

**Canada Labour Code**  
**Part II**  
**Occupational Health and Safety**

Racine Terminal (Montreal) Ltd.  
*applicant*

and

Canadian Union of Public Employees  
Local 375  
*union*

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Decision No. 05-005  
20 January 2005

Pursuant to subsection 146.2(i) of the *Canada Labour Code*, Part II (the *Code*), an appeals officer can decide any matter without holding an oral hearing. After examining the written submissions from Racine Terminal (Montreal) Ltd. (Racine Terminal), as well as the intervention summary by health and safety officer Pierre Bouchard (officer Bouchard), I am of the opinion that the documents filed in this case allow me to come to conclusions without holding a hearing.

The Canadian Union of Public Employees, Local 375, representing the dockworkers, did not make any written submission.

**Health and safety officer**

Pierre Bouchard, Human Resources and Skills Development Canada, Labour Program, Prevention Services Directorate, Montreal, Quebec

- [1] This case concerns an appeal filed on 5 September 2003, pursuant to subsection 146(1) of the *Code*, by Meguerditch Kanondjian (general manager, operations) and Wayne Smith (health, safety and environment specialist), both with Racine Terminal.
- [2] This appeal resulted from a direction issued to Racine Terminal on 14 August 2003, pursuant to paragraph 145(2)(a) of the *Code*, by officer Bouchard.
- [3] On 13 August 2003, officer Bouchard investigated a work accident that occurred in section 57-64 of the Port of Montreal's Racine Terminal, during which a dockworker was injured.

- [4] Officer Bouchard submitted his intervention summary for the purposes of the appeal. I have noted, in particular, the following points from this summary:
- On the morning of 13 August 2003, a cylinder of uranium hexafluoride, UF<sub>6</sub>, was sitting in a flat-rack-type container, behind which were four rows two containers high with one container stacked on top of the other. This type of container is different from standard containers in that it consists of a deck supporting a semi-circular docking pedestal designed to accept a cylinder. This type of container has no roof or side walls.
  - The work operation consisted using a forklift to lift the cylinder of UF<sub>6</sub> from the container;
  - A few moments before the accident, the employee who was about to be injured had just finished lifting the cylinder straps and had attached the forklift chains to remove the cylinder from the container;
  - As the forklift was starting to lift the cylinder of UF<sub>6</sub>, the employee moved aside to protect himself from the manoeuvre. He backed on to the deck of the container located behind the container holding the cylinder. The employee was then in a container with another container stacked on top of it;
  - During the UF<sub>6</sub> cylinder handling manoeuvre, the container that was above the employee, shifted for no apparent reason and fell at an angle into the container below. It was at this moment that the employee was injured when his forelegs were crushed at ankle level, causing fractures to both legs;
- [5] The same day, after his investigation, officer Bouchard determined that a dangerous situation existed in the workplace and issued an oral direction to Racine Terminal. The next day (i.e., on 14 August 2003), he issued a written direction (Appendix A) to Meguerditch Kanondjian.
- [6] The direction issued pursuant to paragraph 145(2)(a) identified the danger in the following terms:
- The employer must henceforth prohibit any performance of a work operation similar to the one leading to Mr. Thomin's accident until appropriate corrective measures have been taken to eliminate any possibility that a flat-rack container might fall.
- [7] Racine Terminal provided written confirmation to officer Bouchard that it had taken corrective measures to comply with the direction by placing all the flat-rack containers on the ground so as to eliminate any risk that they might fall.
- [8] In addition, the employer submitted the following arguments against the direction.

