

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

Federal Express

*and*

Purolator Courier  
*applicants*

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Decisions No. 03-022  
03-023

This case was heard by Michèle Beauchamp, Appeals Officer, in Montreal, Quebec, on March 19, 2003

**Appearances**

**For Federal Express**

Douglas G. Gilbert, Solicitor, Heenan Blaikie  
Pierre Balayk, Safety Manager  
Jack Latino, Senior Operations Manager

**For Purolator Courier Ltd.**

George J. Pollack, Solicitor, Gowling Lafleur Henderson LLP  
Harry Philips, Federally Regulated Employers Transportation and Communications Committee (FETCO)  
Denis Rock, General Manager, Anjou Depot  
Mark Tilden, Vice-President Engineering and Facilities

**Health and Safety Officer**

Jacques Maltais

[1] This case concerns the two following appeals, made under Part II of the *Canada Labour Code* (the *Code*):

- Appeal made by an employer, Purolator Courier, under subsection 146(1), to rescind a direction (Appendix A) issued in writing on June 12, 2002 by health and safety officer Jacques Maltais;
- Appeal made by an employer, Federal Express, under subsection 146(1), to rescind a direction (Appendix B) issued in writing on July 17, 2002 by health and safety officer Jacques Maltais.

[2] Both appeals made by Purolator Courier and Federal Express concerned similar directions, issued regarding the same question by health and safety officer Jacques Maltais under subsection 145(1) of the *Code*.

[3] These directions read that both employers were in contravention of paragraph 125(1)(k) of the *Code* and subsection 14.16 of the *Canada Occupational Health and Safety (COHS) Regulations*, because in an area occupied by employees, trucks were travelling in reverse without being fitted with a horn or similar audible warning device that automatically operates while they travel in reverse.

[4] At the request of the parties, a single hearing was held for both appeals. At their request also, it was held in both French and English, and simultaneous translation was provided.

[5] The parties agreed at the hearing that Mr. Douglas Gilbert would be the first to put questions to health and safety officer Maltais and witnesses and to submit arguments for Federal Express. Mr. Pollack would then proceed for Purolator Courier.

[6] There were no representations made by the unions representing the employees of Purolator Courier or Federal Express, either by way of written submissions or of oral testimonies.

[7] The facts that led to the issuing of the directions are basically the same in both cases and are undisputed. Suffice to say that health and safety officer Maltais visited both work places concerned by the directions and received Assurances of Voluntary Compliance<sup>1</sup> regarding various infractions relative to these work places. Both employers terminated the contraventions in compliance with the *Code*.

[8] However, Purolator Courier as well as Federal Express refused to consider that they were subject to section 14.16 of the *COSH Regulations* and were therefore contravening the *Code* because their courier vans were not equipped with an automatic back-up warning device when being in an area occupied by employees. Consequently, health and safety officer Maltais issued a direction to both employers, which they both appealed.

[9] Health and safety officer Maltais' directions relatively to section 14.16 of the *COSH Regulations* stemmed from a memorandum that the Acting Manager of OSH Compliance and Operations, at Labour Program Headquarters, had sent to the Occupational Health and Safety Technical Advisor (OHS-TA) of the Quebec Region.

[10] The memorandum intended to resolve whether or not a truck is considered motorized materials handling equipment and must therefore be equipped with a back-up automatic warning device when used in an area occupied by employees.

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<sup>1</sup> An Assurance of Voluntary Compliance is a formal written promise made to a health and safety officer by the person in charge of a work place and who has the authority to correct contraventions to Part II of the *Canada Labour Code* that the required corrections will be made within the specified time frame.

[11] Health and safety officer Maltais explained that the memorandum provides an interpretation of the meaning of section 14.16 of the *COSH Regulations*. It was clear to him that the memorandum meant that a truck used to transport materials in an area occupied by employees falls under the definition of section 14.1 of the *COSH Regulations* and is therefore subject to section 14.16.

[12] The memorandum reads:

Objet : CAMIONS UTILISÉS DANS LE LIEU DE TRAVAIL DE L'EMPLOYEUR ET LA PARTIE XIV DU *RCSST*

Q.

La question était la suivante : un camion est-il considéré comme un appareil de manutention motorisé. Plus précisément, un camion doit-il être muni d'un avertisseur sonore fonctionnant automatiquement en marche arrière, quand il circule dans des aires occupées par des employés (article 14.16 du *RCSST*)?

R.

Oui, les camions sont considérés comme des appareils de manutention motorisés. En conséquence, ils doivent être conformes à la partie XIV, notamment à l'article 14.16, du *RCSST*.

Cette conclusion s'appuie sur les motifs suivants :

À l'article 14.1 du *RCSST*, « appareil de manutention » est défini ainsi :

« Dispositif, y compris les structures d'appui, le matériel auxiliaire et le grément utilisé pour transporter, lever, déplacer ou placer des personnes, des matériaux, des marchandises ou des objets. La présente définition exclut les appareils élévateurs installés en permanence dans un bâtiment, mais comprend les appareils mobiles utilisés pour lever, hisser ou placer les personnes. »

Subject: PART XIV OF THE *COSH REGULATIONS* AND TRUCKS CIRCULATING IN AREAS OCCUPIED BY EMPLOYEES

Q.

The question raised was whether or not a truck is considered motorized materials handling equipment. More specifically, to determine if back-up automatic warning devices are required for trucks when they are circulating in areas occupied by employees (section 14.16 *COSHR*)?

