

**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**

Decision No.: 99-015

Applicant: Revenue Canada
Summerside, P.E.I.
Represented by: Richard Fader, Counsel

Respondent: Public Service Alliance of Canada
Local 90060
Charlottetown, P.E.I.
Represented by: Mary Ann Arsenault, President

Mis-en-cause: Pierre St-Arnauld
Safety Officer
Human Resources Development Canada

Before: Serge Cadieux
Regional Safety Officer
Human Resources Development Canada

An oral hearing was held on June 15, 1999 in Summerside, P.E.I.

Background

On February 16, 1999, safety officer Pierre St-Arnauld noticed, as he was driving past the Summerside Tax Centre, that Revenue Canada employees were picketing in front of the premises of the Tax Centre. He inquired about the length of time the employees had been in the line up along the road and was told they had been there all day. After making a few phone calls, the safety officer was allowed through the picket line and met with Mr. Dan Woodin, Director of the Summerside Tax Centre. The safety officer expressed a number of safety and health concerns to Mr. Woodin, one of which was the safety of employees walking along the road. He felt the employer had the responsibility to take measures to protect the employees who had to park their vehicles along the road since access to the parking lot was blocked by picketing employees. He

stated in his report that:

“At that time appx (sic) 15:00h there was no more line up. The employer had given the OK for the employee (sic) to go home.

Based on the information available to me at the time, I am of the opinion that the employer was in control of the employees awaiting to access the parking lot.

Therefore the employer had the obligation to protect his employees.”

The safety officer stated that Mr. Woodin had requested that the employees wait along the road until they could come inside. He explained that since the employees were being paid to remain outside, they were under the control of the employer.

A written direction (APPENDIX) was issued shortly after meeting with Mr. Woodin under subsection 145(1) of the Canada Labour Code, Part II (hereafter the “Code”) to Revenue Canada to protect its employees. This is the direction under review.

Testimony of Mr. Dan Woodin

Mr. Dan Woodin is the Director of the Summerside Tax Centre. He explained that employees of the Centre were issued a notice on December 17, 1998 stating the policy of the Department in a strike situation. The policy is to the effect that, in the event of a strike, the Department will conduct business as usual. The employees have specific responsibilities in this regard. For example, employees are expected to report for work as scheduled. If they encounter difficulty at the picket line, they are to contact a representative of the management monitoring team at the picket line who will escort them through the line or reassign them at other locations.

On February 16, 1999, the vehicle traffic was held up for a long period of time. Those employees that had walked to work were allowed in on a one by one basis. Around 14:30 h that day, the employees waiting in their vehicles to enter the parking lot of the Centre were allowed to go home. The safety officer arrived around 15:00 h. At that time, all the vehicles had left for the day. Mr. Woodin is adamant: he never told employees they had to stay in line and he never said he did to the safety officer. He never told a non-striking employee he/she had to wait in line.

Mr. Woodin explained that the safety officer was of the view that since the employees were being paid while they were on the streets, the employer was in control of the employees. However, the safety officer did not inquire about the nature of the payment received by the employees which, as it turns out, was leave with pay for strike related activities.

Submissions for the Employer

Mr. Fader reviewed the application of section 124 to this case and the definition of work place as found at section 122(1) of the Code with emphasis on the expression “engaged in work”. He added:

It is our position that the employees were not engaged in work. They were off the employer’s property, they were on the side of the road. They were on public roads, they were on leave with pay and we submit that Part II of the Code does not contemplate public highways any more that it contemplates coffee shops, gas stations or other places that employees may pass on their way to work.

Mr. Fader relied on two decisions of the Federal Court “because they give clear instruction as to what is meant by at work and as such they are relevant to this case and we are bound by them.” The first one is *Bidulka v. Canada (Treasury Board) (F.C.A.)*, [1987] 3 F.C.J. No 274 and the second one is *Jackie T.R. Carr et all v. Canada Post Corporation*, CLRB Decision No. 668. Both cases dealt with picket line activity. Both also found that the situation feared by employees occurred outside the work place and are not situations envisaged by the Code.

Essentially, the submission of Revenue Canada is that this is a labour relations issue and not a safety matter. The Public Service Alliance of Canada had decided to picket this institution as a result of a labour dispute and employees were not crossing the picket line. When a question of safety arose as a result of the traffic caused by parked vehicles along the road, the police took control of the situation since only they had the authority to deal with it. The employer was not in control of the employees who could come and go at will.

Submissions for the Employee

Ms. Arsenault had no submissions to make and no arguments to present.

