

CANADA LABOUR CODE
PART II
OCCUPATIONAL SAFETY AND HEALTH

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

Applicant: Logistec Arrimage Inc.
Montreal, Quebec
Represented by: Philippe Massé

Respondent: Longshoremen's Union, CUPE Local 375
Represented by: Daniel Tremblay and Paul Gervais

Mis-en-cause: Michel Iavarone
Safety Officer
Human Resources Development Canada

Before: Serge Cadieux
Regional Safety Officer
Human Resources Development Canada

A hearing was held in Montreal on May 8, 1998.

Background

On January 27, 1998, two slingers and a crane operator employed by Logistec Arrimage Inc. (hereinafter referred to as Logistec) each exercised their right to refuse to do work that they considered dangerous. The safety officer investigated the dangerous situations the same day. Following his investigation, he issued two directions to the employer for danger under paragraph 145(2)(a) of the Canada Labour Code, Part II (hereinafter referred to as the Code). A request for a review of the direction (ANNEX A) issued to protect the two slingers was made to the Office of the Regional Safety Officer. No request was made with respect to the direction (ANNEX B) issued to protect the crane operator.

Investigation by the Regional Safety Officer

The parties submitted their arguments to me in writing, and these documents form part of the file. On the basis of the information contained in this file, I decided that a hearing was necessary for two reasons. In the first place, it was important to clarify whether the request for a review of the direction in ANNEX A had been made within the time limit set by the Code. Secondly, it was necessary to discuss the existence of two separate directions and the fact that a single request for a review was made, in order to determine whether only the direction in ANNEX A was to be reviewed or whether both could be.

Time limit for requesting a review of directions

The direction in ANNEX A was issued orally to Mr. Massé on January 27, 1998 at Logistec's work place. The direction was confirmed in writing on January 28, 1998 and mailed the same day. The request for a review of this direction was made on February 12, 1998. The time limit of 14 days established in subsection 146(1) of the Code seems to have been exceeded since the number of days between January 27 and February 12, when the employer made a request for a review, is calculated to be 16. Subsection 146(1) reads as follows:

146 (1). Any employer, employee or trade union that considers himself or itself aggrieved by any direction issued by a safety officer under this Part, may, within fourteen days of the date of the direction, request that the direction be reviewed by a regional safety officer for the region in which the place, machine or thing in respect of which the direction was issued is situated. (my underlining)

The directions being appealed were issued by the safety officer under paragraph 145(2)(a) of the Code because of the dangerous situation. Paragraph 145(2)(a) of the Code tells us that when the safety officer determines that a danger exists:

- a) the safety officer shall notify the employer of the danger and issue directions in writing to the employer directing the employer immediately or within such period of time as the safety officer specifies

Consequently, the Code requires that directions for danger be issued in writing. In my opinion, it is not until the written directions have been received that the 14-day time limit starts to be counted down since it is not until that point that the employer is aggrieved by the directions. The safety officer confirmed that he mailed the written directions on January 28, 1998. Without determining exactly when Logistec received the said directions, everyone agreed that they were received at least a few days after January 28, 1998. The request for a review of the direction in ANNEX A is therefore deemed to be timely and is accepted.

Which direction may be reviewed

The safety officer issued two directions in writing to the employer under paragraph 145(2)(a) of the Code. The two directions were sent to the employer by registered mail on January 28, 1998. The two directions were accompanied by almost identical form letters to the employer, where only the reference numbers differed slightly, making it difficult to tell them apart. The letters inform the employer of the results of the safety officer's investigation and the employer's related rights and responsibilities, but they do not constitute the actual directions as they are attached to the letters and are clearly identified as such.

At first glance, the two directions are very similar. However, one quickly sees merely by reading through them that the two directions are distinct documents. The first paragraph of the direction in ANNEX A states that it concerns the refusal to work by Daniel Clermont and Mario Lefebvre, while the first paragraph of the direction in ANNEX B states that it concerns the refusal to work by Treffle Poirier. The description of the danger appearing in the third paragraph in each direction

could also lead to confusion since the first half of the description is the same in both cases. But the appearance of similarity ends quickly if one takes the time to carefully read the entire description. The description of the danger differs significantly in both cases. Consequently, the two directions are distinct and must be treated as such.

Mr. Massé admitted that there was an error on his part when he requested a review solely for the direction in ANNEX A even though he had received two documents. He sincerely thought that he had received the same document twice and did not notice the difference. Mr. Massé told me that, since the two directions had been issued for the same circumstances, they should be covered by the same review, to which Mr. Gervais strongly objected.

