

Case No.: 2005-49
Decision No.: CAO-07-025

Interlocutory decisions
Preliminary objection: CAO-06-048
Request for a stay: 05-049 (S)

Canada Labour Code
Part II
Occupational Health and Safety

SSI Micro Ltd.
appellant

No one appeared as respondent

July 26, 2007

This case was decided by Appeals Officer Richard Lafrance, based on the written submission received from the appellant and the health and safety officer's investigation report.

For the appellant

Paul N.K. Smith, Counsel to SSI Micro Ltd.

Brian Beresh, Agent and Counsel to SSI Micro Ltd.

Jeff Philipp, President/CEO, SSI Micro Ltd.

- [1] This case concerns an appeal filed on November 10, 2005, by Brian Beresh, Counsel on behalf of SSI Micro, pursuant to subsection 146(1) of the *Canada Labour Code*, Part II (the *Code*). The appeal was made against a direction issued by health and safety officer (HSO) Bryan Lloyd.
- [2] The direction was issued on November 2, 2005, further to the investigation conducted by HSO Lloyd following the fatal electrocution of two SSI Micro employees.
- [3] The direction states:

Direction to the employer under paragraph 145(2)(b)

On October 30, 2005, the undersigned health and safety officer conducted an investigation into a multiple work place fatality, in the work place operated by SSI Micro Ltd. being an employer subject to the *Canada Labour Code, part II* (CLC) in the yard south of 806 Whiskey Jack Drive, Enterprise, NWT (60⁰ 33' 45'' North, 116⁰ 08' 54'' West), the said work place being sometimes known as the SSI Micro – Enterprise communication site.

The said health and safety officer considers that the performance of an activity constitutes a danger to employees while at work:

The installation, maintenance, servicing, erection and repair of field communication devices and towers present a danger to field operations employees.

The following contraventions of the Occupational Health and Safety Regulations (COHSR) and the CLC, observed at the time of the investigation, led the said health and safety officer to the conclusion of danger.

1. SSI Micro Ltd. Field operations employees did not observe safe limits of approach to overhead high voltage power lines while erecting a communication tower. 8.5(7) COHSR
2. SSI Micro Ltd. Field operations employees were not provided with the necessary supervision, training and instruction while erecting a communication tower. 125.(1)(q) CLC
3. SSI Micro Ltd. Field operations employees were not made aware of the known and foreseeable hazards present while erecting a communication tower. 125.(1)(s) CLC
4. SSI Micro Ltd. Field operations employees were not provided the necessary personal protective equipment to prevent injury from the hazards present. 12.1 COHSR

Therefore, you are **HEREBY DIRECTED**, pursuant to paragraph 145(2)(b) of the *Canada Labour Code*, to take measures to correct the conditions that constitute the danger immediately.

Issued at Fort Providence, NWT, this second day of November, 2005.

- [4] An application for a stay of the direction was made by the appellant on November 10, 2005. The undersigned Appeals Officer, who heard the application, refused to grant the stay¹.
- [5] No other party came forward as a respondent in the present case. As indicated by Jeff Philipp, President/CEO of SSI Micro Ltd, there is no union representing the employees, nor is there a health and safety committee present in the enterprise.
- [6] On December 13, 2006, I rendered the following decision² on a preliminary question raised by the appellant concerning the jurisdiction applicable to SSI Micro:
- [39] In view of the evidence submitted and the fact that telecommunication is a single federal subject; I find that SSI Micro is a telecommunication enterprise that has the capacity, and indeed does provide out-of-territory and international telecommunication services to its subscribers on a continuous and regular basis. As such, SSI Micro falls under federal jurisdiction and therefore, is governed by the *Canada Labour Code*.

¹ *SSI Micro Ltd*, Occupational Health and Safety Tribunal Canada, Appeals Officer Richard Lafrance, Decision 05-049(S), December 6, 2005

² Decision No. CAO-06-048, SSI Micro Ltd.

- [40] Having decided that SSI Micro is an employer subject to the *Canada Labour Code*, I must now turn to the merits of the appeal filed by SSI Micro against the direction issued by HSO Lloyd.
- [41] Since most of the arguments presented by B. Beresh dealt with the matter of applicable jurisdiction of the enterprise, I will allow SSI Micro, if it so wishes, to proceed on the merits of the case and to provide the undersigned evidence and arguments in support of its position in appeal.
- [42] SSI Micro will be required to inform the undersigned within 20 days of the present decision as to whether it intends to do so at a formal hearing or through written submission.
- [7] Further to the said decision, B. Beresh informed this Appeals Officer on December 19th, 2006, that he would be presenting further written submissions in relation to the merits of the case.
- [8] Upon receipt of the letter from Mr. Beresh, I then informed him in writing that he would have until January 16, 2006 to provide me with written submissions on the merits of the SSI Micro case. As well, I requested from Mr. Beresh that he provide me with the name of a person or persons representing the employees of SSI Micro to act as respondents in this case.
- [9] Mr. Beresh's office was subsequently contacted by phone in February, 2007 by the Canada Appeals Office to inquire about his submissions. Mr. Beresh did not reply to any of the request for submission.
- [10] At my request, additional documents were submitted by the health and safety officer and were subsequently sent to B. Beresh. Because new documents were now part of the files, this Appeals Officer gave B. Beresh, 18 days, until June 18, 2007 to present arguments on the merits of the case.
- [11] On June 11, 2007, P. Smith advised the Canada Appeals Office that he was the new legal representative in the case and requested an extension to review the case and submit arguments.
- [12] On July 23, 2007, P. Smith informed the Canada Appeals Office that SSI Micro was abandoning its appeal of the direction issued by HSO Lloyd.
- [13] Considering the above and having reviewed the case file, I duly note the stated intention of the appellant. This appeal is therefore withdrawn and this case is closed.

Richard Lafrance
Appeals Officer

Summary of Appeals Officer's Decision

Decision No.: CAO-07-025

Appellant: SSI Micro Ltd.

Respondent: No one appeared as respondent

Provisions: *Canada Labour Code*, Part II: 146(1), 145(2)(b)

Keywords: Direction, stay, respondent, electrocution, withdrawal

Summary:

On November 10, 2005, counsel for SSI Micro Ltd. appealed a direction issued on November 2, 2005, following the fatal electrocution of two SSI Micro employees.

An application for a stay of the direction was made on November 10, 2005. The Appeals Officer refused to grant the stay.

On December 13, 2006, the Appeals Officer confirmed that SSI Micro fell under federal jurisdiction further to a preliminary question raised by the appellant.

On July 23, 2007, Mr. Smith informed the Canada Appeals Office that SSI Micro was abandoning its appeal of the direction. The case is therefore closed.