Decision

The issue to be decided in this case is whether the employer is in contravention of section 124 of the Canada Labour Code, Part II (hereafter the Code) for the reasons stated in the direction. Section 124 reads:

124. Every employer shall ensure that the safety and health at work of every person employed by the employer is protected. (my underlining)

Evidently, the obligation of the employer to protect the safety and health of his employees is predicated on the employees being at work. In the case at hand, the employees had not yet arrived

at their place of work which is the Summerside Tax Centre. They were prevented from entering their respective work places by other employees engaged in picketing in front of the Tax Centre. The employer has no control over this situation and cannot be held responsible for the actions of picketing employees. The fact also that non striking employees were being paid for time loss as a result of a strike action does not impose upon the employer health and safety obligations under the Code. The employees are being paid as a result of a negotiated benefit under their collective agreement.

I am satisfied that the employer has not directed the non-striking employees to remain in line until they would be allowed to enter the Tax Centre. Mr. Woodin has testified to this effect and his testimony is uncontradicted. In fact, the safety officer's assertion that management had directed employees to remain in line is based on allegations made by a few unidentified employees. The "Standard Notice to Employees Prior to a Legal Strike" sets out, on the other hand, a clear procedure to be followed in the event of a strike action. Nowhere does this procedure recommend that management direct its employees to remain close to the work place. Also, no evidence has been tendered which would indicate that employees waiting in their vehicles actually reported to work to their supervisor to a representative of the management monitoring team at the picket line to be escorted through the line or to be reassigned at other locations.

Also, I agree with Mr. Fader that protection on the road is primarily the responsibility of the police authorities. Revenue Canada has no control over the traffic or the safety and health of employees who decide of their own volition to walk along the shoulder of the road without having been directed by their employer to wait in line. The employees were not at work at that moment and consequently, the employer has no responsibility towards the safety and health of these employees until they enter the work place.

Evidently, in some cases such as mail delivery or road transportation to name only those occupations, the work place of employees includes being on the road and in such circumstances, they would be considered at work. However, this is not the case before me.

I need not look any further to decide this case. The situation addressed by the safety officer has no application under the Code because employees were not at work at the time of the safety officer's investigation. Safety officers should be cautious and mindful that, in matters of this kind, it is necessary not to confuse safety and health with labour relations interests.

For all the above reasons, **I HEREBY RESCIND** the direction issued under subsection 145(1) of the Code on February 17, 1999 by safety officer Pierre St-Arnauld to Revenue Canada.

Decision rendered on July 13, 1999

Serge Cadieux

Regional Safety Officer

ANNEX I**IN THE MATTER OF THE CANADA LABOUR CODE
PART II - OCCUPATIONAL SAFETY AND HEALTH****DIRECTION TO THE EMPLOYER UNDER SUBSECTION 145(1)**

On February 16th, 1999, the undersigned safety officer conducted an inspection in the work place operated by REVENUE CANADA, being an employer subject to the Canada Labour Code, Part II, at 275 POPE ROAD, SUMMERSIDE, P.E.I., the said work place being sometimes known as SUMMERSIDE TAX CENTRE.

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

1. Paragraph 124 of the Canada Labour Code, Part II.

The employer did not provide protection against moving vehicle for employees walking along the road while the said employees were required to park on the road's shoulder and await access to the employer's parking lot.

Therefore, you are HEREBY DIRECTED, pursuant to subsection 145(1) of the Canada Labour Code, Part II, to terminate the contravention no later than February 16th, 1999.

Issued at Charlottetown, PEI, this 17th day of February 1999.

PIERRE ST-ARNAULD
Safety Officer
1753

To: REVENUE CANADA
SUMMERSIDE TAX CENTRE
275 POPE ROAD
SUMMERSIDE, P.E.I.
C1N 5Z7

SUMMARY OF REGIONAL SAFETY OFFICER DECISION

Decision No.: 99-015

Applicant: Revenue Canada
Summerside, P.E.I.

Respondent: Public Service Alliance of Canada

KEYWORDS:

Moving vehicles, picket line, strike activity, employees at work.

PROVISIONS:

Code: 145(1), 124
Reg: n/a

SUMMARY:

A safety officer gave a direction to Revenue Canada because the employer was not protecting the safety and health of employees parked along the shoulder of a road as a result of picketing activity in front of its premises. The safety officer felt that since the employer was paying these employees, he/she was in control of the employees and had the responsibility to protect them. Upon review, the Regional Safety Officer decided that since the employees were not at work, the employer had no responsibility to protect them on the road. That was the responsibility of the police authorities. Also, the fact that employees were being paid had nothing to do with the Code but had much to do with their collective agreement. For these reasons, the RSO rescinded the direction.