Must Employer Inspect Postal Carrier Routes for Safety Hazards?

SITUATION

Letter carriers express concern about the safety of their delivery routes to their JHSC. They travel on foot in public areas and also deliver to private residences. Currently, carriers are supposed to report any safety hazards they observe on their routes to their supervisors, who use a checklist to record these safety observations. This checklist is part of the employer's safety management program. But the letter carriers and the JHSC don't believe this approach is sufficient. So the JHSC asks the employer to inspect the routes for hazards at least annually as part of its Workplace Hazard Prevention Program. But the employer refuses, arguing that the checklist and carrier hazard reporting requirement are sufficient.

QUESTION

Does the employer have to inspect the delivery routes'

A. Yes, because they're part of the workplace.
B. Yes, because letter carriers are at risk on their routes.
C. No, because it doesn't own or control the delivery route locations.
D. No, because safety inspections of workplaces aren't

legally required at all.

ANSWER

C. The letter carriers' employer doesn't own or control the delivery routes and thus, it's unreasonable to expect it to inspect those routes.

EXPLANATION

This hypothetical is based on a case in which a federal OHS Tribunal decided that although Canada Post letter carriers' routes were technically part of their employer's workplace, because Canada Post didn't own or control the routes, it couldn't ensure they were inspected. The routes included public and private residential properties and, explained the Tribunal, the employer had no legal rights to fix problems found on those properties. So it would be impractical to require the employer to inspect those routes, the Tribunal said. As a result, the employer's workplace inspection duty didn't apply to the carriers' routes, the panel concluded, adding that Canada Post did have other measures in place to ensure the carriers' safety on their routes.

WHY THE WRONG ANSWERS ARE WRONG

A is wrong because these routes aren't part of the workplace *controlled by* the employer. Given the purpose of the OHS laws to prevent safety incidents and injuries, the term 'workplace' should be broadly interpreted to include *everywhere* employees engage in work. In fact, the OHS laws typically define 'workplace' and do so in a fairly broad manner. For example, Sec. 1(1) of Ontario's *OHS Act* defines workplace as 'any land, premises, location or thing at, upon, in or near which a worker works.' Under such an inclusive definition, the carriers' routes would be part of the workplace. However, as the employer doesn't control those routes and has no legal right to alter them or fix any problems on them, they're not subject to the employer's workplace inspection duty.

B is wrong because although an employer's required to protect its workers from the risks created by workplace hazards, it's only required to take *reasonable* steps to protect workers from foreseeable or known hazards. In this case, the employer has no control over the property on the carriers' routes. So requiring it to protect workers by inspecting those routes isn't reasonable. Instead, the employer must protect the workers in other ways from foreseeable hazards and those it has been made aware of by the workers, such as developing safety procedures that account for potential or known risks on the delivery routes. For example, during cold weather, the employer can provide letters carriers with the appropriate footwear for snowy and icy conditions and appropriate clothing to keep them warm.

D is wrong because workplace safety inspections *are* required by OHS laws across Canada. For example, Sec. 130(h) of BC's *Workplace Compensation Act* says the JHSC has a duty to ensure that regular inspections are carried out in the workplace. (For more on JHSC inspections, see 'The JHSC, Part 1: The Committee's Role in Workplace Inspections,' Sept. 2007, p. 1.) Such inspections are a key tool in identifying safety hazards. In general, these inspections should include the entire workplace. But as discussed above, it's unreasonable to expect employers to inspect areas or locations over which they have no control or legal authority, such as the letter carriers routes in this case.

SHOW YOUR LAWYER

Canada Post Corporation v. Canadian Union of Postal Workers, [2014] OHSTC 22, Nov. 27, 2014