

Occupational Health
and Safety Tribunal Canada



Tribunal de santé et
sécurité au travail Canada

Ottawa, Canada K1A 0J2

Case No: 2009-05
Decision No.: OHSTC-09-014(I)
Interlocutory decision

**CANADA LABOUR CODE
PART II
OCCUPATIONAL HEALTH AND SAFETY**

Gayle Bossenberry - Canadian Union of
Postal Workers (CUPW)
appellant

and

Canada Post Corporation
respondent

April 17, 2009

The appeal was decided by Appeals Officer Richard Lafrance.

For the appellant

Mr. David Bloom, Counsel, Cavalluzzo Hayes Shilton McIntyre & Cornish LLP

For the respondent

Mr. Stephen Bird, Counsel, Bird Richard

- [1] This interlocutory decision deals with the objection raised by Canada Post, through Mr. S. Bird, legal counsel, that the application for appeal requested by G. Bossenberry with regard to the direction issued by health and safety officer Dubé on December 8, 2008, be received by the Tribunal.
- [2] Mr. Bird argued that, in accordance with sub. 146.(1) of the Canada Labour Code (the Code) the 30 day time period for lodging an appeal against a direction, had expired. He submits that the written confirmation was prepared and sent to the union on December 23, 2009; therefore they had until January 22, 2009 to appeal the direction. He further argued that even though the Appeals Officer has the power, under subsection 146.2(f) of the Code to extend the time for instituting the proceeding or doing any act; there are no justifiable reasons to do so.
- [3] Mr. Bloom, legal counsel for CUPW, argued in response that because of the holyday period, CUPW offices were closed during that period and consequently received the "written confirmation" only on January 5, 2009, therefore giving the appellant until February 4, 2009 to appeal the said direction. In the alternative if; as argued by Mr. Bird, they have miscalculated this time period; he suggested that the Appeals Officer extend the time period and receives the Appeal because of the circumstances surrounding the delay caused by the holyday period and the fact that the delay was short (only 8 days), and finally the issue, as acknowledged by Mr. Bird in his submission, is serious and significant to both parties.
- [4] In deciding this I have to take into consideration subsection 146(1), which states:
- An employer, employee or trade union that feels aggrieved by a direction issued by a health and safety officer under this Part may appeal the direction in writing to an appeals officer within thirty days after the date of the direction being issued or confirmed in writing.
- [5] The Interpretation Act tells us that every act shall be interpreted in a fair, large and liberal way as to ensure the attainment of the objective of the said Act.
- [6] At issue in this objection from Mr. Bird, is when was the direction confirmed in writing to the Union? In Black's Law dictionary¹, "confirm" is defined as: "to verify or corroborate". Taken in the context of subsection 146(1); I take this to mean that a direction may be appealed within thirty days, starting either at the moment an employer or employee receives directly the said direction from the health and safety officer or; when an employer, employee or trade unions that feels aggrieved by the direction, receives and verifies

¹ Black's Law Dictionary, Seventh Edition, 1999

that the written confirmation corroborates that a direction has indeed been issued.

- [7] In this case, the written confirmation was prepared by the HSO on December 23, 2008; two days before the holiday period. I find that because of this holiday period, where mail deliveries may be delayed and work places, such as the Unions office, may be closed during the holiday period, it is quite believable that CUPW received the written confirmation only on January 5, 2009. Therefore, by applying for an appeal of the direction on January 30, 2009, the time limit of 30 days was respected.
- [8] Consequently, the application for appeals is received.

Richard Lafrance
Appeals Officer