

Canada Labour Code
Part II
Occupational Health and Safety

Tridem Services Ltd.
appellant

Decision No.: 06-027
August 15th, 2006

This case was decided by Appeals Officer Pierre Guénette on the basis of written documents submitted by Tridem Services Ltd. and health and safety officer Lance Labby. The work place health and safety representative did not submit any written documentation.

- [1] This case concerns an appeal made on March 14, 2006, under subsection 146(1) of the *Canada Labour Code*, Part II (the *Code*), by Tibor Himer, President of Tridem Services Ltd., against a direction issued on March 2, 2006 by health and safety officer (HSO) Lance Labby pursuant to subsection 145(1) of the *Code*.
- [2] On December 8, 2005, HSO Labby conducted a hazardous occurrence investigation following the disabling injury suffered by a truck driver of Tridem Services Ltd. at a client's work place.
- [3] HSO Labby submitted documents following the appeal. I retain the following from his hazardous occurrence investigation report.
- [4] The truck driver's duty on that day was to deliver pallets of floor laminate to a client of Tridem Services Ltd. Once there, the driver removed the straps retaining his load. At this point, the client asked him to move his B-Train¹ tractor trailer because the trailer was on uneven ground. However, the load was already unstrapped and the driver could not move the B-Train tractor trailer because its wheels were stuck in the snow.
- [5] Therefore, the load of pallets of floor laminate had to be unloaded from an uneven surface. The client's operator started unloading the pallets with a sit down counterbalanced forklift, while the truck driver was standing on the trailer to assist him.

¹ A B-Train is a trailer that is approximately 23 feet long and is usually connected to another B-Train on the back of a fifth-wheel highway tractor unit.

- [6] As the pallets were stacked too high in the middle of the trailer, the forks of the forklift could not reach them. The truck driver decided to put a makeshift stand together and pull the top loaded pallet out further onto it so that the load could be fit into place on the lift truck. As the driver was starting to rock/pull the pallet, he was advised not to do this by the lift truck operator. At that moment, an employee saw the 1000-lb floor laminate top pallet fall over. He shouted “look out its coming down” and stepped aside, but it fell onto the truck driver, crushing his head and neck.
- [7] As a result of his investigation, HSO Labby issued on March 2, 2006 a direction to Tridem Services Ltd. alleging that the employer had committed nine contraventions to the *Code*.
- [8] Tibor Himer sent a written notice of appeal to the Appeals Officer with regard to item no. 8 of the direction issued by HSO Labby.
- [9] Item no. 8 reads as follows:

Canada Labour Code Part II, Paragraph 125.(1)(v), *Canada Occupational Health and Safety Regulations*, Paragraph 14.50(3)(f)

The employer shall in consultation with all truck drivers with every load ensure all materials, goods, or things shall be stored in a manner so that there is no risk to the health or safety of any employee. The employer shall record on a daily basis, twice a day communication with each driver to discuss the loads being picked up and how they are loaded to ensure the employees safety.

- [10] The appellant wrote the following in his submission to support his appeal of item no. 8 of the direction:

We feel the Direction is both impractical and unwarranted. The loading of trailers occurs away from the Employer’s workplace and is undertaken by the shipper. Similarly, the unloading of trailers occurs away from the workplace and is undertaken by the shippee (sic). It is neither feasible nor warranted for the Employer to supervise such processes, nor to consult with each driver employee regarding every load. The Employer is nowhere near the site of loading, and therefore must rely on driver employees to take reasonable steps to protect their own safety.

Employees are instructed that they are to take no part in loading or unloading their trailers, and are to stand clear while such processes occur. Employees also receive instruction on how make sure a load is properly tied down for safe transit. Employees have further been directed to contact the Employer for directions if they have any concerns about the safety of a load, and are in no event to haul a load unless they are satisfied that it has been properly secured.

- [11] In addition, Tibor Himer provided to the Appeals Officer the written instructions that his drivers have to follow during the loading and unloading of trailers.

