

Canada Labour Code
Part II
Occupational Health and Safety

W. Lawrysyn
applicant

and

B. R. Wilkins
Respondent

Decision No.: 03-018
October 10, 2003

This inquiry involved an appeal of a direction issued by a health and safety officer pursuant to subsection 145.(1) of the Canada Labour Code (hereto referred to as the Code or Part II). A hearing was held in Vancouver, British Columbia on June 2, 2003.

Appearances:

Applicant:

Mr. Robert (Bob) Adamic, Superintendent, Operations, Saskatchewan Wheat Pool (SWP), Vancouver Terminal, North Vancouver,

Mr. William (Bill) Lawrysyn, Director, Environment Health and Safety, SWP

Respondent:

Mr. Brian Wilkins, CO-Chair, Workplace Health and Safety Committee, SWP

Ms. Liz Spees, Chief Shop Steward, Grain Workers Union (GWU).

Mr. Gurden S. Dhillon, Employee, SWP

Observers:

Mr. Bob McPherson, President, GWU.

Mr. Ron Burton, Secretary Treasurer, GWU

Health and Safety Officer:

Ms. Diana Smith, Human Resources Development Canada.

[1] On July 11, 2002, health and safety officer Smith conducted an inspection at the Saskatchewan Wheat Pool (SWP) workplace located at 801 Low Level Road, North Vancouver, British Columbia. Following her inspection she informed SWP that they were in contravention of paragraph 125.(h) of the Code and subsection 16.4 of Part XVI of the Canada Occupational Health and Safety Regulations (COHSR) entitled, "First Aid." According to health and safety officer Smith some employees assigned to be first aid attendants at SWP did not work close to the first aid room, and could be assigned duties that would interfere with the prompt and adequate rendering of first aid. She accepted an Assurance of Voluntary Compliance¹ from SWP wherein they agreed to bring themselves in compliance.

[2] On July 26, 2002, Mr. Lawrysyn wrote to health and safety officer Smith in response to the AVC. He advised her that the joint health and safety committee at the workplace had reviewed the AVC and confirmed their agreement that the existing use of 2-way radio communications ensures prompt and adequate first aid response. He also advised her that SWP's written first aid procedures had been amended to formerly specify that the first aid attendant assigned to the first aid room could not be actively working as a safety watcher or pesticide applicator or be assigned any activity that would prevent their ability to provide prompt and adequate response of first aid. He concluded that SWP was in compliance with the Code and the COHSR.

[3] On August 19, 2002, health and safety officer Smith replied in writing that SWP's response did not go far enough to meet current requirements. She stated that paragraph 16.4(2)(a) of the COHSR requires first aid attendants to work close to the first aid station or first aid room to which they are assigned. She held that this is not satisfied by the use of radios. She also stated that employees assigned as first aid attendants should only be engaged in activities that would not contaminate their clothing with grease, oil, excessive dust or other hazardous substances.

[4] On September 10, 2002, health and safety officer Smith issued a direction to SWP and directed the Company to comply with the above noted provisions. A copy of the direction is annexed.

[5] On October 9, 2002, Mr. Lawrysyn wrote to health and safety officer Smith in response to the direction and confirmed that the operations supervisors on shift will be assigned as first aid attendants and that their offices are positioned on the third level of the terminal building located across from the first aid room.

[6] On October 3, 2002 Mr. Lawrysyn appealed the direction to a Canada Appeals Officer and a hearing was held on June 2, 2003, at Vancouver, British Columbia.

[7] Prior to the hearing Mr. Lawrysyn provided documents in support of his appeal of health and safety officer Smith's direction and testified at the hearing. I retain the following from his document and testimony.

¹ An Assurance of Voluntary Compliance is a non-statutory document wherein an Employer acknowledges a contravention and, by his or her signature, agrees to terminate the contravention to avoid a Direction.

[8] When health and safety officer Smith conducted her inspection on July 11, 2002, work procedures at the SWP terminal did not formally specify in writing that an employee assigned to be the first aid attendant could not be assigned to a confined space or to act as safety watcher or pesticide applicator. However, according to Mr. Adamic, this was their practice.

[9] Nonetheless, SWP with its work place health and safety committee revised their written procedures. The written first aid procedures now specify that:

- The first aid attendant cannot be actively working as a Pesticide Applicator;
- The first aid attendant cannot be actively working in a confined space or as safety watcher; and,
- The first aid attendant is not to be actively working other non specified activities that would prevent there ability to provide prompt and adequate response of first aid.

[10] The work place health and safety committee also considered the use of hand held 2-way radios at the SWP terminal for ensuring prompt first aid response in the work place. The committee agreed that this was consistent with the term “close” used in paragraph 16.4(2)(a).

[11] Mr. Adamic further testified that the 2-way radio communication system in the work place has been designed to operate everywhere throughout the work place without dead zones. He stated that the work place health and safety committee reviewed first aid records and confirmed that there was no record of a 2-way radio failing or of a first aid attendant failing to provide prompt first aid response over the past approximate 20 years. He also noted that there was no record of a life threatening injury during that period of time.