A.

Yes, trucks are considered motorized materials handling equipment. Therefore, they must comply with Part XIV of the *COSH Regulations* (including section 14.16).

The rationale to that conclusion is as follows:

In section 14.1 of the *COSHR*, the "material handling equipment" definition reads as follows:

"means equipment, including its supporting structures, auxiliary equipment and rigging devices, used to transport, lift, move or position persons, materials, goods or things and includes mobile equipment used to lift, hoist or position persons, but does not include an elevating device that is permanently installed in a building."

Il n'y a aucun doute que tout camion (et tout véhicule motorisé) est un « appareil mobile »<sup>1</sup>, étant donné qu'il se déplace à l'aide d'un moteur. En conséquence, étant donné qu'un « appareil de manutention motorisé » est un appareil mû par un moteur à propulsion et possédant les caractéristiques d'un « appareil de manutention motorisé », les camions (et les autres véhicules à moteur) doivent être considérés comme des appareils de manutention motorisés.

De plus, le paragraphe 14.16(1) stipule que :

14.16(1) L'appareil de manutention motorisé qui est utilisé dans une aire occupée par des employés et qui se déplace :

(a) en marche avant à une vitesse de plus de 8km/h doit être muni d'un klaxon ou autre avertisseur sonore du même genre;

(b) en marche arrière doit, sous réserve du paragraphe 14.51(1), être muni d'un klaxon ou autre avertisseur sonore du même genre qui fonctionne automatiquement durant le déplacement en marche arrière.

Donc, les camions, et les autres véhicules motorisés, doivent être munis d'un avertisseur sonore fonctionnant automatiquement en marche arrière quand ils sont utilisés dans une aire occupée par des employés.

Without a doubt, trucks (and all motor vehicles) are considered "mobile equipment"<sup>2</sup>, since they are provided with a motor for propulsion. Therefore, since "motorized materials handling equipment" consists of equipment, equipped with a motor for propulsion, having the characteristics of "materials handling equipment, a truck (and all motor vehicles) would be considered motorized material handling equipment.

Moreover, subsection 14.16(1) stipulates:

14.16(1) Motorized materials handling equipment that is used in an area occupied by employees and that travels

(a) forward at speeds in excess of 8km/h shall be fitted with a horn or other similar audible warning devices; and

(b) in reverse shall, subject to subsection 14.51(1), be fitted with a horn or other similar audible warning device that automatically operates while it travels in reverse.

Therefore, all trucks (and all motor vehicles) must be fitted with back-up automatic warning devices when used in an area occupied by employees.

<sup>1</sup> Pour votre information, l'article 14.16 du *RCSST* de 1986 ne comprenait pas le terme « appareil de manutention motorisé », mais plutôt le terme « appareil mobile ». À cette époque, « appareil mobile » était interprété comme incluant tous les véhicules motorisés. En 1996, la notion d'« appareil de manutention motorisé » a été introduite pour distinguer les appareils de manutention motorisés et ceux qui ne le sont pas.

<sup>2</sup> For your information, section 14.16 of the 1986 *COSH Regulations* did not use the phrase "motorized materials handling equipment" but was using instead the phrase "mobile equipment. At the time, "mobile equipment" was interpreted as including all motor vehicles. In 1996 the new concept of "motorized materials handling equipment" was introduced to differentiate between motorized and non motorized materials handling equipment.

[13] Health and safety officer Maltais was of the opinion that in the present cases, the courier vans were definitely materials handling equipment, because they would enter the work place -- where employees were working--, in order to be loaded, and then they would exit the work place with their load to go to customers' premises. He noticed however that in neither work places were the courier vans being used to transport or handle materials within or inside different enclosed areas of that work place.

[14] In other words, health and safety officer Maltais thought that the presence of employees performing various tasks in the loading areas that the vans were entering or exiting to be loaded or unloaded was sufficient to conclude that these vans were indeed materials handling equipment.

[15] Presenting Federal Express position, solicitor Gilbert explained that the direction issued to Federal Express pertained to a terminal known as the "St. Hubert facility", where each morning packages arrive for delivery in accordance with time commitments. Courier vans enter into and park at the facility's loading area and packages are placed in the courier vans by employees. The courier vans then back out and the drivers leave the facility to make their deliveries on their designated routes.

[16] Later in the day, drivers return to the facility with packages that they picked up from customers. They enter the loading area and park the vehicle. Packages are then removed from the vehicle, sorted and put into a transport truck that takes them to the airport or other locations. The courier vans remain stationary while they are being loaded or unloaded and they are backed out after unloading. Solicitor Gilbert stressed that there has never been an accident at the facility involving either the arrival, departure, loading or unloading of a courier van in the loading area.

[17] Mr. Gilbert maintained that Federal Express courier vans are not "materials handling equipment" as defined under section 14.1 of the *COSH Regulations*. In support of Federal Express position, he submitted both a contextual analysis of Part XIV of the *COSH Regulations* and, following a request of Appeals Officer Serge Cadieux, who handled the pre-hearing proceedings, of the exclusion provided in subsection 14.2(a).

[18] In order to ensure a complete and unambiguous understanding of the employer's position, following is a slightly abridged version of the submission letter dated December 9, 2002, that solicitor Gilbert sent to Serge Cadieux.

