Federal Court Limits Definition of "Workplace" Under Part II of the Canada Labour Code to Workplaces Controlled by Employer

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Federally-regulated employers now have clear guidance from the Federal Court regarding what constitutes a "workplace" for the purposes of health and safety inspections.

In a recent judgment issued on February 26, 2016 (*Canadian Union Postal Workers v. Canada Post Corporation*, 2016 FC 252), the Federal Court limited the definition of "workplace" for the purposes of inspections under Part II of the *Canada Labour Code* (the "Code") to workplaces where the employer exercises control.

Facts

The Canadian Union of Postal Workers (the "Union") represents letter carriers at Canada Post (the "Employer"). In 2012, a representative of the Union filed a complaint with the then Human Resources and Skills Development Canada alleging that only the physical building of the Burlington, Ontario Depot was being inspected, whereas inspections should also occur on letter carrier routes. Following an investigation, the Health and Safety Officer (the "HSO") held that the Employer had breached paragraph 125(1)(z.12) of the Code by restricting the Local Joint Health and Safety Committee's inspection to the physical building at the Burlington Depot.

The Employer brought an appeal of the HSO's direction. The Appeals Officer held that the HSO erred in adopting a broad interpretation of "workplace" to include the routes and each point of call for letter carriers. The Appeals Officer ruled that the obligation to inspect under paragraph 125(1)(z.12) of the Code does not apply to any place where a letter carrier is engaged in work outside the physical building, given that the Employer does not exercise control over these workplaces. In the Appeals Officer's view, the inspection obligation only arises where the employer controls the workplace as the purpose of the inspection is the identification and opportunity to fix hazards.

The Union sought to set aside the Appeals Officer's decision in that respect.

Decision

The Federal Court dismissed the Union's application for judicial review and ruled that the Appeals Officer's determination was reasonable.

The Federal Court found reasonable the finding of the Appeals Officer that subsection 125(1) of the Code draws a clear distinction between control over the "workplace" and control over the "work activity". The Court ruled that the Appeals Officer's determination that the Employer can only satisfy certain obligations imposed by subsection 125(1) when in control of the workplace was "not driven by an impracticality assessment but rather a determination that the underlying purpose of paragraph 125(1)(z.12) can only be achieved where the employer is in a position to both identify and fix hazards."

The Court noted there was no dispute that the Employer does not exercise physical control over points of call or lines of routes. Similarly, there was no dispute that many of the points of call are private property. On that basis, it was reasonable for the Appeals Officer to come to the conclusion that the Employer did not exercise control over the workplace and, as such, could not effectively carry out an inspection and accomplish the underlying purpose of paragraph 125(1)(z.12) of the Code.

In conclusion, the Court held that the Appeals Officer's ruling "demonstrated sensitivity to preserving the broad nature of the employer's obligation to ensure health and safety of its employees without placing obligations upon the employer that the latter would be unable to fulfill."

Impact For Employers

As a result of this decision, it is now clear that the definition of "workplace" for the purposes of inspections under Part II of the Code is limited to workplaces over which the employer exercises control.

This ruling will be particularly relevant to employers with employees working in different locations outside of the controlled workplace, such as airline employees working at airports, truck drivers making deliveries to different points of call or telecommunication employees installing telecommunication systems at an individual's residence.

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