

Occupational Health  
and Safety Tribunal Canada



Tribunal de santé et  
sécurité au travail Canada

Ottawa, Canada K1A 0J2

Case No.: 2009-09

**Interlocutory decision**  
Decision No.: OHSTC-09-015(S)

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

Les industries Dover Ltée  
*Appellant/Requester*

and

Syndicat des employés de Cereal Foods  
*Respondent*

**TRANSLATION/  
TRADUCTION**

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April 28 2009

This is an interlocutory decision originating from a request for a stay of a direction heard by Michael Wiwchar, Appeals Officer, by way of a teleconference held on March 4, 2009.

**For the appellant**

Mr. François Longpré, Counsel for Les industries Dover Ltée

**For the respondent**

Mr. Wayne Wilson, Representative for Syndicat des employés de Cereal Foods

- [1] This matter is in regards to a request for a stay of a direction as prescribed under subsection 146(2) of the *Canada Labour Code (Code)*, Part II. A direction in accordance with paragraphs 145(2) (a) and (b) of the *Code* was issued to Les industries Dover Ltée, the employer, by Health and Safety Officer (HSO) Regis Tremblay on January 30, 2009 for a work place operated by them.
- [2] On February 27, 2009 a letter was received from Mr. Longpré, on behalf of the employer, requesting a stay of the said direction. The letter also stated that the intent of the correspondence was to notify the appeals officer that the employer was appealing the direction.
- [3] Prior to hearing this application by way of a teleconference with Mr. Longpré, Mr. Wayne Wilson, representative for Syndicat des employés de Cereal Foods and Mr. Regis Tremblay, Health and Safety Officer (HSO), the parties received a report sent to the Registrare of the Tribunal<sup>1</sup> by HSO Tremblay titled « Déflagration dans un des bâtiments du site (Moulin à farine) – Expertise en électricité sur la conformité des installations électriques dudit bâtiment », prepared in February 2009 by Mr. Luc Moreau, Engineer, Public Works and Government Services Canada (Public Works).
- [4] At the outset of the teleconference I requested HSO Tremblay to provide clarification regarding the intent of the direction of January 30, 2009 and to describe the present circumstances at the work place in relation to his direction.
- [5] HSO Tremblay stated that the electrical equipment in the areas mentioned in his direction is not presently in operation and that employees are not exposed to the dangerous conditions described in his direction. He further clarified that the segment he wrote by hand on the notice tag posted at the work place implied that the employer was not precluded from entering the electrical rooms of the basement mill area and the roller floor. He stated that the purpose of the notice is to ensure that the electrical devices not be used or activated until corrective measures have occurred.
- [6] Mr. Longpré stated that following a close review of HSO Tremblay's report he was now in a better position to understand the rationale vis-à-vis the dangerous condition stated in the direction. He added that after reading the report it the employer and their engineering consultants perceived the issue in the same manner as explained by engineer Moreau. Without the knowledge of the facts stated within the detailed report Mr. Longpré was not able to ascertain what type of corrective measures would be necessary and for this reason he initiated what essentially became a request of a stay of the direction.

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<sup>1</sup> Occupational Health and Safety Tribunal Canada

- [7] Mr. Wilson stated that the work place is still operating as a flour distribution centre and employees are working there. He did not want the activity, described as a danger in the direction, to resume until such time that the employer has taken corrective measures within a fixed timeframe. He was not in favour of a stay being granted however he was in favour of providing the employer the time necessary to ensure a permanent solution is arrived at.
- [8] In light of these new facts Mr. Longpré requested some time be granted to the employer in order for their engineering consultants to investigate the matter further and to provide a report to the employer and to subsequently have an opportunity to discuss the matter further with HSO Tremblay. He reiterated that his intention was actually not to request a stay under 146(2) but rather to simply protect the right of the employer to appeal HSO Tremblay's direction. Mr. Longpré agreed to provide an update of the employer's intention to proceed with the appeal or not within 30 days from the date of the teleconference.
- [9] Having heard the parties and HSO Tremblay, I hereby accept the withdrawal of the application for a stay made by Mr. Longpré regarding the direction issued by HSO Tremblay on January 30, 2009.

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Michael Wiwchar  
Appeals Officer