[19] Solicitor Gilbert's submission reads:

**Contextual Analysis of Part XIV of the Regulations**

When Part XIV is carefully examined, it becomes clear that its intention is to regulate equipment designed to "handle" materials within a workplace. Throughout Part XIV, the focus is on equipment or devices that are both designed and used to either lift or carry objects from one location to another within the workplace as opposed to transporting goods on public roads to and from the employer's premises.

We believe this distinction is intended and critical to the understanding of Part XIV of the Regulations. Our client's vans are not used as materials handling equipment within the meaning of Part XIV. The vans operate on public roadways to deliver and pick up parcels at customers' premises. The cycle of delivery and pick up begins and ends at a FedEx station where the courier van arrives at a loading dock, parks and is either loaded or unloaded, and then leaves the premises again. The van is not used in any way to transport or convey materials from one location to another on Federal Express premises. In this regard, the Federal Express courier van is similar to any other transportation vehicle used in the trucking industry. Its purpose is to convey parcels to and from the customers' premises, not to reposition goods within the Federal Express workplace itself.

There are numerous provisions in Part XIV confirming that the focus of the regulations is upon equipment designed to lift and carry objects within a workplace. We refer in particular to the following provisions.

1. Section 14.1 defines materials handling equipment as follows:

**"materials handling equipment"** means equipment, including its supporting structures, auxiliary equipment and rigging devices, used to transport, lift, move or position persons, materials, goods or things and includes mobile equipment used to lift, hoist or position persons, but does not include an elevating device that is permanently installed in a building;

The choice of words in this definition strongly suggests that the intention is to regulate equipment such as forklift trucks that are used to lift, move and reposition objects as part of production, warehousing or other processes being conducted on an employer's premises.

We note that the definition explains the meaning of "equipment" as including "supporting structures, auxiliary equipment and rigging devices" all of which suggest lifting or conveyance systems that are part of production or other similar processes. None of these references have any application to a courier van.

The definition also states that materials handling equipment is equipment "used to transport, lift, move or position persons, materials, goods or things, and includes mobile equipment used to lift, hoist or position persons...". When these uses are considered together, it appears that the primary focus of the definition is upon equipment that is designed to lift, move and reposition goods and persons. It is also significant that the definition concludes by excluding an "elevating device that is permanently installed in a building." Once again, we argue that this reference is a clear indication that Part XIV is aimed at systems of conveyance within a workplace.

We acknowledge that one of the uses in the definition is to "transport" persons, materials, goods or things. This use, however, must be read in the context of other uses described in the definition (e.g. lifting, hoisting or positioning). Otherwise, there is no reason why the definition could not apply to aircraft taxiing into a gate or ships approaching a port terminal, either of which would be an absurd extension of the definition.

2. Sections 14.46 to 14.49 deal with the employer's obligation to ensure that manual movement of materials does not cause injury. When these sections are carefully considered, it is clear that the concept of manual handling equates to "lifting" and "carrying" from one location to another location within the workplace. If this is what is meant by manual materials handling, a comparable meaning should be applied to materials handling with the aid of motorized or other equipment.
3. It is clear that the hazards associated with operating the equipment addressed in the materials handling provisions are related to carrying heavy or awkward loads in a manner that may exceed the safe limitations of the equipment. For example, section 14.4(1) deals with the hazard of falling objects or shifting loads. Section 14.34 requires the operator to ensure that the load is as close to the ground as possible. These are risks that are not obvious in the operation of an over the road van.

4. In the same regard, many of the procedures and protections required by the Regulations relate to the inherent instability of equipment that is not principally designed for transportation and that may become unstable if not properly utilized. For example, section 14.6 deals with the risk of rollover; section 14.23<sup>2</sup> deals with hazards associated with a steep gradient; and section 14.40 deals with hazards relating to the rear dumping of material. Once again, these risks are not commonly associated with the operation of a van.
5. Section 14.30 specifically prohibits the use of materials handling equipment for the transportation of employees. The passenger area of a Federal Express van is designed specifically for the transportation of personnel.
6. The type of equipment addressed in the materials handling provisions appears to be equipment designed for use inside a workplace. Sections 14.44 and 14.45 relate to the design of interior space in addressing the requirements for aisles, corridors and clearances. Indeed, the drafters of the Regulations considered it to be necessary in section 14.9 to deal specifically with the protection of operators from the elements when materials handling equipment is used outdoors. Federal Express vans are designed for outdoor use.
7. In addition, many of the features that are stipulated as necessary for materials handling equipment are common amenities for over the road vans, such as shatterproof glass, lighting, rear view mirrors, protected fuel tanks, etc.

In summary, the focus of the Regulations appears to be on types of equipment of a different design and with different operating risks than an over the road vehicle. Of equal importance, the function which is being considered in the materials handling provisions appears to be lifting, carrying, or repositioning goods and materials within a workplace. This is fundamentally different from the operation of a van that backs up to a loading dock and remains stationary while goods are unloaded or loaded onto the vehicle. Quite simply, the purpose of the van is to transport materials to or from the customer to the Federal Express facility rather than repositioning materials within a Federal Express workplace.

#### **The Exclusion of Motor Vehicles by Section 14.2 of the Regulations**

You have asked for our analysis of the relationship between section 14.2 and subsection 14.4(4) of the Regulations.

As noted in your letter, section 14.2 is made subject to subsection 14.4(4). In other words, the exclusion of the motor vehicles described in section 14.2 from the application of Part XIV has one qualification. Subsection 14.4(4) provides:

Where there is likelihood that materials, goods or things will shift and endanger employees in a motor vehicle acquired after July 1, 1995 and having a gross vehicle weight of less than 4,500 kg, the employer shall install a bulkhead or other means to protect the employees.

