

Canada Labour Code
Part II
Occupational Health and Safety

Parrish & Heimbecker Ltd.
appellant

and

Robin Lowes
respondent

Decision No.: 06-025
August 10th, 2006

This case was heard by Appeals Officer Thomas Farrell, in Regina, Saskatchewan, on May 10, 2006.

Appearances

For the appellant

Colin Hirschfeld, Counsel, McKerchar McKerchar & Whitmore LLP
James McKerchar, General Superintendent, Parrish & Heimbecker Ltd.
Wade Sobkowich, Executive Director, Western Grain Elevator Association

For the Respondent

There were no appearances for the respondent.

Health and Safety Officer

Dave Shepherd, Human Resources and Skill Development Canada (HRSDC), Labour Program, Saskatchewan

- [1] This case concerns an appeal made under section 146 of the *Canada Labour Code*, Part II (the *Code*), on September 28, 2005, by Counsel Colin Hirschfeld on behalf of the employer, Parrish & Heimbecker Ltd.
- [2] The appeal was made as a result of a direction issued to the employer on September 19, 2005 by health and safety officer (HSO) Dave Shepherd under paragraph 145(2)(a) of the *Code*, following his investigation of an accident that occurred to Christopher Kinnee, an employee of Parrish & Heimbecker Ltd., at the work place of Parrish & Heimbecker Ltd. in Moose Jaw, Saskatchewan.

- [3] Christopher Kinnee was helping with the loading of grain into railcars in the trackside load-out area. The railcars were being positioned to load empty cars. The employee was standing on top of a car, wearing fall arrest equipment that was attached to a beam with a retractable lifeline. He gave the “go ahead” via radio to the locomotive engineer that it was clear to move the cars. At the time he gave that signal, he was standing on the car and at some point, as the cars were being moved, his harness caught on the walkway of the next railcar, causing the lifeline case anchor point to break. Christopher Kinnee fell to the ground and his right leg was run over by the first wheel of the lead truck on the railcar.
- [4] Following his investigation, HSO Shepherd issued the following direction to the employer:

**IN THE MATTER OF THE *CANADA LABOUR CODE*
PART II – OCCUPATIONAL HEALTH AND SAFETY**

DIRECTION TO AN EMPLOYER UNDER PARAGRAPH 145(2)(a)

On September 15th, 2005, the undersigned health and safety officer conducted an investigation in the work place operated by Parrish & Heimbecker, Limited, being an employer subject to the *Canada Labour Code*, Part II, at #40 – 5th Avenue N.W., Moose Jaw, Saskatchewan, S6H 7X6, the said work place being sometimes known as Parrish & Heimbecker, Limited.

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

“Standing, sitting or walking on top of railcars while cars are being moved presents a risk of falling to employees.”

Therefore, you are HEREBY DIRECTED, pursuant to subsection 145(2)(a) of the *Canada Labour Code*, Part II, to cease the activity that constitutes the danger immediately.

Please note that NOTICE OF DANGER # 3330 has been affixed pursuant to subsection 145(3) and shall remain posted until this direction has been complied with.

- [5] Counsel Colin Hirschfeld called two witnesses to address the basis of the appeal, James McKerchar, General Superintendent at Parrish & Heimbecker Ltd., and Wade Sobkowich, Executive Director of the Western Grain Elevator Association.
- [6] I retain the following from the information provided by James McKerchar during examination by Counsel Hirschfeld. James McKerchar outlined the changes in grain handling and transportation methods that have taken place over the past 30 years, including

increased mechanization and the need to handle significantly higher volumes of grain while continuing to ensure quality. This was the reason for the work procedures that were now in use at grain terminals across Western Canada.

- [7] James McKerchar noted that the fall protection equipment and programs were developed in the late 1980s to protect the workers who had to work on top of the cars. Workers are required to stand on top of grain cars for three reasons: (1) to open and close lids; (2) to ensure that no foreign material is loaded; and (3) to ensure that the car is loaded to full capacity.
- [8] James McKerchar noted that the fall protection program was developed at that time in consultation with Labour Canada*, in recognition of the need to have workers positioned on top of the cars to do their work. As the cars are moved in place, a visual inspection is made at ground level. Then, the worker goes to the top of the cars and loading begins. The worker on the car directs any movement, either by radio to an operator using a locomotive or car mover, or, in some cases, by using a remote control device to operate a winch or car mover himself.
- [9] As the car is filled, the hatches are closed and secured. When the string of cars is loaded, the worker goes to a “crow’s nest” platform located between tracks A and B while cars are moved out and replaced by another string of five cars. The cars that are being loaded are moved very slowly, at something less than walking speed.
- [10] James McKerchar remarked that at the time of the accident, the workers had finished loading on track “A”. Employee Christopher Kinnee had disconnected his lanyard from the trolley on track “A” and attached it to the trolley on track “B”. He then walked to the end of his lanyard and sat down on top of a car. While there, he could not be seen by other members of the crew.
- [11] James McKerchar pointed out that the operating procedure required that the employee remain on the crow’s nest platform.
- [12] For his part, Wade Sobkowich outlined the concerns of the Western Grain Elevator Association relatively to the safety of workers and the need to ensure that they are adequately trained. He noted that procedures very similar to those in place at the Parrish & Heimbecker Ltd. work operation are in use across the industry.
- [13] HSO David Shepherd indicated that he was in agreement with the explanation of the accident provided by James McKerchar. He noted that the employer’s Safety Program is new and is being upgraded. He was also aware that there is a desire to standardize training across the industry.

