The Case of Claude Fortin

A court decision in Quebec a month ago could set a precedent extending beyond Canada.

It was the case of a mine electrician, Claude Fortin who contracted lung cancer after long term exposure to diesel exhaust. He wasn't a smoker.

The final decision in Claude Fortin's case was made in Superior Court of Quebec on 24 January 2013.

The Superior Court reviewed several decisions made in lower courts, Compensation and Occupational Health commissions.

The investigation of Mr Fortin's case began in 2005.Mr Fortin died in 2009.

Here are translated extracts from a decision of the Commission of Occupational Health from 15th February 2012

Commission of Occupational Health

IAMGOLD — Mine Doyon and Fortin (Succession de) 2012 QCCLP 1112 15/02/2012

[5]

The trial judge who handed down the decision of 11 July 2011 was asked to rule on whether Mr Fortin suffered, on 28 September 2005, a work-related lung injury following his employment as an electrician in the mining industry, in particular for his employer from 1989-2005.

[6]

On 11 April 2006, the CSST [Commission de Santé et Sécurité du Travail – Québec's OH&S Commission] ruled that he had suffered such an injury following the opinion of the special Committee of presidents which itself endorsed the outcome of the Committee of Occupational Lung Diseases, suggesting that Mr Fortin suffered work-related lung cancer from exposure to diesel motor fumes.

On 9 August 2006, following an administrative review, the CSST confirmed its decision, hence the employer's appeal to the Occupational Health Commission.

[109]

The only other possible risk factor is the presence of EMD ["émanations de moteurs diesel" – diesel engine fumes] at the employer's premises, for whom the worker has worked as an underground electrician.

[110]

The Tribunal notes that the majority of studies introduced in evidence conclude that diesel engine fumes are carcinogenic.

In "Diesel Emissions and Lung Cancer, Meta-Analysis", a relatively greater risk is inferred for railway workers, bus and truck drivers, stevedores, and operators of heavy machinery.

This is also found in "Smoking imputation and lung cancer...".

Other studies, such as "What is Diesel Exhaust", "Diesel...", "EPA...", "Lung Cancer...", "Occupational...", and "Diesel Engine Emissions: Brief Review of Their Makeup and Risks of Developing Lung Cancer" all conclude that workers exposed to diesel engine fumes are more susceptible to developing lung cancer.

[111]

The two experts heard at the hearing believe there are carcinogenic elements in diesel engine fumes.

According to the employer's expert, the worker's exposure to diesel engine fumes at his employment would not have been sufficient to cause lung cancer.

He relied mainly on the Hesterberg study, and that of Dr Lacasse and others, suggesting that the risk is minimum so long as the exposure is minor.

[115]

The evidence does not allow us to conclude that the worker is constantly exposed to weak doses of diesel engine fumes whilst working underground.

There are signs in the worker's claim to the CSST that suggest exposure was greater when working for other employers.

The Tribunal recalls also the evidence of Mr Dominique Boucher, a worker who undertook the same work over a period of 6 years, as the worker.

He gave evidence that their assignment to the development of new mine shafts involved tasks where the ventilation was less suitable.

[116]

The Tribunal also recalls that the CSST stepped in 6 times during the period of the worker's electrical employment with the company (1994-2004), on account of problems relating to air quality.

Furthermore, the sample results of PCR ["poussière combustible respirable" = breathable fuel dust] introduced into evidence date from 1998.

The Tribunal therefore does not know what the levels were between 1989-1998 when the employer was employed by the company.

[117]

The risk factor exists in the present case.

The evidence shows that the worker has been exposed to diesel engine fumes.

The employer was able to show that the exposure level to this risk factor remained below the regulatory standard.

The evidence shows the employer is making commendable efforts to reduce to a minimum the exposure of workers to different contaminants.

Nevertheless, there is no evidence of a total absence of contaminants.

Contaminants are almost always present, even if in weak doses.

[118]

The Tribunal wishes to make it clear that a regulatory standard does not indicate a threshold that demonstrates whether a worker is afflicted with an industrial illness or not.

The standards exist as a preventative measure to lower the risk of developing an illness associated with a particular risk.

The modifications that have been made to the regulations over the years demonstrate the evolution of the science surrounding the risks associated with different contaminants.

[119]

The Tribunal believes the worker has proved irrefutably that he suffers from a work-related lung illness.

The worker has been exposed to diesel engine fumes – that is to say, to a risk factor – for close to 25 years in the course of working as an electrician below ground.

Furthermore, there is no evidence of any other risk factor which could explain the provenance of this illness in a 44 year old non-smoker in good health at the time of the claim.

[26]

The conclusion to which he arrives is well motivated, is not based on an error of law, despite the employer's claim, and flows from the impression made on him by the entirety of the evidence brought.

There is nothing which justifies reconsideration.

[27]

After considering the arguments put forward by the representatives of each party, the Occupational Health Commission concludes that the employer has not established that the decision of 11 July 2011 contains a fundamental error which would nullify it, and so its suit should be rejected.