I informed Mr. Massé that from the legal standpoint I had received only one request for review of a direction, namely the one in ANNEX A. I did not receive a request for review of the direction in ANNEX B and, consequently, I cannot review that direction. However, I explained that when reviewing the direction in ANNEX A I had to review all the circumstances relating to the safety officer's investigation. Consequently, in point of fact, I would be reviewing and commenting on the same circumstances that led the safety officer to issue the two directions even though, technically speaking, I would not be reviewing the direction in ANNEX B. I recognized, however, that the latter direction would remain intact and that at that point it would be up to the safety officer to decide on the outcome of the events relating to that direction.

In the light of this information, Mr. Massé requested a short adjournment of the hearing to examine and express the employer's position on the matter. Upon his return, Mr. Massé informed me that Logistec was withdrawing its request for a review of the direction in ANNEX A.

Decision

As the regional safety officer in charge of reviewing the direction in ANNEX A issued pursuant to paragraph 145(2)(a) of the Code on January 28, 1998 by safety officer Michel Iavarone to Logistec Arrimage Inc., I confirm that the request for review has been withdrawn. Consequently, I am no longer seized of this matter. The case is closed.

Issued on May 14, 1998.

Serge Cadieux
Regional Safety Officer

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

DIRECTION TO THE EMPLOYER UNDER PARAGRAPH 145(2)(a)

On 27 January 1998, the undersigned safety officer conducted an investigation following the refusal to work made by Daniel Clermont and Mario Lefebvre in the work place operated by LOGISTEC ARRIMAGE INC., being an employer subject to the Canada Labour Code, Part II, at SECTION 50, PORT OF MONTREAL, MONTREAL, QUEBEC, the said work place being sometimes known as Logistec.

The said safety officer considers that a condition in the work place constitutes a danger to an employee while at work:

The operator of the mobile crane (weight - 90 tonnes), Treffle Poirier, who loads rolls of steel (coils) into a freight car (gondola or half box car), does not have a full view of the work area where he has to operate and slingers Mario Lefebvre and Daniel Clermont cannot concentrate on their work because they also have to give signals to the operator. As a result, it is dangerous for these employees to handle the load in the car until it is positioned, since they could be pinned, crushed or struck.

Therefore, you are HEREBY DIRECTED, pursuant to paragraph 145(2)(a) of the Canada Labour Code, Part II, to take measures for guarding the source of danger immediately.

Issued at Montreal, Quebec, this 28th day of January 1998.

MICHEL IAVARONE
Safety Officer
1787

TO: LOGISTEC ARRIMAGE INC.
SECTION 50
PORT OF MONTREAL
MONTREAL, QUEBEC
H3C 3R5

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

DIRECTION TO THE EMPLOYER UNDER PARAGRAPH 145(2)(a)

On 27 January 1998, the undersigned safety officer conducted an investigation following the refusal to work made by Treffle Poirier in the work place operated by LOGISTEC ARRIMAGE INC., being an employer subject to the Canada Labour Code, Part II, at SECTION 50, PORT OF MONTREAL, MONTREAL, QUEBEC, the said work place being sometimes known as Logistec.

The said safety officer considers that a condition in the work place constitutes a danger to employees while at work:

Treffle Poirier, who operates the mobile crane (weight - 90 tonnes) and loads rolls of steel (coils) into a freight car (gondola or half box car), does not have a full view of the work area where he has to operate, and he operates the equipment without a properly trained signaller whose sole function is signalling. As a result, it is dangerous for slingers Mario Lefebvre and Daniel Clermont to handle the load in the car until it is positioned.

Therefore, you are HEREBY DIRECTED, pursuant to paragraph 145(2)(a) of the Canada Labour Code, Part II, to take measures for guarding the source of danger immediately.

Issued at Montreal, Quebec, this 28th day of January 1998.

MICHEL IAVARONE
Safety Officer
1787

TO: LOGISTEC ARRIMAGE INC.
SECTION 50
PORT OF MONTREAL
MONTREAL, QUEBEC
H3C 3R5

SUMMARY OF REGIONAL SAFETY OFFICER DECISION

Applicant: Logistec Arrimage Inc.

Respondent: Longshoremen's Union, CUPE Local 375

KEYWORDS

Slingers, crane operator, review, direction in writing, fourteen days, time limit, withdrawal.

PROVISIONS

Code: 145(2)(a), 146(1)

SUMMARY

A safety officer issued two directions for danger to the employer following the refusals by two slingers, in the first case, and a crane operator, in the second. The employer appealed the first direction but failed to request a review of the second direction because it so closely resembled the first one that he confused them. He thought that he was dealing with a single direction. A discussion also arose concerning the timeliness of the request for a review of the first direction. On review, the Regional Safety Officer (RSO) allowed the request for a review of the first direction since it was made within the time limit set out in subsection 146(1) of the Code considering that the direction was issued under paragraph 145(2)(a) of the Code, a provision that requires the direction to be given in writing. However, the RSO informed the employer that he was not seized of a request for a review of the second direction and that, consequently, he could not legally review it. At that point, the employer informed the RSO that he was withdrawing the request for a review. The case was closed.