The qualifying language in subsection 14.4(4) reinforces the effect of section 14.2. Section 14.2 operates to exclude motor vehicles from the application of Part XIV. Section 14.4(4) does not remove this exclusion, nor does it deem the motor vehicles in question to be materials handling equipment. Rather, subsection 14.4(4) imposes one single requirement: a bulkhead or other protective device to ensure that employees are not exposed to the risk of shifting objects or materials in the vehicle. Subsection 14.4(4) has no further effect and this confirms that Part XIV was not intended to require back-up alarms on the vehicles described in section 14.2.

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<sup>2</sup> Appeals Officer's note: the right section on gradients is section 14.28, not section 14.23.

The exception in section 14.2 is helpful in interpreting the Regulations in the case of Federal Express. The courier vans are designed to operate on public roadways travelling to and from customers' premises. The vehicles arrive at a Federal Express facility for the purpose of parking at a loading dock to be loaded or unloaded. The courier van is not used in any way to handle or transport materials on the employer's premises. Federal Express has a range of other equipment to perform this function, such as forklift trucks, trolleys and other conveyances.

### **Conclusion**

In summary, Federal Express relies on two arguments. First, an analysis of Part XIV in its entirety serves to identify the type of equipment that is being regulated for which back-up alarms are required. Throughout Part XIV, the references point is to equipment or devices that are aimed at lifting, moving and/or repositioning objects in a workplace. This is not the function of a Federal Express courier van. Secondly, Federal Express relies on section 14.2 of the Regulations, which specifically excludes a motor vehicle used and operated on a public road. As noted, the reason why Federal Express operates a fleet of courier vans is to facilitate delivery and collection of parcels from its customers. A courier van has no use for material handling equipment at a Federal Express facility. For these and other reasons that may be advanced at the hearing of this appeal, Federal Express requests that the direction of the Health and Safety Officer be rescinded and set aside.

[20] Solicitor Pollack also maintained that Purolator Courier pick-up or delivery vans are not materials handling equipment and are therefore not subject to subsection 14.16(1)(b) of the *COSH Regulations*. He submitted Purolator Courier's position and reasons in his August 21, 2002 letter to Serge Cadieux.

[21] In this case also, I am reproducing a slightly abridged version of Mr. Pollack's reasons, to ensure a thorough understanding of their rationale.

[22] Solicitor Pollack's position is as follows:

It is Purolator's submission that the term "materials handling equipment" suggests a function different from transportation to or from the employer's place of business. Indeed, section 14.2 of the Regulation excludes motor vehicles operated on public roads, thereby placing in contradiction road vehicles and "materials handling equipment". Whether a road vehicle may be considered a piece of materials handling equipment should be determined based on the vehicle's use.

An example of the distinction drawn between road vehicles and materials handling equipment is to be found in section 14.7 of the regulation, which provides that:

14.7 Where motorized materials handling equipment is used under conditions where a seat-belt or shoulder-type strap restraining device is likely to contribute to the safety of the operator or passengers, the materials handling equipment shall be equipped with such belt or device.

Vehicles such as Purolator's delivery trucks are already required by law to come equipped with seat-belts. Given the foregoing, section 14.7, if it is considered to be redundant, cannot refer to road vehicles—which are governed by other legislative and regulatory provisions requiring the mandatory installation of seat-belts—and can only be read as applying to other sorts of equipment.



Moreover, section 125(1)(k) of the *Canada Labour Code* clearly draws a distinction between vehicles and mobile equipment:

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,  
[...]  
(k) ensure that the vehicles and mobile equipment used by the employees in the course of their employment meet prescribed standards;

It appears that the legislator's intent in adopting this *Code* was to apply different rules to vehicles than to mobile equipment.

In addition, Division III of the Regulation, entitled "Manual Handling of Materials" – which deals with the manual as opposed to motorized handling of materials – provides guidance in interpreting the meaning of "materials handling". Sections 14.46 to 14.49 of Division III address the employer's obligation to ensure that the manual movement of materials does not cause injury. In these sections, the concept of manual handling of materials equates to "lifting" and "carrying" from one location to another location within the workplace. Purolator believes that a comparable meaning should be applied to handling of materials with the aid of motorized or other equipment.

The hazards associated with the operation of equipment addressed in Part XIV of the Regulation – "Materials Handling"- relate to the carrying of heavy or awkward loads in a manner that may exceed the safe limitations of the equipment. For example, section 14.4(1) deals with the hazard of falling objects or shifting loads. Section 14.34 requires the operator to ensure that the load is as close to the ground as possible. These are risks that are not encountered in the operation of road vehicles.

In the same vein, many of the procedures and protections required by the Regulation relate to the inherent instability of equipment that is not principally designed for transportation and, which may become unstable if not properly utilized. For example, section 14.6 deals with the risk of rollover, section 14.23<sup>3</sup> deals with hazards associated with a steep gradient, and section 14.40 deals with hazards relating to the rear dumping of material. Once again, these risks are not commonly associated with the operation of a delivery van.

Section 14.30 specifically prohibits the use of materials handling equipment for the transportation of employees. The passenger area of a Purolator delivery van is designed specifically for the transportation of personnel. This further suggests that delivery vans are not "materials handling equipment" within the meaning of Part XIV of the Regulation.

