

Canada Labour Code
Part II
Occupational Health and Safety

Swanberg Bros. Trucking Ltd.
Applicant

and

Dale Pinnell
Respondent

Decision No. 05-009
February 7, 2005

This case was heard by appeals officer Thomas Farrell, in Edson, Alberta, on December 1st, 2004.

Appearances

For the applicant

Gene Gauthier, General Manager, Swanberg Bros. Trucking Ltd.

For the employees

Dale Pinnell

Health and safety officer

Derek Becker, Human Resources and Skills Development Canada (HRSDC), Labour Program, Alberta Region

- [1] This case concerns an appeal made under section 146 of the *Canada Labour Code*, Part II (the *Code*), on July 21st, 2003, by Gordon Dixon, on behalf of Swanberg Bros. Trucking Ltd. (Swanberg).
- [2] The appeal was made as a result of a direction issued on July 3rd, 2003 by health and safety officer Derek Becker under subsection 145(1) of the *Code*, following his investigation of an accident that occurred at a drilling site to Dayton Hennig, an employee of Swanberg.
- [3] Dayton Hennig, a swamper (signaller), was injured when he attempted to gain access to the deck of a Commander C Unit (the Commander) owned by Swanberg and operated by Dale Miller, while the vehicle was in motion. Dayton Hennig slipped under the front driver's side tire, which then rolled over his left leg and left hip area. He suffered minor injuries.

- [4] Following his investigation, health and safety officer Becker issued a four-item direction to Swanberg.
- [5] On July 14, 2003, Jim Donald, Human Resources and Safety Supervisor for Swanberg, replied to the direction issued by health and safety officer Becker. He also stated that Swanberg wished to appeal the second item of the direction, referencing a contravention to paragraph 125(1)(l) of the *Code* and subsection 14.27(1) of the *Canada Occupational Health and Safety Regulations* (COHS Regs).
- [6] The second item of the direction reads:
- The investigation indicated that on June 20, 2003, Dayton Hennig, an employee, was not provided an effective means of communication between himself and the operator of the Commander C Unit Number 196.
- [7] I retain the following from the written arguments submitted by the employer and the ones presented by G. Gauthier at the hearing. The employer outlined the nature of the operations involved in a “lease site” and the working conditions that might be encountered during the setup or dismantlement of an oil and gas drilling site.
- [8] The Commander is used to perform the task of a bed truck when the lease conditions are too soft and/or muddy. Commanders are designed to haul heavy loads across unstable surfaces minimising surface damage on the lease. The height of the deck at the rear of the unit is six feet plus. There is a camera in the rear with a microphone and a camera on the front part of the deck on the passenger side hooked to a screen in the cab so the swamper can communicate with the driver while he is hooking or unhooking rigging at the rear. The camera on the right hand side of the unit supplements the driver backing up while the swamper guides him on the driver side.
- [9] G. Gauthier outlined the company’s safety practices, that, among other things, forbid accessing a moving vehicle. He further stated that the operator of the Commander involved in the accident refused any responsibility in the fact that Swanberg Bros.' safety policies were breached, specifically since these policies require that the operator have the swamper in sight at all times and that no swamper be permitted to access the unit while it is moving.
- [10] Mr. Gauthier pointed out that after receiving the direction, radios were provided to the swampers. However, he noted that their reliability can become a hazard in itself, due to the harsh conditions of many of the work sites and the risk that a caller be confused for somebody else by the Commander operator. He was emphatic in his belief that the Commander operator should not move the vehicle unless he has the swamper in sight.
- [11] In his written arguments against the direction, Jim Donald stated that the industry has tried using radios with swampers in the past and it created as many if not more problems than it resolved. Hand units were also tried for the operator and the swamper. The operator had the truck-to-truck radio to monitor and to communicate with the truck pusher and other

units and a separate radio with another channel to communicate with the swamper. Handling two radios at the same time was causing too much interference in the cab for the driver and created more safety issues than it prevented. For his part, a swamper frequently works in wet and muddy conditions: the radio would fall out into the mud or using the radio with muddy gloves would render it unserviceable. The employer also equipped these employees with clip on microphones, but they would try to hold on a piece of rigging and use the mic, getting mud all over it and themselves. Also, the back up alarm becomes a major source of interference when using a radio at the side of the Commander. If the swamper is out of sight of the driver using the radio, the alarm can prevent a clear communication to the driver, resulting in safety issues.