* Labour Canada has since been integrated as the Labour Program component of Human Resources and Skills Development Canada.

[14] Robin Lowes, respondent and employee health and safety representative at the Parrish & Heimbecker Ltd. work place, was given prior notice of the hearing by letter on April 27th, 2006. He did not appear and he did not submit written submissions on the matter.

Decision

[15] In accordance with subsection 146.1(1) of the *Code*, the appeals officer must inquire into the circumstances and reasons that cause a health and safety officer to issue a direction and upon completion of that inquiry, the appeals officer may vary, confirm or rescind the direction and issue any direction that the appeals officer considers appropriate under subsection 145(2) or (2.1).

[16] In the present case, the issue to be addressed is whether HSO Shepherd was justified, given the circumstances, in finding that there was a risk of falling for employees remaining on top of a car as it was being loaded and, consequently, in directing the employer under subsection 145(2)(a) of the *Code* to immediately cease the activity constituting a danger.

[17] Christopher Kinnee was seriously injured when he chose to remain on a car during the switching process, contrary to the established safety procedures outlined by the employer's representatives as well as the industry representatives.

[18] In hearing the evidence and reading the information presented, there was agreement that workers should not be standing on a car while it is being switched. It also demonstrated that the level of training provided by the employer was not adequate and that the enforcement of the safety procedures by the supervisors could have been more diligent.

[19] The employer stated that since the accident, increased emphasis has been placed on employee training for both new employees and more senior employees. Such training is also being recorded.

[20] The fall protection system adopted by the employer was acceptable to both the workers and HRSDC Labour Program prior to this accident. Furthermore, it provided the necessary protection when used as outlined in the employer's *Hopper Car Loading Procedures*. However, the employer must also ensure that the supervisors and lead hands assume their responsibility of verifying that safe work procedures are followed at all times.

[21] For these reasons, under the authority given to me by paragraph 146.1(1)(a) of the *Code*, Part II, I am amending the direction issued to the employer, Parrish & Heimbecker Ltd., by HSO Shepherd, in order to identify more specifically when there is a risk of falling for employees.

[22] The amended direction is attached to the present decision. I request that HSO Shepherd or any other HSO ensure that the employer complies with this new direction.

Thomas Farrell
Appeals Officer

APPENDIX I

**IN THE MATTER OF THE CANADA LABOUR CODE,
PART II – OCCUPATIONAL HEALTH AND SAFETY**

DIRECTION TO THE EMPLOYER PURSUANT TO PARAGRAPH 145(2)(a)

On September 15, 2006, health and safety officer Dave Shepherd conducted an investigation concerning the accident of Christopher Kinnee, an employee of Parish & Heimbecker Ltd., an employer subject to the *Canada Labour Code*, Part II, doing business at #40 – 5th Avenue N.W., in Moose Jaw, Saskatchewan, the said business being known as Parish & Heimbecker Ltd.

Following this investigation, health and safety officer Shepherd issued a direction to the employer under subsection 145(2)(a) of the *Canada Labour Code*, Part II. The employer appealed that direction under section 146 of the *Canada Labour Code*, Part II.

Following my inquiry into the circumstances and the reasons of the direction issued by HSO Shepherd, I vary the said direction as follows:

Standing, sitting or walking on top of railcars while the cars are being shunted or repositioned presents a risk of falling to employees.

Therefore, you are **HEREBY DIRECTED**, pursuant to subsection 145(2)(a) of the *Canada Labour Code*, Part II, to cease the activity that constitutes the danger immediately.

Please note that NOTICE OF DANGER # 3330 has been affixed pursuant to subsection 145(3) and shall remain posted until this direction has been complied with.

Ottawa, August 10th, 2006

Thomas Farrell
Appeals Officer

To: Parish & Heimbecker Ltd
#40 – 5th Avenue N.W.
Moose Jaw, Saskatchewan
S6H 7X6