In addition to the foregoing, the Regulation lays emphasis on the type of equipment that is designed and intended for use inside a workplace. For example, sections 14.44 and 14.45 relate to the design of interior space by stipulating requirements for aisles, corridors and clearances. Indeed, the drafters of the Regulation considered it necessary in section 14.49 to deal specifically with the protection of operators from the elements when materials handling equipment is used outdoors. Purolator delivery vans are designed for outdoor use. In addition, many of the features that are stipulated as necessary for materials handling equipment are common amenities for road vehicles, e.g. shatterproof glass, lighting, rear view mirrors, protected fuel tanks, etc.

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<sup>3</sup> Appeals Officer's note: the right section on ramps' gradients is section 14.28, not section 14.23.

An incontrovertible distinction between vehicles and materials handling equipment is drawn by section 14.37(2), which provides that:

14.37(2) Where motorized or manual materials handling equipment is required to enter or exit a vehicle other than a railway car to load or unload materials, goods or things to or from the vehicle, the vehicle shall be immobilized and secured against accidental movement, by means additional to the vehicle's braking system.  
[emphasis added]

This section contemplates an operational situation identical to that, which provoked the issuance of the directives. The provision makes an obvious and clear distinction between road vehicles on the one hand and materials handling equipment (such as forklifts) on the other. In fact, Purolator's delivery vans are not driven into and parked into terminals otherwise than to be loaded and unloaded.

Therefore, if the Parliament's intent had been to apply the Regulation to vehicles such as delivery vans, it would have clearly indicated that intention by including such vehicles within the definition of "materials handling equipment" of the Regulation. Since vehicles such as delivery vans are not included in the definitional provisions, and given the distinctions made in various provisions between vehicles and motorized handling equipment, the Regulation cannot apply to delivery vans.

Moreover, Harry Philips, now Senior Manager, Safety and Environment at the Canadian Broadcasting Corporation, was the chairman of the Federally Regulated Employers Transportation and Communication Committee ("FETCO"), which was involved in the drafting of the Regulation. Mr. Philips states that it was always clear to the members of the Committee that the Regulation was not concerned with road vehicles and would certainly not apply to them. Mr. Philips has confirmed to us that this understanding was shared by the officials at Labour Canada who collaborated with FETCO in drafting the Regulation. The Direction, therefore, is an unwarranted and ill-founded corruption of the intent underlying the regulation.

The Appeals Office should note that Purolator has put into place certain safety measures that its drivers must follow when backing vehicles up. Before any back up manoeuvre, drivers are required to do a circle inspection and then sound the horns of their vehicles as they back-up. Purolator has also created a designated pathway for pedestrians within its cargo handling facilities in order to keep employees away from the area where vehicles back up. Because of the implementation of such measures and owing to Purolator's diligence in enforcing them, there has never been a case of a fatality or injury caused by a vehicle back up within a Purolator terminal.

In summary, the focus of the Regulations appears to be on equipment of a different design and purpose with different operating risks. Of equal importance, the work related function that is the focus of the materials handling provisions appears to be the lifting, carrying, or repositioning of goods and materials within a workplace. This is fundamentally different from the operation of a delivery van inside or outside of a cargo handling facility. Delivery vans are used to transport materials to or from a customer facility as opposed to the repositioning of materials to and from delivery vans.

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[23] Both solicitors Pollack and Gilbert stated in their written submissions and at the hearing that the sole and fundamental issue to be decided here is whether or not a courier or delivery van constitutes materials handling equipment and is therefore subject to the application of subsection 14.16(1) of the *COSH Regulations*. I agree with them.

[24] Health and safety officer Maltais gave a detailed, well-thought and well-developed testimony to explain the reasons supporting his directions to both Federal Express and Purolator Courier to require that their delivery vans be equipped with an automatic back-up warning device.

[25] In addition, health and safety officer Maltais made it undoubtedly clear that the memorandum sent by the OSH Compliance and Operations Acting Manager to the Quebec Region OHS Technical Advisor on the question of whether or not a truck constitutes materials handling equipment, and must therefore be equipped with an automatic back-up warning device, was fundamental in his decision to issue directions to that effect to both employers.

[26] I disagree with health and safety officer Maltais' interpretation of the *COHS Regulations* on that subject. Therefore, I am rescinding the directions that he gave to both Purolator Courier and Federal Express, for the following reasons.

[27] First, after a careful analysis of the memorandum sent by the OSH Compliance and Operations Acting Manager, it seems to me that his conclusion that trucks, and all motor vehicles, are indeed materials handling equipment is basically supported wholly by this paragraph:

Il n'y a aucun doute que tout camion (et tout véhicule motorisé) est un « appareil mobile »<sup>1</sup>, étant donné qu'il se déplace à l'aide d'un moteur. En conséquence, étant donné qu'un « appareil de manutention motorisé » est un appareil mû par un moteur à propulsion et possédant les caractéristiques d'un « appareil de manutention motorisé », les camions (et les autres véhicules à moteur) doivent être considérés comme des appareils de manutention motorisés.

Without a doubt, trucks (and all motor vehicles) are considered "mobile equipment"<sup>2</sup>, since they are provided with a motor for propulsion. Therefore, since "motorized materials handling equipment" consists of equipment, equipped with a motor for propulsion, having the characteristics of "materials handling equipment, a truck (and all motor vehicles) would be considered motorized material handling equipment.

