

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: Purolator  
Represented by: Mr. J. McCallum,  
National Health, Safety and Environmental Manager

Respondent: International Brotherhood of Teamsters, Chauffeurs,  
Warehousemen and Helpers  
Represented by: Mr. R. Ashtown,  
Local Union Representative, Local 979

Mis-en-cause: Dennis Schultz  
Safety Officer  
Human Resources Development Canada

Before: Douglas Malanka  
Regional Safety Officer  
Human Resources Development Canada

Background:

On November 15, 1999, safety officer Dennis Schultz and safety officer Noel Kirouac conducted an inspection in the workplace of Purolator Courier Ltd. (hereto referred to as Purolator) located at 1926 Sargent Avenue Winnipeg. On January 10, 2000, safety officer Schultz issued a direction to Purolator pursuant to subsection 145.(1) of the Canada Labour Code, Part II (hereto referred to as the Code or Part II.). He ordered Purolator to construct a one hour fire separation for the service room containing their emergency diesel generator in compliance with paragraph 125.(a) of the Code, section 2.1 of the Canada Occupational Safety and Health Regulations (COSHRs) and sentence 3.5.2.1(2) of the National Building Code of Canada (NBC), 1985, by April 15, 2000. Purolator requested that a Regional Safety Officer review and rescind the direction. A hearing was held in Winnipeg on April 13, 2000. After hearing the case, the Regional Safety Officer indicated that he would vary the direction and change the compliance date to May 25, 2000, to give Purolator time to construct the one hour fire separation.

Safety Officer:

Safety officer Schultz provided the Office of the Regional Safety Officer with a copy of his report prior to the hearing. The report will not be reproduced here, but forms part of the file. I retain the following from his report and testimony.

On November 15, 1999, safety officer Schultz and safety officer Noel Kirouac conducted a general occupational safety and health inspection of the workplace at Purolator in the company of Mr. Philip Fenske, Ramp Manager and employer representative on the workplace safety and health committee. The safety officers identified several violations of the Code and COSHRs including the failure by Purolator to provide a one hour fire separation for the service room containing their emergency diesel generator as specified in the NBC, 1985. They met with Purolator on November 18, 1999, to discuss compliance and Purolator signed an Assurance of Voluntary Compliance (AVC).

Approximately one month later, Purolator wrote to safety officer Schultz and indicated that they would not be constructing a fire separation because the more recent 1995 version of the NBC provides an exemption from doing so. Safety officer Schultz advised Purolator that the COSHRs specify the 1985 version of the NBC and that he did not have the authority to apply the 1995 version. Purolator was unmoved and so safety officer Schultz issued a written direction and ordered them to comply with paragraph 125.(a) of the Code, section 2.1 of the COSHRs and sentence 3.5.2.1(2) of the NBC, 1985, by April 15, 2000.

At the hearing, safety officer Schultz added that he would have considered a later compliance date if requested by Purolator. He also stated that the exemption that Purolator referred to in the 1995 version of the NBC did not apply to their emergency diesel generator. He insisted that both versions of the NBC require a fire separation for the service room that contains Purolator's emergency diesel generator.

Applicant:

Mr. McCallum presented three witnesses which included Mr. K. (Kelly) Van Weber, Ramp Attendant and employee safety and health committee co-chair, Mr. A. (Andy) Franczyk, District Manager, Winnipeg Air Operations, and Ms. C. (Christine) Makichuk, Administrative Assistant, Winnipeg Air Division.

Mr. Franczyk testified that he maintains a good occupational safety and health program at the workplace and that all managers and employees at the facility participate in safety and health committee meetings. In addition, an employee representative is appointed to represent the concerns of employees who might be absent the day of the meeting or who might prefer not to speak to an item. According to Mr. Franczyk there have been no complaints registered with the safety and health committee regarding the generator since its installation in 1997. He pointed out that he reviewed the AVC signed by Purolator on November 18, 1999 with the workplace safety and health committee and that prompt compliance was achieved on all items except for the one at bar.

