

**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.:** 99-030

**Applicant:** North East Air Services  
Brantford, Ontario  
Represented by: E. Parchewsky

**Respondent:** Safety and Health Committee  
North East Air Services  
Brantford, Ontario  
Represented by: C. L.

**Mis-en-cause:** Paul Danton  
Safety Officer  
Human Resources Development Canada

**Before:** Serge Cadieux  
Regional Safety Officer  
Human Resources Development Canada

**Background**

On June 23, 1999, safety officer Paul Danton issued a direction (ANNEX) under paragraph 141(1)(f) of the Canada Labour Code, Part II (hereafter the Code) to North East Air Services. This provision reads as follows:

*141. (1) A safety officer may, in the performance of the officer's duties and at any reasonable time, enter any work place controlled by an employer and, in respect of any work place, may  
(f) direct the employer to produce documents and information relating to the safety and health of his employees or the safety of the work place and to permit to the safety officer to examine and make copies of or extracts from those documents and that information;  
and*

The direction orders Mr. Parchewsky, the owner of the company, to produce to the safety officer an existing engineering report certifying that a mezzanine work area, referred to as a storage unit, is safe. I understand that the safety officer was made aware that an assessment of the storage unit had been carried out by an engineering firm when Ms. C. F., Office Manager at North East Air

Services, stated at a hearing before the Regional Safety Officer<sup>1</sup> that her company entered into a contract with an engineering firm to have the firm carry out the said assessment and produce a report. Ms. C. F. claimed at the time that the report concluded that the storage unit is safe.

Mr. Parchewsky requested a review of the direction by facsimile dated, by him, July 7, 1999 which would make the request timely. The issue of timeliness was not discussed.

### **Chronology of events**

In a letter dated July 16, 1999, Ms. C. F. acting on behalf of Mr. Parchewsky, wrote to me requesting that I provide her with specific information concerning a decision<sup>2</sup> I had rendered in a previous case involving North East Air Services. Mr. Parchewsky was informed that once a decision is rendered, the Regional Safety Officer is no longer seized of the matter and that it would be inappropriate for him to comment on a previous decision. Mr. Parchewsky was also advised that such information could be obtained by contacting a safety officer or the Department of Human Resources Development Canada directly.

A standard letter from the Office of the Regional Safety Officer requesting reasons in support of the request for review was sent to Mr. Parchewsky on August 17, 1999. The deadline for submitting the reasons was set at September 10, 1999. On September 13, 1999, Ms. C. F. wrote to the Office of the Regional Safety Officer requesting that no hearing be scheduled in this case. She explained that safety officer Paul Danton was under investigation by his Department resulting from complaints made by North East Air Services because the safety officer allegedly abused his authority during his visits at the premises of the Company. I wrote to Ms. C. F. on September 22, 1999, explaining that the review process under section 146 of the Code was independent from any investigation that the Department may undertake as a result of a complaint made by her Company against the investigating safety officer. Nonetheless, in order to accommodate Ms. C. F. and in the spirit of fairness, I granted North East Air Services an extension of two weeks before scheduling a hearing. This, I believed, would have allowed sufficient time for Ms. C. F. to consult with the Department and satisfy herself that her concerns were being addressed.

After numerous telephone calls between the Office of the Regional Safety Officer and Ms. C. F. to seek her availability for a hearing date, since she had been granted an extension of two weeks which would require a hearing to be held in early October, I decided to set a date since it was impossible to obtain Ms. C. F.'s cooperation to hold any form of hearing. On November 25, 1999, I sent a Notice of Hearing to Mr. Parchewsky indicating that an oral hearing was scheduled to take place on December 8, 1999. Ms. C. F. wrote back on behalf of Mr. Parchewsky on November 26, 1999 to complain about the allegedly unfair manner in which she had been treated in the hearing that was held in the case cited above. She stated that she would not participate in any further RSO hearings. She was also adamant that it would be improper for the safety officer to participate in any hearings since he was under investigation by the Department.

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<sup>1</sup> See *North East Air Services, February 1999*, unreported RSO Decision # 99-007

<sup>2</sup> *Supra*

In another letter dated November 30, 1999, Ms. C. F. wrote that she should not be required to attend a hearing and face the safety officer who, she alleged, is under investigation for abuse of authority. Ms. C. F. further added that she should also not be required to attend a hearing under my direction because she was challenging the validity of the hearing I had presided in the case cited above, indicating that the RSO had not honoured his mandate. I informed Ms. C. F. that her accusations were not based on any evidence, that they were self-serving and that the proper forum for dealing with the issue of fairness was the Federal Court, Trial Division. Ms. C. F. had not appealed my decision to the Federal Court although she had been advised of her right to do so.