[28] The Acting Manager then supplements his deduction with the following explanatory note at the bottom of the memorandum:

<sup>1</sup> Pour votre information, l'article 14.16 du *RCSST* de 1986 ne comprenait pas le terme « appareil de manutention motorisé », mais plutôt le terme « appareil mobile ». À cette époque, « appareil mobile » était interprété comme incluant tous les véhicules motorisés. En 1996, la notion d'« appareil de manutention motorisé » a été introduite pour distinguer les appareils de manutention motorisés de ceux qui ne le sont pas.

<sup>2</sup> For your information, section 14.16 of the 1986 *COSH Regulations* did not use the phrase "motorized materials handling equipment" but was using instead the phrase "mobile equipment. At the time, "mobile equipment" was interpreted as including all motor vehicles. In 1996 the new concept of "motorized materials handling equipment was introduced to differentiate between motorized and non motorized materials handling equipment.

[29] In other words, the memorandum states that trucks, and all motor vehicles, are materials handling equipment for no other reasons than

- they are “mobile equipment, since they are provided with a motor for propulsion”;
- motorized materials handling equipment is made of equipment, fitted with a motor for propulsion, having the characteristics of materials handling equipment, and
- in 1986, it was understood that mobile equipment included all motor vehicles – and why that is, I may add, the memorandum is silent on it.

[30] Do the French and English definitions of “materials handling equipment” given in section 14.1 of the *COHS Regulations* support this rather “circular” explanation and conclusion? I do not believe so.

[31] The definitions read:

« Appareil de manutention » Dispositif, y compris les structures d'appui, le matériel auxiliaire et le grément utilisé pour transporter, lever, déplacer ou placer des personnes, des matériaux, des marchandises ou des objets. La présente définition exclut les appareils élévateurs installés en permanence dans un bâtiment, mais comprend les appareils mobiles utilisés pour lever, hisser ou placer les personnes.

“materials handling equipment” means equipment, including its supporting structures, auxiliary equipment and rigging devices, used to transport, lift, move or position persons, materials, goods or things and includes mobile equipment used to lift, hoist or position persons, but does not include an elevating device that is permanently installed in a building.

[32] Breaking the definitions down into their main components reveals that materials handling equipment

- is (obviously) an equipment;
- that equipment includes its supporting structures, auxiliary equipment and rigging devices;
- it also includes mobile equipment; but
- it excludes permanently installed elevating devices.

[33] These definitions imply that:

- the term “equipment” – and its French equivalent “*appareil*” – refers to a machine, an apparatus, a mechanism, a piece of machinery, an implement, or something alike;
- the use of the word “handling” – and its French equivalent “*manutention*” – in this distinctive designation is a direct reference to the sole function, role and purpose of the equipment;

- this “handling” function, role and purpose is spelled out as being to “transport, lift, move or position persons, materials, goods or things”, or “to lift, hoist or position persons”;
- in other words, this purpose of “handling” – and its French equivalent “*manutention*” –, is done to maneuver persons, materials, goods or things, to transfer them, to change their positioning relatively to a previous one.

[34] Furthermore, I believe that the definitions suggest that:

- “materials handling equipment” is used when what needs to be moved is too heavy or too bulky to be moved manually;
- the handling of materials is carried out as part of a larger process, as one of the steps that has to be accomplished in order to successfully complete the whole process;
- the handling of materials takes place in an “enclosed” area of the work place, for example a warehouse, a terminal, a wharf, a tarmac, as opposed to an “open” area like a public road.

[35] Finally, I will add that what is commonly and typically known as an “equipment” – and its French equivalent “*appareil*” – does not correspond to what is commonly and typically known as a “motor vehicle” – and its French equivalent “*véhicule automobile*”.

[36] The definitions stipulated in section 14.1 of the *COSH Regulations* reflect in truth and in substance the purpose, the role, the use, the function of the equipment to which the following Part XIV prescriptions apply. And that purpose is fundamental to the understanding of the intent of Part XIV.

[37] Consequently, I am of the opinion that these definitions do not support the contention that courier and delivery vans are indeed “materials handling equipment”, because their purpose is not to handle materials within a single work place, but to transport them from one work place to another.

[38] I also base my decision on section 14.2 of the *COSH Regulations*, which stipulates the exclusions contemplated to the application of Part XIV. In the cases at bar, the applicable exclusion is specified in paragraph 14.2(a) and references subsection 14.4(4).

[39] Paragraph 14.2(a) reads :

14.2 La présente partie ne s’applique pas :

a) sous réserve du paragraphe 14.4(4), à la mise en service et à l’utilisation de véhicules automobiles sur les voies publiques;

14.2 This Part does not apply in respect of

(a) subject to subsection 14.4(4), the use and operation of motor vehicles on public roads;

[40] Subsection 14.4(4) of the *COHS Regulations* reads:

14.4(4) Lorsqu'il y a un risque que des matériaux, des marchandises ou des objets se déplacent et mettent les employés en danger dans un véhicule automobile acquis après le 1<sup>er</sup> juillet 1995 et ayant un poids brut inférieur à 4 500 kg, l'employeur doit installer une cloison ou tout autre dispositif pour protéger les employés.

14.4(4) Where there is a likelihood that materials or things will shift and endanger employees in a motor vehicle acquired after July 1, 1995 and having a gross vehicle weight of less than 4,500 kg, the employer shall install a bulkhead or other means to protect the employees.

[41] It is beyond question that Federal Express and Purolator Courier delivery vans and trucks are motor vehicles. After all, they do use a motor for propulsion.