Mr. Franczyk described the layout of the facility and estimated that the distance between the emergency diesel generator and the maintenance bays to be approximately 30 feet. He said that it was highly unlikely that a spark from the maintenance bays could reach the generator because of the distance and the presence of a plastic weather curtain. In terms of noise produced by the emergency diesel generator in operation, he held that employees are not exposed to hazardous levels of sound because ramp employees wear hearing protectors at all times and the maintenance employees work far enough away. He further held that there were no air quality issues relative to the emergency diesel generator because it was exhausted to the outside of the building and because there are large bay doors that are opened when necessary. Notwithstanding this, he indicated that he would be consulting with his safety and health committee regarding these potential hazards.

Ms. Makichuk testified that the fire protection systems at Purolator are inspected annually by a company called Grinnel Fire Protection (Grinnell). Grinnel looks at fire extinguishers, sprinklers, and fire alarms. In addition, Wescan Electrical Mechanical Services (Wescan) tests the emergency diesel generator every month during the day. The test conducted by Wescan takes approximately 5 minutes and the few employees present at the workplace at that time go for lunch. Thus they are not exposed to sound from the emergency diesel generator. She further noted that neither Grinnel nor Wescan had ever cited the absence of a fire separation for the service room containing the emergency diesel generator.

Respondent:

Mr. R. (Rick) Ashtown did not introduce any further evidence or present witnesses.

Summations:

Mr. McCallum conceded that the 1985 version of the NBC applies in respect of their emergency diesel generator and that it requires the construction of a fire separation for the service room containing their emergency diesel generator. He did not argue, pursuant to section 2.1 of the COSHRs, that it was not reasonably practicable to do so. He requested, however, that the direction be varied to change the compliance date from April 15, 2000 to May 25, 2000, to give Purolator 6 weeks from the time of the hearing to construct the required fire separation. He held that Purolator is a responsible employer and makes every effort to comply with applicable standards. He pointed out that the Company contracts with professional fire service groups to inspect their workplaces and ensure that the company is in compliance with applicable standards. He noted that Grinnell, Westcan and the Winnipeg fire department had inspected the workplace and none had identified the need for a one hour fire separation in respect of their emergency diesel generator. He cited the prompt action taken by Purolator to comply with the violations noted in the AVC and held that Purolator genuinely believed that it was in compliance with the Code requirement relative to the emergency diesel generator.

Decision:

Issue(s):

The issue in this case is whether safety officer Schultz erred when he applied the 1985 version of the National Building Code and required Purolator to construct a one hour fire separation for a service room at the workplace that housed an emergency diesel generator.

Applicable Legislation

As safety officer Schultz identified in his direction the applicable sections of the Code and COSHRs include:

Paragraph 125.(a) which reads:

*“125. Without restricting the generality of section 124, every employer shall, in respect of every work place controlled by the employer,  
(a) ensure that all permanent and temporary buildings and structures meet the prescribed standards;...”*

Section 2.1 of the COSHRs which reads:

*“2.1 The design and construction of every building shall meet the standards set out in Parts 3 to 9 of the National Building Code in so far as is reasonably practicable.”* [My underline.]

Section 1.2 of the COSHRs which specifies that:

*““National Building Code” means the National Building Code of Canada, 1985, issued by the Associate Committee on the National Building Code, Research Council of Canada, dated 1985.”*

Sentence 3.5.2.1.(2) of the National Building Code of Canada, 1985, which reads:

*“(2) Except as provided in Sentences (3) and (4), fuel-fired appliances shall be located in a service room or service space separated from the remainder of the building by a fire separation having a fire-resistance rating of not less than*

- (a) 2 h in buildings classified as Group B of Group G, Division 1 occupancy where such buildings exceed 2 storeys in building height of 400 m<sup>2</sup> in building area, and*
- (b) 1 h in buildings other than as described in Clause (a).*

Sentence 3.5.2.1.(4) of the National Building Code of Canada, 1985, reads:

*(4) Except for buildings classified as Group B or Group F, Division 1 major occupancy, the fire separations required in Sentence (2) need not be provided for fuel fired appliances where it can be shown that the separation is not necessary and the appliance*

*(a) serves not more than 1 room or suite, or*

*(b) serves a building with a building area of not more than 400m<sup>2</sup> and a building height of not more than 2 storeys.” [My underline.]*

Rationale:

Section 1.2 of the COSHRs specifies that the NBC means the 1985 version of the standard. That being the case, there is no authority in the Code or COSHRs for applying the more recent 1995 version of the standard. Since Mr. McCallum failed to establish that safety officer Schultz had erred in interpretation and application of the 1985 version of the NBC when he directed Purolator to construct a one hour separation for the service room that contained their emergency diesel generator, and did not argue, pursuant to section 2.1 of the COSHRs, that it was not reasonably practicable to do so, there was no basis to rescind the direction in that regard.