[12] Mr. Adamic explained that channel “two” of the 2-way radio system at SWP is reserved for supervisors and first aid attendants. This, he held, ensures that first aid communications will not be interfered with other communications and enables first aid attendants to contact supervisors if they require assistance or first aid supplies to be brought to the site where the employee has been injured. He added that channel “two” is monitored by other employees who can assist in the response if they have first aid training, and that a telephone system is accessible to the first aid attendant and supervisors for use should the 2-way radios ever fail.

[13] Ms. Spees testified that first aid attendants conduct a radio check at the beginning of their shift and periodic radio checks throughout their shift. She pointed out that first aid may sometimes have to be rendered where the employee is injured. For this eventuality, the first aid room is equipped with two first aid kits that would be accessed by 2-way radio. She also added that first aid attendants would wash their hands and probably don a pair of protective gloves, and could dust themselves off or remove their work coveralls prior to rendering first aid if their clothing was soiled and interfere with providing first aid.

[14] Mr. Adamic also testified that he conducted a test to measure the response time for a first aid attendant in presence of health and safety officer Smith. According to the results of the impromptu test, the response time was approximately 4 minutes. He said that he repeated the test later and found that the approximate time to walk from the most remote point in the workplace, being the top floor in Annex 3, to the first aid room was approximately 4 minutes.

[15] Finally, Mr. Adamic testified that the number of employees employed during a shift depends on the shift, the time of year and the relative abundance of grain during any season. He recalled that the number of employees employed has varied in the past between 73 and 119, but this is split over 3 shifts. He estimated that the approximate number of employees employed during a typical day shift would be 50 or 60 employees. This might include 10 Management Personnel, 12 -15 Maintenance employees and 25 Operations employees.

[16] Employees testified that they were concerned with the procedures imposed as a result of health and safety officer Smith's direction, whereby supervisors were assigned as first aid attendants instead of employees. They indicated being concerned that:

- Supervisors were appointed as first aid attendants as opposed to volunteering. Thus, the person may not be as motivated or personally suited to rendering first aid.
- Supervisors were trained in accordance with minimum standard in the COHSR and so only had 2 days of first aid training, as opposed to the volunteer employee first aid attendants who had received 2 or more weeks of first aid training;
- Supervisor may exceptionally have to go to a remote part of the plant. So, in fact, no one is constantly physically close to the first aid room.

[17] Mr. Adamic referred to a common dictionary which he said defined the term "close" as including the meaning, "*leaving no gaps or weakness.*"

[18] The issue to be decided in this case is whether the SWP terminal named in this case was in contravention of paragraph (h) of section 125 of the Code and subsections 16.4 of Part XVI of the Canada Occupational Health and Safety Regulations (COHSR) entitled, "First Aid" relative to its first aid procedures which used 2-way radios.

[19] In this regard, paragraph 125.1(h) of the Code reads:

Without restricting the generality of section 124, every employer shall, in respect of every work place controlled by the employer and, in respect of every activity carried out by an employee in a work place that is not controlled by the employer, to the extent that the employer controls the activity,

(h) provide prescribed first-aid facilities and health services.

[20] Subsection 16.3(1) prescribes that the employer must ensure that there is a first aid attendant at every work place at which 6 or more employees are working at any time. Subsection 16.3(1) reads:

1) At every workplace at which six or more employees are working at any time, the employer shall ensure that there is a first aid attendant.

[21] Paragraph 16.4(1)(a) and (b) of the COHSR establishes that a first aid attendant appointed pursuant to subsection 16.3 or paragraph 16.10(1)(a) of the COHSR must be assigned to a first aid station or first aid room and must be readily available and assessable to employees during working hours. Paragraph 16.4(1)(a) and (b) reads:

(1) A first aid attendant referred to in section 16.3 or paragraph 16.10(1)(a)

(a) shall be assigned to a first aid station or first aid room;

(b) shall be readily available and accessible to employees during working hours;

[22] Paragraph 16.4(2)(a) and (b) of the COHSR require that the first aid attendant must work “close” to the first aid station or first aid room and must not be assigned duties that will “interfere” with the prompt and adequate rendering of first aid. Paragraph 16.4(2)(a) and (b) read:

(2) The first aid attendant referred to in subsection (1)

(a) shall work close to the first aid station or first aid room to which the first aid attendant is assigned; and

(b) shall not be assigned duties that will interfere with the prompt and adequate rendering of first aid.

[23] With regard to the first issue, whether or not the employer was in contravention with paragraph 16.4(2)(a) relative to the word “close”, I note that “close” is not defined in the Code or COHSR. For its meaning, therefore, I refer to the Merriam-Webster’s Collegiate Dictionary, Tenth Edition which defines the word “close” as follows:

“close” means being near in time, space, effect.

[24] In my opinion, the definition is more akin to a performance standard which defines an outcome than to an engineering standard which specifies units of measure that can be verified by an appropriate measuring tool. Clearly, the outcome or appropriate performance standard relative to paragraph 16.4(2)(a) of the COHSR is the rendering of prompt and adequate first aid by the first aid attendant.