[42] It is also indisputable that these vans and trucks have but one sole and fundamental purpose: to move, to carry, to transport materials, persons, things or goods from one location to another.

[43] Furthermore, it is unarguable that Federal Express and Purolator Courier vans and trucks carry out that purpose on specific types of road. They are "used and operated" on public roads, *i.e.* roads that are used by the public and maintained at public expense.

[44] Therefore, they do not, as a general rule, move, carry, transport materials, persons, things or goods on "private" roads, *i.e.* roads that belong to an individual or a company. The only time when these delivery vans and trucks are operated somewhere else than on a public road is when they enter a "private" road and are driven to a terminal or other type of loading or unloading area.

[45] Since Federal Express and Purolator Courier delivery vans and trucks are used and operated on public roads, they are, among other things, subject to the prescriptions of the *Motor Vehicles Act* of the province where they are being operated. That is why, for example, they must at all times be certified and registered under the applicable provincial *Motor Vehicles Act* and they must be driven only by provincially licensed operators, contrary to what is prescribed in the case of materials handling equipment.

[46] Does paragraph 14.2(a) of the *COHS Regulations* mean that Federal Express and Purolator Courier delivery vans and trucks are always subject to Part XIV, except when they are used and operated on public roads?

[47] Conversely, could paragraph 14.2(a) of the *COHS Regulations* contemplate that as soon as these vans and trucks enter a terminal to be loaded or unloaded, they automatically become materials handling equipment and therefore fall under Part XIV?

[48] I do not believe either hypothesis is valid. The intent of paragraph 14.2(a) of the *COHS Regulations* is to precisely delimit that, except for subsection 14.4(4), Part XIV does not apply to motor vehicles when their sole purpose and function is to be used and operated on public roads.

[49] Furthermore, in my opinion, the reference that paragraph 14.2(a) makes to subsection 14.4(4) reinforces the application exclusion. The intent of section 14.4 in its entirety is to prescribe what type of protection is required against falling objects.

[50] However,

- subsections 14.4(1) and (3) are the only references to the protective measures required on motorized materials handling equipment;
- subsection 14.4(2) excludes motorized hand-rider trucks from the requirements of subsection 14.4(1); and
- subsection 14.4(4) requires the installation of bulkheads on motor vehicles acquired after July 1, 1995 and having a gross weight of less than 4,500 kg.

[51] The fact that the legislator spelled out in subsection 14.4(4) a different type of protection against falling objects applicable to motor vehicles when he already had described in subsections 14.4(1) and (3) what protection was required for motorized materials handling equipment is further evidence that Part XIV of the *COHS Regulations* does not apply to Federal Express and Courier Purolator delivery vans and trucks.

[52] Another reason for my decision relies on paragraph 125(1)(k) of the *Code*, which makes a clear distinction between vehicles and mobile equipment. The authority to prescribe regulatory standards related to vehicles and mobile equipment lies in that paragraph.

[53] Paragraph 125(1)(k) 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,

[...]

(k) ensure that the vehicles and mobile equipment used by the employees in the course of their employment meet prescribed standards;

[54] Would the legislator have used two different expressions, *i.e.* vehicles and mobile equipment, if his intention had been that they were but one and the same “materials handling equipment” under Part XIV of the *COHS Regulations*? Permit me to strongly doubt it.

[55] The purpose of Part XIV is to deal with equipment that handles materials within a work place, as opposed to equipment that transports materials from an employer’s to a client’s work place. That is why the definition of “materials handling equipment” refers to terms like “lift, move, position or hoist”.

[56] That also explains why Part XIV stipulates the different kind of safety features that must be found on materials handling equipment. For example, there are prescriptions on protection against falling objects (section 14.4) and overturning (section 14.6); seat-belts (section 14.7); fuel tanks (section 14.8); protection from elements (section 14.9); vibration (section 14.10); design or displays and controls (section 14.11); fire extinguishers (section 14.12); means on entering and exiting (section 14.13); lighting (section 14.14); braking and steering systems (section 14.15).

[57] All these matters are already prescribed under existing provincial legislation regulating the design, the construction and the safe use of motor vehicles. I believe that the federal legislator did not intend to duplicate in Part XIV similar prescriptions, that would also be applicable to motor vehicles.

[58] I will add that any summary review of the literature or of other legislation on the subject of materials handling equipment is further evidence that Part XIV of the *COSH Regulations* was not intended to cover motor vehicles like courier vans and trucks. It is clear that the designation of “material handling equipment” refers to what is commonly known as “powered industrial trucks“, that is mobile, power-driven vehicles that are used to carry, push, pull, lift, stack and tier material. And among them we find lift trucks, electric pallet trucks, elevated order pickers, low-lift platform trucks, cantilever trucks, counter-balance front/side loader trucks and single-side loader rider trucks, to name but a few.

[59] To declare that Federal Express and Purolator Courier delivery vans and trucks are automatically subject to Part XIV because they spend some time at a terminal where employees are working while they are being loaded or unloaded is, to my view, to distort and misconstrue the intent of Part XIV of the *COHS Regulations*.

[60] In my opinion, if the federal legislator had indeed intended to have motor vehicles like Federal Express and Purolator Courier delivery vans and trucks subject to Part XIV of the *COHS Regulations*,

- it would most likely have been specifically stated in the definition of “materials handling equipment” given in section 14.1, *Interpretation*;
- there would have been no exclusion to the application of Part XIV of the *COHS Regulations* stipulated for motor vehicles used and operated on public roads under section 14.2, *Application*; and
- there would have been, in paragraph 14.2(a), no reference to a different protective measure against falling objects under subsection 14.4.

