of the damaged tractors would be corrected and, on the strength of those assurances, he closed the case.

During a subsequent investigation which he conducted at the Air Canada work place on March 4, 1997, the safety officer noted that a number of tractors had still not been fitted with weather protection. Having observed that six (6) tractors were in contravention of subsection 14.9(1) of Part XIV (Materials Handling) of the Canada Occupational Safety and Health Regulations (hereafter the *Regulations*), the safety officer issued a direction to the company requiring that it comply with the Regulations immediately.

Submission for the employer

The detailed submission of Ms. Sénécal is on record. Essentially, Ms. Sénécal argued that, in order for there to be a contravention of subsection 14.9(1) of the Regulations, the following factors must be present, namely:

1. the materials handling equipment must be regularly used outdoors; and
2. the roof must protect the operator from weather conditions that are likely to be hazardous to the safety and health of employees,

in accordance with the specific obligation of the employer under paragraph 125(i) of the Canada Labour Code, Part II (hereafter the *Code*).

According to Ms. Sénécal, these tractors are used for set-up, to transport baggage to the domestic conveyor and for working near aircraft. Experience has shown that tractors fitted with roofs have been implicated in accidents involving aircraft because of the reduced visibility caused by these roofs. The tractors used over long distances have roofs.

Furthermore, the exposure to the elements is not long enough to pose a risk to the employees' safety and health compared to other employees working outdoors. With respect to the hazards or risks of hazards, we must consider the weather conditions prevailing primarily during the winter season. Ms. Sénécal suggested using the Threshold Limit Values (TLVs) standard of the American Conference of Governmental Industrial Hygienists (ACGIH) for cold. According to this standard, the threshold limit of exposure to extreme weather conditions (minus 31 degrees Celsius with winds of 15 mph) for employees who work on the tarmac should be 40 minutes. However, the average amount of time spent by Air Canada employees who use the tractors in question is less than the 40-minute limit.

Ms. Sénécal pointed out that tractors without cabs are used in all airports in Canada and abroad. It should also be borne in mind that the employees working on the ground loading or unloading aircraft do not have any additional protection.

Submission for the employee

Mr. Audet pointed out that when the tractor moves on the aprons, and particularly when moving into the wind, the wind factor changes because of the speed at which the tractor is travelling. Furthermore, Mr. Audet stated that the tractors in question are not used only around aircraft, as Ms. Sénécal claims. For example, when employees do a set-up, i.e. collect all the equipment necessary to be ready for the arrival of the aircraft, they may travel long distances in certain cases.

When an employee drives an open tractor in a rain or snow storm, visibility can be reduced to the point where it is virtually nil.

According to Mr. Audet, the danger is not around aircraft. It exists when employees travel over long distances. Cold is not the only hazard for employees moving in an open tractor; wind-blown dust also affects the employees' visibility.

Reasons for decision

The point in dispute in the instant case is to determine whether Air Canada is in contravention of the Code and the Regulations for having removed the cabs from the six tractors referred to in the direction without having fitted them with a roof or other structure. The provisions relevant to this determination are as follows:

Paragraph 125(i) of the Code:

125. Without restricting the generality of section 124, every employer shall, in respect of every work place controlled by the employer,

- (i) ensure that the vehicles and mobile equipment used by the employees in the course of their employment meet prescribed safety standards;

Subsection 14.9(1) of the Regulations:

14.9(1) Motorized materials handling equipment that is regularly used outdoors shall be fitted with a roof or other structure that will protect the operator from exposure to any weather condition that is likely to be hazardous to the operator's safety or health.

Paragraph 125(i) of the Code is the section of the enabling legislation which authorizes application of a provision of the Regulations concerning materials handling by means of motorized equipment. The reference is the correct one and consequently I must resolve the point in dispute.

The tractors referred to in the direction are in fact motorized materials handling equipment routinely used outdoors. I do not believe that there is any dispute concerning this point. This equipment is used mainly for short trips between aircraft and the automatic conveyor belt so that employees can load and unload aircraft baggage. As has been noted on several occasions, this equipment is intended for use near aircraft. It is therefore obvious that this motorized handling equipment is regularly used outdoors.

Subsection 14.9(1) of the Regulations stipulates that "Motorized materials handling equipment that is regularly used outdoors shall be fitted with a roof or other structure..." In my opinion, the expression "*regularly used outdoors*" is decisive in the case of the tractors identified in the direction. When motorized materials handling equipment is regularly used outdoors, as in the

instant case, the wording of subsection 14.9(1) of the Regulations does not permit any discretion concerning the obligation to provide protection from the elements. In such cases, the equipment must be fitted with a roof or other structure.

It is obvious that the intended purpose of this provision is to protect the operator from any weather condition that is likely to be hazardous to his safety or health. Ms. Sénécal stated that when the operators must travel long distances, tractors fitted with cabs to protect the operators are used. I note that the Regulations do not make any distinction concerning the distance travelled as a criterion for determining the obligation to provide a roof or other structure.