[25] In this regard, I note that Mr. Adamic measured the time for a first aid attendant to respond both in the presence of health and safety officer Smith and later on his own. The impromptu tests indicated that the approximate time to respond from the most remote part of the work place was 4 minutes. One could expect lesser times where the first aid attendant is working closer to the first aid room.

[26] While the tests were not conducted scientifically, the first aid records confirmed for the work place health and safety committee that there was no record of a first aid attendant being delayed or of not having rendered adequate first aid over the past 20 years. This, and the fact that both employees and the employer both expressed strong support for the previous arrangement, whereby employees were assigned as first aid attendants, convinces me that the arrangement, which included the use of 2-way radios, met the performance standard of ensuring prompt and adequate rendering of first aid. I conclude, therefore, that SWP was in compliance with paragraph 16.4(2)(a) of the COSHR.

[27] With regard to paragraph 16.4(2)(b) of the COHSR, whereby the first aid attendant must not be assigned work that will interfere with the prompt and adequate rendering of first aid, I find that the work procedures formalized in SWP's written procedures following the AVC were in compliance with the legislation. The procedures not only specify that the first aid attendant must not be assigned as a safety watcher or pesticide applicator, but essentially repeat the wording in paragraph 16.4(2)(b).

[28] Mr. Adamic further assured me that supervisors at the work place were authorized to alter any work assignment where a first aid attendant complained that the activity to which they were assigned could interfere with their prompt and adequate rendering of first aid. This would apply to the extent that clothing contaminated with grease, oil, excessive dust or other hazardous substances would interfere with the prompt and adequate rendering of first aid, notwithstanding Ms. Spees's contention that first aid attendants would wash their hands or don protective gloves before dealing with an open wound, and could change their coveralls if they were soiled.

[29] Both parties were unanimous in their appeal that the direction be rescinded. The employer held that their procedures prior to the direction were in compliance with the Code and COHSR, and the employees held that the procedures in place prior to the direction ensured a more motivated and trained first aid attendant. I could not disagree with either of their positions.

[30] For all these reasons, I rescind the direction that health and safety officer Smith issued to SWP on September 10, 2002 pursuant to subsection 145.(1) of the Code.

Douglas Malanka
Appeals Officer

**In the Matter of the *Canada Labour Code*
Part II – Occupational Health and Safety**

Direction to the Employer Under Subsection 145(1)

On July 11, 2002 the undersigned health and safety officer conducted an inspection in the work place operated by SASKATCHEWAN WHEAT POOL, being an employer subject to the *Canada Labour Code*, Part II, at 801 Low Level Road, North Vancouver, British Columbia, V7L 4J5, the said work place being sometimes known as SASKATCHEWAN WHEAT POOL.

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

(a) *Canada Labour Code*, Part II, 125. (1) Without restricting the generality of section 124, every employer shall, in respect of every work place controlled by the employer and, in respect of every work activity carried out by an employee in a work place that is not controlled by the employer, to the extent that the employer controls the activity,...

(h) provide prescribed first-aid facilities and health services; and

(b) the *Canada Occupational Health and Safety Regulations* (COSHR) , Part 16.4

(1) A first aid attendant referred to in section 16.3 or paragraph 16.10(1)(a) shall be assigned to a first aid station or first aid room; (b) shall be readily available and accessible to employees during working hours...

(2) The first aid attendant referred to in subsection (1) (a) shall work close to the first aid station or first aid room to which the first aid attendant is assigned; and (b) shall not be assigned duties that will interfere with the prompt and adequate rendering of first aid.

Some employees assigned to be first aid attendants do not work close to the first aid room and may be assigned duties that interfere with the prompt and adequate rendering of first aid.

Therefore, you are HEREBY DIRECTED, pursuant to subsection 145(1)(a) of the *Canada Labour Code*, Part II, to terminate the contravention no later than October 10, 2002.

Further, you are HEREBY DIRECTED, pursuant to paragraph 145(1)(b) of the *Canada Labour Code*, Part II, within the time specified by the health and safety officer, to take steps to ensure that the contravention does not continue or reoccur.

Issued at Vancouver, B.C., this 10th day of September, 2002.

Diana Smith
Health and Safety Officer Id No BC1635

Summary of Appeals Officer's Decision

Decision No.: 03-018

Appellant: W. Lawrysyn

Respondent: B. R. Wilkins

Provisions:

Canada Labour Code: 124, 125, 145.(1)

COHSR: 16.3, 16.4, 16.10

Keywords: close, grain elevator, first aid, first aid station, first aid room, prompt first aid, adequate first aid, 2-way radio communications, soiled or contaminated clothing, work activities

Summary:

On September 10, 2002, health and safety office issued a direction to a Saskatchewan Wheat Pool work place. The health and safety officer was of the opinion that the employer was in contravention of the Code and Canada Occupational Health and Safety Regulations because the first aid attendant did not always work in close proximity to the first aid room, and because the first aid attendant may be assigned duties that could contaminate their clothing. She directed the employer to terminate the contravention by October 10, 2002.

The Appeals Officer found that the employer was already in compliance with the legislation and rescinded the direction.