[12] The issue to be decided in the present case is whether or not HSO Labby erred when he found that the employer, Tridem Services Ltd., was contravening paragraph 125(1)(v) of the *Code* and paragraph 14.50(3)(f) of the *Canada Occupational Health and Safety Regulations* (COHSR), Part XIV, Materials Handling.

[13] For deciding the matter, I must consider the relevant legislation and the facts of the case.

[14] Subsection 125(1) of the *Code* clearly stipulates the following:

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**

...

(v) adopt and implement prescribed safety codes and safety standards[.]

(My underline)

[15] Paragraph 14.50(3)(f) of the COHSR states in Division IV, Storage of Materials:

14.50(3) All materials, goods or things shall be stored in a manner so that

...

(f) there is no risk to the health or safety of any employee.

[16] In either one of the situations described in subsection (1) of the *Code*, the employer has to comply with specific duties under the *Code*.

[17] Tibor Himer appealed the direction relative to item no. 8 on the basis that he, as the employer, did not control the work places where the loading and unloading of trailers were taking place.

[18] In the present case, the evidence demonstrated that the employer did not control work places where loading and unloading of trailers occur.

[19] In fact, HSO Labby did not provide any evidence in his investigation report that Tridem Services Ltd. could control his clients' areas where loading and unloading of trailers was taking place.

[20] Furthermore, Tibor Himer argued that, as the employer, he could not supervise the loading and unloading process because he was not physically present in the work places where it was being done. However, the employer could, to a certain extent, control some of the tasks performed by his own drivers during the loading and unloading operations taking place out of his own work place.

[21] To demonstrate his compliance with the *Code*, the employer provided evidence that his drivers had been given the following instructions:

- 1- they were not to be involved in the loading and unloading of their trailer;
- 2- they were trained on how to properly tie down and secure a load; and
- 3- they were to contact the employer if they had any concerns about the safety of a load.

[22] In my view, given the evidence submitted, Tridem Services Ltd. did not contravene the *Code* regarding item 8 of the direction issued by HSO Labby.

[23] It is also important to mention that neither the *Code* nor the COHSR require an employer to specifically hold, twice a day, communications with each of his driver as well as record those communications on a daily basis. Therefore, HSO Labby had no reason to include item 8 in the direction he issued to Tridem Services Ltd. on March 2, 2006.

[24] As to the other contraventions identified by HSO Labby in his direction, the employer did not appeal them and therefore they are not being addressed in the present decision.

[25] For all the above mentioned reasons, I hereby rescind item no. 8 of the direction issued by HSO Labby to Tridem Services Ltd. on March 2, 2006.

Pierre Guénette
Appeals Officer

Summary of Appeals Officer's Decision

Decision No.: 06-027

Appellant: Tibor Himer

Respondent: Neville Morrissette Jr.

Key Words: Direction, Hazardous occurrence investigation, Disabling injury, item no. 8, *Canada Occupational Health and Safety Regulations*, *Canada Labour Code* Part II.

Provisions: *Canada Labour Code*: 125(1)(v)
Canada Occupational Health and Safety Regulations: 14.50(3)(f)

Summary:

A truck driver was to deliver pallets of floor laminate to Tridem Services Ltd. The driver removed the straps retaining his load and the client asked him to move his tractor trailer in vain because the load was stuck in the snow. Therefore, the load had to be unloaded from an uneven surface. As the pallets were stacked too high, the forks of the forklift could not reach them. The truck driver decided to put a makeshift stand together and pull the top loaded pallet out further. As the driver was starting to rock/pull the pallet, the 1000-lb floor laminate fell over and crushed his head and neck.

HSO Labby conducted a hazardous occurrence investigation following the disabling injury and issued a direction to Tridem Services Ltd. Tridem appealed item no. 8, which stated that the employer had to communicate, twice a day, with each of his drivers as well as record those communications on a daily basis. The Appeals Officer rescinded item no. 8 of HSO Labby's direction because neither the *Code* nor the COHSR require an employer to abide to the above mentioned actions.