- [9] First, Meguerditch Kanondjian and Wayne Smith allege that the direction issued by officer Bouchard on 14 August 2003 is invalid because the first part of the direction ordering the employer to “prohibit performance of any similar work operation” is vague and ambiguous and, therefore, “non-binding.”
- [10] They point out that the direction does not specifically identify the products handled, the containers and the forklift involved in the accident.
- [11] In their view, the direction does not specifically describe or accurately identify either the work operation or the part of it constituting a dangerous situation.
- [12] In their second argument, the Racine Terminal representatives allege that officer Bouchard issued a direction pursuant to paragraph 145(2)(a) of the *Code*, without affixing a notice of danger, as prescribed in subsection 145(3).
- [13] In their third argument, they allege that officer Bouchard orally transmitted the direction to Racine Terminal without confirming it in writing before leaving the workplace, which is contrary to paragraph 145(1.1)(a) of the *Code*.
- [14] In their fourth and last argument, they claim that the direction is invalid, because its formulation ordering the employer to take “appropriate corrective measures to eliminate any possibility that a flat-rack container might fall” is vague and ambiguous and, therefore, non-binding.
- [15] They question whether it is the work operation or the possibility that the container might fall that constitutes the danger. They consider that officer Bouchard did not describe the danger precisely, which puts Racine Terminal in a “precarious position.”
- [16] In their fifth and last argument, Meguerditch Kanondjian and Wayne Smith allege that the direction states “to take appropriate action before 14 August 2003 to eliminate the risk,” whereas the written direction was issued that very day.
- [17] As a result, Meguerditch Kanondjian and Wayne Smith adduce all these arguments to ask the appeals officer to rescind the direction issued by officer Bouchard.

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- [18] Pursuant to subsection 146.1(1) of the *Code*, when an appeals officer receives an appeal brought under subsection 129(7), the officer shall, in a summary way, inquire into the circumstances of the direction, and the reasons for it. Depending on the decision I will take, I shall vary, rescind or confirm the direction issued by officer Bouchard.
- [19] On the basis of the grounds for appeal argued by Racine Terminal, I will respond to each of the arguments submitted by the employer in accordance with the powers conferred by section 146.1 of the *Code*.

[20] The five particular questions to be dealt with involve determining whether the direction should be rescinded on the following grounds:

1. the direction is vague and ambiguous;
2. a notice of danger was not affixed after the initial direction;
3. the oral direction was not confirmed in writing before officer Bouchard left the workplace on 13 August 2003;
4. the direction is vague and ambiguous with respect to the corrective measures required; and
5. the deadline date for compliance with the direction occurred “before” the date of the written direction.

[21] During his inquiry, officer Bouchard determined that there was a risk that flat-rack containers might fall, which constituted a dangerous situation. As a result, officer Bouchard was duty-bound to issue a direction to Racine Terminal under the provisions of paragraph 145(2)(a).

[22] Paragraph 145(2)(a) of the *Code* reads as follows:

If a health and safety officer considers that the use or operation of a machine or thing, a condition in a place, or the performance of an activity constitutes a danger to an employee at work:

(a) the officer shall notify the employer of the danger and issue directions in writing to the employer directing the employer, immediately or within the period that the officer specifies, to take measures ...

[23] Contrary to the first argument made by the employer, I consider that the direction specifies both the context in which it was issued and its purpose, namely, to prevent any repetition of the accident.

[24] Also contrary to the employer, I consider that it was not relevant in the direction to spell out the products handled, the containers or the forklift involved.

[25] It seems clear to me that officer Bouchard described the dangerous situation adequately and it was not necessary to further specify either the work operation or the part of it that represented a danger or a dangerous situation.

[26] According to the second argument, officer Bouchard did not affix a notice of danger, as prescribed in subsection 145(3) of the *Code*, after the direction had been issued pursuant to subsection 145(2)(a) of the *Code*. Contrary to the employer, I consider that the safety perimeter constituted a notice of danger.

