

Case No.: 2006-62

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

D & W Forwarders  
*appellant*

and

I. Stublely  
*respondent*

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Decision No.: CAO-06-047  
December 12, 2006

This case was decided by Appeals Officer Richard Lafrance.

**For the Appellant**

H. P. Rolph, Solicitor for D & W Forwarders Inc.  
A. deWeerd, Manager, Driver Training, Health and Safety

**For the Respondent**

I. Stublely, Senior employee member, Health and Safety Committee

**Health and Safety Officer**

Ken S. Manella, Human Resources and Skills Development Canada

[1] This case concerns an appeal made on November 17, 2005 under Part II of the *Canada Labour Code* (the *Code*) subsection 146(1), by H.P. Rolph, Counsel for D&W Forwarders Inc., against a direction issued by Health and Safety Officer (HSO) Ken S. Manella.

[2] The direction was issued by HSO Manella further to his investigation of an accident that occurred to a driver of D&W Forwarders Inc.

[3] The direction stated the following:

**IN THE MATTER OF THE CANADA LABOUR CODE  
PART II – OCCUPATIONAL HEALTH AND SAFETY  
DIRECTION TO THE EMPLOYER UNDER SUBSECTION 145(1)**

On September 26, 2006, the undersigned health and safety officer conducted an investigation in the work place operated by D & W Forwarders Inc. being an employer subject to the *Canada Labour Code*, Part II, at 81 Orenda Road, Brampton, Ontario, L6W 1V7, the said work place being sometimes known as D&W Forwarders Inc.

The said health and safety officer is of the opinion that the following provision of the *Canada Labour Code*, Part II, has been contravened.

**125. (1) (l) Canada Occupational Health and Safety Regulations  
(Part XII - Safety Materials, Equipment, Devices and Clothing**

**12.10 (1)** Subject to subsection (1.1), every employer shall provide a fall-protection system to any person, other than an employee who is installing or removing a fall-protection system in accordance with the instruction referred to in subsection (5), who works

- (a) from an unguarded structure or on a vehicle, at a height of more than 2.4 m above the nearest permanent safe level or above any moving parts of machinery or any other surface or thing that could cause injury to a person on contact;
- (b) from a temporary structure at a height of more than 6 m above a permanent safe level, or
- (c) from a ladder at a height of more than 2.4 m above the nearest permanent safe level where, because of the nature of the work, that person is unable to use at least one hand to hold onto the ladder.

**(1.1)** Where an employee is required to work on a vehicle on which it is not reasonably practicable to provide a fall-protection system, the employer shall

- (a) in consultation with the policy committee or, if there is no policy committee, the work place committee or the health and safety representative,
  - i. perform a job safety analysis to eliminate or minimize the need for the employee to climb onto the vehicle or its load, and
  - ii. provide every employee who is likely to climb onto the vehicle or its load with training and instruction on the safe method of climbing onto and working on the vehicle or its load;

- (b) make a report in writing to the regional health and safety officer setting out the reasons why it is not reasonably practicable to provide a fall-protection system and include the job safety analysis and a description of the training and instruction referred to in paragraph (a); and
- (c) provide a copy of the report referred to in paragraph (b) to the policy committee or, if there is no policy committee, the work place committee or the health and safety representative.

A driver fell a distance of approximately 2.59 meters (8 feet 6 inches) while adjusting the load on top of the flatbed truck.

Therefore, you are **HEREBY DIRECTED**, pursuant to subsection 151(1)(a) of the *Canada Labour Code*, Part II, to terminate the contravention no later than **January 31, 2006**.

Further, you are **HEREBY DIRECTED**, pursuant to paragraph 145(1)(b) of the *Canada Labour Code*, Part II, within the time specified by the health and safety officer, to take steps to ensure that the contravention does not continue to reoccur.

- [4] On November 20, 2006, in addition to the application for an Appeal, H.P. Rolph, asked that, as proposed by the Canada Appeals Office, mediation services be made available in this case.
- [5] A teleconference was held on December 7, 2006 with the participation of the parties as well as that of HSO Manella to clarify the issue.
- [6] H.P. Rolph submitted written arguments on behalf of his client. He argued that the direction had no force or effect because there was an error in the set date for compliance. HSO Manella had mistakenly put a date for compliance for February 12, 2006, instead of 2007.
- [7] Alternatively, H.P. Rolph suggested that the deadline for compliance should be extended to a reasonable future, which the company submits should be May 31, 2007.
- [8] The employer explained that they were well on their way to achieve compliance with the direction by way of the exemption to provide fall-protection equipment as set in subsection 12.10(1.1) of the *Canada Occupational Health and Safety (COHS) Regulations*.
- [9] A. deWeerd explained that the job safety analysis that is required in the COHS Regulations had been done and that a training program was being developed.
- [10] He noted as well that a company policy had been put in place ordering the drivers not to climb on any loads above 2.8 meters. If such a situation occurred, the driver was to contact the company dispatcher, and that arrangements would be made so that the driver would not have to climb on the load.

- [11] As well, he indicated that the eight foot long protective corners used on the loads were not used anymore; instead four foot protective corners were used. These shorter corners could be handled from the bed of the truck.
- [12] HSO Manella acknowledged the unfortunate error in the date of the direction. He believed that the employer was trying to achieve compliance.
- [13] Although he would have preferred an earlier compliance date, he had no reason to argue against the proposed date, as long as he could have a copy of the job hazard analysis and see that real progress was being made on the training.
- [14] Taking into consideration the arguments of the employer that:
- There is a policy in place forbidding the drivers to climb on their load above eight feet;
  - that a job hazard analysis has been done;
  - that progress has been made with the training of the drivers on safe climbing methods were it was not reasonably practicable to provide fall-protection equipment,
  - and that the employer agrees that it will comply to the direction, at the said date, to the satisfaction of the health and safety officer;

I vary the direction issued by Health and Safety Officer Manella, to have a compliance date of **May 31, 2007**.

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Richard Lafrance  
Appeals Officer

## Summary of Appeals Officer's Decision

**Decision No.:** CAO-06-047

**Appellant:** D & W Forwarders

**Respondent:** I. Stublely

**Key Words:** Safety harness, error, date, varied

**Provisions:** *Canada Labour Code, Part II*, 146(1), 145(1)  
*Canada Occupational Health and Safety Regulations*, 12.10(1.1)

### Summary:

On September 26th, 2006, a driver fell a distance of approximately 2.59 meters while adjusting the load on top of the flatbed truck. Further to the incident, the health and safety officer issued a direction to D & W Forwarders stating among other things that they had failed to provide harnessing equipment. The Appeals Officer varied the direction to give more time to comply with the direction to D & W Forwarders.