Once again, in order to accommodate Ms. C. F., I decided to cancel the oral hearing and to proceed by way of written submissions. This, I believed, would satisfy her concern with the presence of the safety officer, whether justified or not, by allowing her not to have to face the safety officer. It would however require her to provide the Office of the Regional Safety Officer with final written submissions on the merits of this case. I wrote to Ms. C. F. on December 3, 1999 informing her of the above and set the deadline to December 17, 1999 to file her written submissions with this Office. Having received no reply from North East Air Services, another letter was sent to Ms. C. F. in which, once more, I extended the time for the company to file its submissions with this Office until January 7, 1999 to take into consideration the holiday season that was about to begin.

Ms. C. F. informed me via a facsimile dated January 4, 2000, that she would not participate in a hearing concerning a direction issued by safety officer Paul Danton. She also informed me that both companies named in the direction were in Receivership. She explained that “neither companies has any employees and are in the process of being liquidated to repay the bank loans. The companies are no longer operating.” Ms. C. F. added that the safety officers involved in this case and in the previous case cited above were the subject of a disciplinary process and according to her statement, this was “as a result of the investigator’s conclusions.” She ended her note by stating “This supports our refusal to associate with him in any manner that would seem to accept his credibility in his role as a Safety Officer.”

### **Decision**

The review of directions has been deemed by the Federal Court to be quasi-judicial in nature. As such, the process before the Regional Safety Officer adheres to the rules of natural justice and procedural fairness. For this reason, Mr. Parchewsky and Ms. C. F. have been given many opportunities to cooperate with the Regional Safety Officer. This Office has made several unsuccessful efforts to obtain rationale or evidence as to why the direction should be rescinded as requested by North East Air Services, but to no avail. To this date I have received no submissions from North East Air Services to show why the direction should be rescinded and I believe that neither Mr. Parchewsky nor Ms. C. F. intend to send any particularly since Ms. C. F. is now making the point that the company is currently in Receivership and no longer has any employees.

Any person who files an application under section 146 of the Code to have a direction reviewed

has the burden of supporting its request with reasons which would show how that person is aggrieved by the direction in question. Failure to provide reasons or to make a reasonable effort to do so will result in the application being dismissed simply because there is no case before the Regional Safety Officer. I have no intention of addressing the tactics of no response and delays used by Ms. C. F. to paralyse the review of direction process.

In the absence of submissions or supporting reasons in this case and because I believe that none will be forthcoming, I am dismissing the request made under section 146 of the Code by Mr. E. Parchewsky to have the direction, issued on June 23, 1999, under paragraph 141(1)(f) of the Code by safety officer Paul Danton to North East Air Services, reviewed. The effect of dismissing the request is that the direction remains intact and in force.

Decision rendered on January 12, 2000

Serge Cadieux  
Regional Safety Officer

ANNEX**IN THE MATTER OF THE CANADA LABOUR CODE  
PART II - OCCUPATIONAL SAFETY AND HEALTH****DIRECTION TO EMPLOYEE UNDER PARAGRAPH 141(1)(f)**

On June 23<sup>rd</sup>, 1999, the undersigned safety officer conducted an inspection regarding compliance with previous directions, in the work place operated by 641296 Ontario Inc. an employer subject to the **Canada Labour Code, Part II**, at Hangar # 4, Brantford Municipal Airport, Brantford, Ontario, the said work place being sometimes known as **North East Air Services or Air Serv. Corp.**

Therefore, you are **HEREBY DIRECTED**, pursuant to paragraph 141(1)(f) of the **Canada Labour Code, Part II**, to produce, no later than June 30<sup>th</sup>, 1999, the documents and information relating to the safety and health of your employees and the safety of the work place which are identified below, and to permit the said safety officer to examine and make copies or extracts of such documents and information:

**A copy of an engineering report, and any related documents and correspondence, conducted since February 1, 1999 regarding an assessment of the upper mezzanine bilevel work area, described by you as a storage area, of your workplace.**

**You advised the undersigned safety officer that this assessment was conducted by engineering firm known as J.H. Cohoon Engineering Ltd. and that they have provided you with a report detailing the results of their assessment.**

Issued at Brantford, this 23<sup>rd</sup> day of June 1999.

PAUL DANTON  
Safety Officer #1863

To: Mr. E.A. Parchewsky  
64129 Ontario Inc.  
P.O. Box 1720 Hangar 4  
Brantford Municipal Airport  
Brantford, Ontario N3T 5V7

## **SUMMARY OF REGIONAL SAFETY OFFICER DECISION**

**Decision No.:** 99-030

**Applicant:** North East Air Services  
Brantford, Ontario

**Respondent:** C. L.  
North East Air Services

**KEYWORDS:** Mezzanine, storage unit, engineering report, tactics, undue delays, non response, request dismissed

### **PROVISIONS:**

Code: 141(1)(f)  
COSH Regs: N/A

**SUMMARY:** A safety officer ordered the president of a company to produce an existing engineering report which concluded, according to a representative of the company, that a storage unit which had been deemed unsafe during a previous inspection, was safe. The company appealed the direction but used tactics of delays and non response which caused the Regional Safety Officer to dismiss the request for review of the direction on the basis that the applicant had not made any submissions nor given reasons in support of the request for review of the direction. The direction remained intact and in force.