However, Mr. McCallum requested that the compliance date specified in the direction be changed from April 15, 2000 to May 25, 2000, to give them time to install the required one hour fire separation. I agreed to vary the compliance date in the direction because safety officer Schultz had given Purolator approximately 3 months to comply with his direction and there was no evidence that the situation at the workplace had changed relative to employee occupational safety and health. In this regard, I heard evidence that employees leave the area whenever the emergency diesel generator is tested and that employees would not be exposed to hazardous levels of sound if the generator was deployed because ramp employees wear hearing protectors at all times and maintenance employees work far enough away. I also heard evidence that employees would not be exposed to air-borne hazardous substances because the generator is exhausted to the outside and the workplace is generally well ventilated. Mr. Franczyk stated further that he would raise these potential hazards at the next safety and health committee and address any occupational safety and health concerns employees might have.

Finally, safety officer Schultz confirmed that Purolator maintains a quality safety and health program at the workplace. In this regard, I note that Purolator includes all employees in its safety and health committee and had acted promptly to comply with all other items identified in the AVC of November 18, 1999. Purolator genuinely believed they were in compliance with the Code and the COSHRs when they refused to construct the one hour fire separation, but immediately agreed at the hearing to comply with the direction once it was confirmed that they were required by the legislation to so. The period of 6 weeks from the hearing date to comply with the direction was accepted because this was the amount of time Mr. McCallum testified that it would take to construct the fire separation.

Decision:

For the above reasons, I HEREBY VARY the direction that safety officer Schultz issued to Purolator Courier Ltd. on January 10, 2000, pursuant to subsection 145.(1) of the Code and change the compliance date from April 25, 2000 to May 25, 2000.

Decision rendered August 17, 2000.

Douglas Malanka  
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 November 15<sup>th</sup>, 1999, the undersigned safety officer conducted an inspection in the work place operated by PUROLATOR COURIER LTD., being an employer subject to the Canada Labour Code, Part II, at BLDG. T51, 1926 SARGENT AVENUE, WINNIPEG, the said work place being sometimes known as Purolator Maintenance Garage.

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

1. 125 (a) 2.1

To ensure building occupant safety, the diesel generator shall be located in a room designed and constructed to meet NBC, Part 3-9 (1985). CLC 125. (a), COSHR 2.1, NBC 3.5.2.1(2), e.g. 1 hour fire separation required for service room containing a fuel fired appliance

Therefore, you are HEREBY DIRECTED, pursuant to subsection 145(1) of the Canada Labour Code, Part II, to terminate the contraventions no later than April 15<sup>th</sup>, 2000.

Issued at Winnipeg, this 10<sup>th</sup> day of January 2000.

Denis Schultz  
Safety Officer  
SCHD

To: PUROLATOR COURIER LTD.  
PUROLATOR COURIER LTD. AIR DIVISION  
BLDG. T51, 1926 SARGENT AVENUE  
WINNIPEG  
R3H 0C9

SUMMARY OF REGIONAL SAFETY OFFICER DECISION

Applicant: Purolator

Respondent: I.A.M.A.W.

**KEY WORDS**

fire separation, emergency diesel generator, service room, National Building Code of Canada, 1985,

**PROVISIONS**

*Code:* 125.(a)

*Regs:* 1.2, 2.1[Sentence 3.5.2.1.(2) of the National Building Code of Canada, 1985]

**SUMMARY**

On January 10, 2000, Safety officer Schultz issued a direction to Purolator pursuant to subsection 145.(1) of the Canada Labour Code, Part II (Code). He ordered Purolator to comply with paragraph 125.(a) of the Code, section 2.1 of the COSHRs and sentence 3.5.2.1(2) of the NBC, 1985, by April 15, 2000. Purolator requested that a Regional Safety Officer review and rescind the direction and a hearing was subsequently held in Winnipeg on April 13, 2000. After hearing the case, the Regional Safety Officer advised that he would vary the compliance date in the direction to May 25, 2000, to give Purolator time to comply with the direction and construct a one hour fire separation for the service room containing their emergency diesel generator.