[61] One final note. Even though both employers appealed the health and safety officer’s direction, they both complied with it nevertheless, as Part II of the *Canada Labour Code* required. Federal Express installed back up warning devices on the vans that were being used at the St. Hubert facility. For its part, Purolator Courier Purolator put into place safety measures that its drivers had to follow when backing vehicles up and provided a designated pathway for pedestrians within its cargo handling facilities in order to keep employees away from the area where vehicles back up.

[62] I conclude that Federal Express and Purolator Courier delivery vans and trucks are not materials handling equipment within the meaning of section 14.1 of Part XIV of the *COHS Regulations*.



[63] Therefore, based on the above-mentioned reasons, I rescind the directions that health and safety officer Jacques Maltais issued to Purolator Courier on June 12, 2002 and to Federal Express on July 17, 2002.

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Michèle Beauchamp  
Appeals Officer

**Dans l'affaire du Code canadien du travail**  
**Partie II – Santé et sécurité au travail**

**Instruction à l'employeur en**  
**vertu du paragraphe 145(1)**

Le 12 juin 2002, l'agent de santé et de sécurité soussigné a procédé à une inspection dans le lieu de travail exploité par Purolator Courier Ltée, employeur assujetti à la partie II du *Code canadien du travail* et sis au 9201, De l'Innovation, Anjou, Québec, H1J 2X9, ledit lieu étant parfois connu sous le nom de Purolator Courier Ltée.

Ledit agent de santé et de sécurité est d'avis que la disposition suivante du *Code canadien du travail* est enfreinte;

1. Alinéa 125(1)*k*) de la partie II du *Code canadien du travail*, alinéa 14.16(1)*b*) du *Règlement canadien sur la santé et la sécurité au travail*.

Pendant que l'aire de travail est occupé par des employés, il y a un camion : n° 1 : 89567 qui se déplace en marche arrière, et qui n'est pas muni d'un Klaxon ou autre avertisseur sonore du même genre qui fonctionne automatiquement.

Par conséquent, il vous est ORDONNÉ PAR LES PRÉSENTES, en vertu du paragraphe 145(1)*a*) de la partie II du *Code canadien du travail* de cesser toute contravention au plus tard le 26 juin 2002.

De plus, il vous est ORDONNÉ PAR LES PRÉSENTES, en vertu du paragraphe 145(1)*b*) de la partie II du *Code canadien du travail* de prendre, dans les délais précisés par l'agent de santé et de sécurité au travail, les mesures qu'il précise pour empêcher la continuation de la contravention ou sa répétition.

Fait à Montréal ce 12<sup>ième</sup> jour de juin 2002.

Jacques Maltais  
Agent de santé et de sécurité

À : Purolator Courier Ltée  
9201, De l'Innovation  
Anjou, Québec  
H1J 2X9

**Dans l'affaire du Code canadien du travail**  
**Partie II – Santé et sécurité au travail**

**Instruction en vertu du paragraphe 145(1)**

Le 17 juillet 2002, l'agent de santé et de sécurité soussigné a procédé à une inspection des lieux de travail dans le lieu de travail exploité par Fedex Express Canada Ltée, employeur assujetti à la partie II du *Code canadien du travail*, et sis au 3225, 1<sup>ère</sup> rue à St-Hubert ledit lieu étant parfois connu sous le nom de Fedex Express.

Ledit agent de santé et de sécurité est d'avis que la disposition suivante de la partie II du *Code canadien du travail* est enfreinte :

A) de la partie II :  
Alinéa 125 (1)k)

B) du *Règlement canadien sur la sécurité et la santé au travail* :

Alinéa 14.16 – Pendant que l'aire de travail est occupé par des employés, il y a des camions qui se déplacent en marche arrière et qui ne sont pas munis d'un klaxon ou autre avertisseur sonore du même genre qui fonctionne automatiquement.

Par conséquent, il vous est ORDONNÉ PAR LES PRÉSENTES, en vertu du paragraphe 145(1) de la partie II du *Code canadien du travail* de cesser toute contravention au plus tard le 31 juillet 2002.

Fait à Montréal ce 12<sup>ième</sup> jour de juin 2002.

Jacques Maltais  
Agent de santé et de sécurité

À : Fedex Express  
3225 1<sup>ère</sup> rue  
St-Hubert (Qc)  
J3Y 8Y8

## Summary of Decision

**Decisions:** 03-022 and 03-023

**Applicants:** Federal Express  
Purolator Courier

**Key Words:** Material handling equipment  
Delivery vans

**Provisions:**

***Canada Labour Code:*** paragraph 125(1)(k)

***Canada Occupational Health and Safety Regulations:*** sections 14.1, 14.2, 14.16

**Summary:**

A health and safety officer issued to Purolator Courier and Federal Express respectively a direction stating that both employers were contravening paragraph 125(1)(k) of Part II of the *Canada Labour Code* and section 14.16 of the *Canada Occupational Health and Safety Regulations (COHS Regulations)* because in an area occupied by employees, their delivery vans were travelling in reverse without being fitted with a horn or similar audible warning device that automatically operates while they travel in reverse. Both employers appealed the direction.

The appeals officer held a single hearing for both cases. She decided that delivery vans are not « materials handling equipment within the meaning of section 14.1 of the *COHS Regulations* and therefore rescinded the two directions.