- [12] The company has discussed the issue for the past several years with the health and safety committee and more recently with commander operators, supervisors and bed truck operators, always coming to the same conclusion that the safest practice was visibility and the use of hand signals.
- [13] A few years before, meetings had been held to discuss the rash of serious injuries and deaths in the industry. The majority of the incidents involved employees working around or behind moving vehicles. Health and safety officers from the Workers' Compensation Board and HRSDC participated with the industry in accident prevention discussions. It was then agreed that there was sufficient legislation and training available to the industry, and that drivers must be aware of where the swampers are at all times and no movement should take place without their knowledge.
- [14] For his part, Dale Pinnell presented further information from an operator's standpoint that reinforced G. Gauthier's position. He spoke of the risk of confusion when there are increased radio communications coming from a number of sources and of the difficulty of the Commander operator to identify the caller as often all callers sound alike on the radio.
- [15] Health and safety officer Becker pointed out that his main concern about item 2 of the direction was related to the interpretation of subsection 14.27(1) of the COHS Regs and the clarification of the expression "shall provide".
- [16] He also presented a letter from Keith Parent, Health, Safety and Environment Manager with F I Oilfield Services Canada Ltd., that endorsed the use of radios by swampers. In this letter, K. Parent refers to his experience as the safety manager of another company that used hand held-two-way radios to maintain contact between the swamper and the driver and states that "[t]his proved to be an invaluable tool for the driver and the swamper." K. Parent concluded his letter by saying:

The company continually promoted the use of visual contact and hand signals between the driver and swamper but the radio gave them both another means of communication to further promote safety during this hazardous task.

Decision

[17] The issue to be decided in this appeal is whether Swanberg Bros. Trucking Ltd. was in contravention of paragraph 125 (1)(l) of Part II of the *Canada Labour Code* and subsection 14.27(1) of the *Canada Occupational Health and Safety Regulations*, as stated in the direction.

[18] Paragraph 125(1)(l) of the *Code* reads:

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,

(l) provide every person granted access to the work place by the employer with prescribed safety materials, equipment, devices and clothing[.]

[19] Subsection 14.27(1) of the COHS Regs regulations prescribes that the employer provide a signaller with additional communication devices when the use of visual signals are not sufficient. It reads:

14.27(1) Subject to subsection (2), where the use by a signaller of visual signals will not be an effective means of communication, the employer shall provide the signaller and the operator with a telephone, radio or other audible signalling device.

[20] The accident that happened to the swamper was the direct result of a breach of the established operating procedures of Swanberg. On one hand, the swamper was aware of the correct procedures. On the second hand, had the Commander operator followed these procedures, he would not have moved the vehicle until he could see the swamper and he would not have permitted the swamper to access the vehicle while it was in motion.

[21] General Manager G. Gauthier testified that the employer's health and a safety policy firmly states that the Commander is not to be moved while operating on a work site unless the operator has the swamper in sight.

[22] The employer representative and the respondent did not believe that the provision of radios to the swampers added to the safety of the work site and they thought that in many cases, it introduced a factor that could result in miscommunications.

[23] The employer issued a Safety Alert on July 7th, 2003 to all supervisors and drivers on the issue of riding or climbing on moving vehicles. He informed them of the health and safety officer's investigation and gave the following advice:

- to Supervisors:
 - it is part of their job to immediately deal with the employee and/or the driver if the see somebody riding or climbing on moving vehicles or any other unsafe act taking place;
- to Drivers:
 - they are forbidden to knowingly allow the swampers to climb on or off or to ride on moving vehicle and they will be held accountable if they do so;
 - they must know the whereabouts of their swampers at all time; and
 - they must stop and check if a swamper is not visible at all time.

[24] Paragraph 14.27(1) of the COHS Regs refers to situations “where the use by a signaller of visual signals will not be an effective means of communications”.

[25] I believe that Swanberg safety policy requiring the Commander operator to maintain constant and uninterrupted visual contact with the swamper while the Commander is in motion and the use of established hand signals provides the swamper with the highest level of protection.

[26] Furthermore, the working conditions that are common to these work sites, *i.e.* deep ruts, mud and high activity levels, render other means of communications unreliable and could increase the level of hazard.

[27] Both parties have convinced me of the risk of using radios for the swamper and I agree that the most effective mean of communication between the swamper and the Commander operator is for the swamper to remain visible at all time to the operator and for the operator to stop the Commander motion when he cannot see the swamper.

[28] For these reasons, under the authority given to me pursuant to paragraph 146.1(1)(a) of the *Code*, Part II, I am rescinding item 2 of the direction issued on July 3, 2003 by health and safety officer Derek Becker, which reads:

2. Paragraph 125.(1)(l) of the *Canada Labour Code*, Part II and subsection 14.27(1) of the *Canada Occupational Health and Safety Regulations*.

The investigation indicated that on June 20, 2003, Dayton Hennig, an employee, was not provided an effective means of communication between himself and the operator of the Commander C Unit 196.

Tom Farrell
Appeals Officer