The fact that there have been no reported incidents or accidents directly caused by weather conditions does not invalidate this provision. In my view, the standard set out in subsection 14.9(1) of the Regulations can be departed from only if it can be demonstrated that no weather condition represents a hazard for the safety or health of operators of motorized handling equipment; this has obviously not been done in the instant case. Proving that no weather condition represents a hazard for the safety or health of a tractor operator is difficult, if not impossible. Weather conditions vary depending on the season and the region. The operators of motorized handling equipment regularly used outdoors have no control over weather conditions. They are regularly exposed to them.

In my opinion, it is of little importance for the application of this provision that last year or the previous year were years in which there were no extreme weather conditions. In meteorology, the past is no guarantee of the future. The TLV standard suggested by Ms. Sénécal is not a regulatory standard, although it can serve as a guide for assessing the severity of cold as a stressor. In situations where the TLV standard indicated extreme cold, the capacity to react quickly would be necessary, which is not practical. Ms. Sénécal referred to a temperature of -28 degrees Celsius with a wind of 2.2 kilometres per hour for the year 1995-1996 as the year when the coldest temperatures were recorded at Dorval Airport. However, as Mr. Audet pointed out, this reference does not take into account the wind factor caused by the movement of the vehicle not fitted with a protection structure.

Cold is an important aspect of the rigors of our climate, but it is not the only one. Wind, thunderstorms, snowstorms, rainstorms, hail, extreme heat, etc. are all adverse weather conditions which can be hazardous to the safety and health of the operators of these tractors. It is true that employees assigned to load and unload aircraft work without equivalent protection. I am of the view that the legislator intended that employees who operate motorized equipment regularly used outdoors should have additional protection since the elements could affect their judgement while operating the equipment or simply their health.

Nonetheless, I note that a structure other than a roof could be acceptable. In my opinion, this aspect of protection deserves the parties' attention and this matter should be discussed by the occupational safety and health committee. Surely, the committee could recommend a type of structure specifically appropriate to the season and to the work to be performed. The important thing, as Ms. Sénécal pointed out, is that the roof or structure protect the operators from any weather condition that is likely to be hazardous to their safety or health. For example, by taking into consideration the distances covered, the time spent outdoors, the normal weather conditions at

a particular time of the year or any other factor, the committee might recommend that a windshield or other appropriate structure be installed on various tractors. In the absence of such a recommendation, the employer may have to justify its unilateral decisions to a safety officer if such decisions are the subject of complaints. It must also be understood that the safety and health committee's recommendations in no way limit the authority of a safety officer to intervene.

In my opinion, by removing the cabs from the tractors referred to in the direction without replacing them with another structure, Air Canada is in contravention of the Regulations.

Decision

For all the reasons outlined above, I **CONFIRM** the direction issued under subsection 145(1) of the Code on March 19, 1997 by safety officer Yves Jégou to Air Canada. However, in order to allow the company to bring the six tractors identified in the direction into compliance within a reasonable period of time, I vary the date on which Air Canada must comply by replacing the previous compliance date of March 19, 1997, stipulated by the safety officer, with July 18, 1997.

Decision issued on June 18, 1997.

Serge Cadieux
Regional Safety Officer

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

DIRECTION TO EMPLOYER UNDER SUBSECTION 145(1)

On March 4, 1997, the undersigned safety officer conducted an investigation in the work place operated by AIR CANADA, being an employer subject to the Canada Labour Code, Part II, at MONTREAL INTERNATIONAL AIRPORT, DORVAL, QUEBEC, the said work place being sometimes known as Air Canada aircraft services.

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

Paragraph 125(i) of the Canada Labour Code, Part II and subsection 14.9(1) of the Canada Occupational Safety and Health Regulations, Part XIV.

The six (6) pieces of motorized materials handling equipment regularly used outdoors: tractors No. Ltf.21,22,26,28, Lt3.35 and Lt1.42, are not fitted with a roof or other structure to protect the operator from exposure to any weather condition that is likely to be hazardous to the operator's safety or health.

Therefore, you are HEREBY DIRECTED, pursuant to subsection 145(1) of the Canada Labour Code, Part II, to cease all contraventions no later than March 19, 1997.

Issued at Montreal, this 19th day of March, 1997.

Yves Jégou
Safety Officer
1679

To: AIR CANADA
AIR CANADA, AIRCRAFT SERVICES
MONTREAL INTERNATIONAL AIRPORT
DORVAL, QUEBEC
H4Y 1C3

SUMMARY OF REGIONAL SAFETY OFFICER DECISION

Applicant: Air Canada

Respondent: Occupational Safety and Health Committee

KEYWORDS

Materials handling equipment, regularly, roof, structure, elements, cold, operator.

PROVISIONS

Code: 125(i), 145(1)

Regs: 14.9(1)

SUMMARY

A safety officer issued a direction to Air Canada because the company had removed the cabs from motorized materials handling equipment regularly used outdoors without replacing them with another structure to protect the operators from the elements. During review of the direction, the Regional Safety Officer (RSO) concluded that the expression "regularly used outdoors" was decisive in the instant case. When the said equipment is regularly used outdoors, the Regulations do not permit any discretion. The equipment must be fitted with a roof or other structure to protect the operators from the elements. The RSO **CONFIRMED** the directions issued but, following agreement with the parties, amended the date of compliance with the direction.