- [27] In his intervention summary, officer Bouchard states that, on 13 August 2003, he asked Racine Terminal to take corrective measures. On 14 August 2003, he gave the company a written direction to immediately take action to eliminate any possible repetition of a similar accident. A safety perimeter marked out by a security cordon was already in place when officer Bouchard arrived at the accident site and the security cordon was maintained after the direction was issued. On 13 August 2003, officer Bouchard also specified that the security cordon should remain in place until corrective measures were taken by the employer. I therefore consider that the security cordon marking out the safety perimeter corresponded to the notice of danger required by subsection 145(3), especially since this security cordon could not be removed without a health and safety officer's permission.
- [28] In the third argument, the employer alleges that officer Bouchard did not confirm the oral direction in writing before leaving the workplace on 13 August 2003, thereby contravening paragraph 145(1.1)(a). I consider that paragraph 145(1.1)(a) does not apply to this direction, because officer Bouchard issued his direction under subsection 145(2)(a), which refers to a dangerous situation, and not under subsection 145(1), which refers to the termination of a contravention.
- [29] It is also important to point out that, under subsection 145(2), the health and safety officer shall notify the employer "if he considers that the use or operation of a machine or thing, a condition in a place, or the performance of an activity constitutes a danger to an employee at work." The health and safety officer then "issues directions in writing to the employer directing the employer, immediately or within the period that the officer specifies, to take measures..."
- [30] On 13 August 2003, officer Bouchard notified Racine Terminal that performance of the work operation in question constituted a danger and he ordered the employer in a written direction on 14 August 2003 to immediately take corrective measures to prevent any container from falling again.
- [31] With respect to the fourth argument, I consider, contrary to the employer, that the direction was sufficiently specific in terms of asking the employer to take corrective measures. In the direction, officer Bouchard adequately described the situation in question because Racine Terminal did, in fact, take steps to correct the situation.
- [32] The fifth argument made by the employer revolves around a degree of confusion over the time to comply given to the employer to take appropriate action to eliminate the risk. Under the provisions of paragraph 145(2)(a), officer Bouchard had the power to oblige the employer to immediately take corrective action. The fact that he did not remove the word, "before," in his direction does not in any way alter the fact that he gave actual and concrete instructions to the employer to immediately take corrective action on the day itself, i.e., 14 August 2003. However, to be fair, I also acknowledge that officer Bouchard should not have written that the employer should comply "before" 14 August 2003.

[33] In consequence, by virtue of the powers conferred on me by paragraph 146.1(1)(a) of the *Code*, I vary officer Bouchard's direction so that the last paragraph reads as follows: "In consequence, you are HEREBY ORDERED, pursuant to paragraph 145(2)(a) of the *Canada Labour Code*, Part II, to immediately take appropriate action to eliminate the risk."

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Pierre Gu nette  
Appeals Officer

**Appendix**

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

**Direction to the Employer Pursuant to Paragraph 145(2)(a)**

On 13 August 2003, the undersigned health and safety officer conducted an investigation in the workplace operated by **RACINE TERMINAL (MONTREAL) LTD.**, AN EMPLOYER SUBJECT TO THE *CANADA LABOUR CODE*, PART II, whose mailing address is P.O. BOX 360, Station 'K', MONTREAL, QUEBEC, H1N 3L3; the said workplace is sometimes called **Racine Terminal (Montreal) Ltd.**

The said health and safety officer considers that performance of the work operation in question constitutes a danger for an employee while at work, as indicated below:

1. *Canada Labour Code*, Part II paragraph 145(2)(a)

The employer must henceforth prohibit performance of any work operation similar to the one leading to Mr. Thomin's accident until appropriate corrective measures have been taken to eliminate any possibility that a flat-rack container might fall.

In consequence, you are **HEREBY ORDERED**, pursuant to paragraph 145(2)(a) of the *Canada Labour Code*, Part II, to take appropriate action before 14 August 2003 to eliminate the risk.

Montreal, 14 August 2003.

Pierre Bouchard  
Health and Safety Officer

To: Racine Terminal (Montreal) Ltd.  
Sections 57-64, Port of Montreal  
Montreal, Quebec  
H1N 3L3

## Summary of Appeals Officer Decision

**Decision No.:** 05-005

**Applicant:** Racine Terminal (Montreal) Ltd.

**Union:** Canadian Union of Public Employees

**Key Words:** Notice of danger, direction, time to comply

**Provisions:** *Code* 145(1), 145(1.1)(a), 145(2), 145(2)(a), 145(3), 146(1), 146.1(1)(a)  
Regulations

### Summary:

Following an accident investigation, a health and safety officer issued a direction under paragraph 145(2)(a) of the *Code* to Racine Terminal (Montreal) Ltd. The direction referred to a dangerous situation and ordered the employer to take appropriate measures to eliminate the risk before 14 August 2003. Pursuant to subsection 146(1) of the *Code*, Racine Terminal (Montreal) Ltd. appealed the direction issued on 14 August 2003.

The appeals officer varied the health and safety officer's direction to read that the employer should "immediately take appropriate action to eliminate the risk."