

ORDER NO. 41

Case No. 382/07/WSH

IN THE MATTER OF:*THE WORKPLACE SAFETY & HEALTH ACT*

- and -

IN THE MATTER OF:An application by

PROTECH SCALE LTD.,

Applicant/Appellant,

- and -

Director, Workplace Safety and Health,

Respondent.

<p>This Decision/Order has been edited to protect the personal information of individuals by removing personal identifiers.</p>
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WHEREAS:

1. On July 9, 2007, Protech Scale Ltd. (the “Applicant”) filed an appeal pursuant to Section 53.1 of *The Workplace Safety and Health Act* (the “Act”) from a Decision of the Deputy Minister to issue five (5) administrative penalties for the failure of the Applicant to comply with five (5) Improvement Orders issued under the *Act* on January 31, 2006, namely:

- Improvement Order No. 7, Material Handling – Ladders – Climbing
- Improvement Order No. 9, W.H.M.I.S. – M.S.D.S.
- Improvement Order No. 10, W.H.M.I.S. – Education
- Improvement Order No. 11, Emergency Eye Wash Equipment
- Improvement Order No. 13, Crane / Hoisting Equipment

All of the Improvement Orders established February 11, 2006 as the original compliance date.

2. The Applicant did not appeal the Improvement Orders either to the Director, Workplace Safety and Health (the “Director”) or to the Manitoba Labour Board (the “Board”) pursuant to Sections 37(2) or 39 of the *Act*.

3. The original compliance date in the Improvement Orders was extended to subsequent fixed dates until a compliance inspection was undertaken on May 29, 2007.

4. On June 20, 2007, the Deputy Minister, having determined that the Applicant had failed to comply with the five (5) Improvement Orders, issued Notices of Administrative Penalties pursuant to Section 53.1(2) of the *Act*, as follows:
 - Material Handling – Ladders – Climbing - \$1,000.00
 - W.H.M.I.S. – M.D.S. - \$1,000.00
 - W.H.M.I.S. – Education - \$1,000.00
 - Emergency Eye Wash Equipment - \$2,500.00
 - Crane / Hoisting Equipment - \$1,000.00
5. On July 9, 2007, the Applicant filed an Appeal with the Board pursuant to Sections 53.1 of the *Act*.
6. On July 25, 2007, following an extension of time, the Director, through Counsel, filed its Reply to the Application, submitting that the Board should confirm the administrative penalties and dismiss the appeal.
7. On September 26, 2007 and February 5, 2008, the Board conducted a hearing, at which time both parties appeared before the Board and presented evidence and argument, the Director being represented by Counsel. The investigating Safety and Health Officers with the Workplace Safety and Health Division attended the hearing.
8. The Board, following consideration of material filed, evidence and argument presented, has **DETERMINED** that:
 - a. The Applicant did not appeal the Improvement Orders when they were issued and the time for appealing the Orders under Section 39(2) of the *Act* has expired. Accordingly, the condition prescribed by Section 53.1(3) of the *Act* for the issuance of a notice of administrative penalty has been met.
 - b. The jurisdiction of the Board on an appeal regarding an administrative penalty is defined in Section 53.1(9) of the *Act*, as follows:

Decision of the board

53.1(9) After hearing the appeal, the board shall determine whether or not the person has failed to comply with an improvement order issued under subsection 26(1) and

- (a) confirm or revoke the administrative penalty; or
 - (b) vary the amount of the penalty if the board considers that it was not established in accordance with the regulations.
- c. Under the foregoing Section of the *Act*, the jurisdiction of the Board is limited to determining whether an improvement order has been complied with by

an appellant as the Board can only confirm or revoke the administrative penalty. The Board does not have the jurisdiction to assess the merits or the reasonableness of an improvement order for the purpose of varying that order because the jurisdiction to vary an order is only vested in the Board under Section 39(6) of the *Act* when the improvement order itself is appealed in the first instance. Under Section 53.1(9), the Board must accept the improvement order, as issued.

- d. The Applicant bears the onus of proof to establish that it has complied with the Improvement Orders.
 - e. On the evidence submitted in this case, the Applicant has not established that it complied with any of the five (5) Improvement Orders.
9. As a result of the determinations made in the preceding paragraph, the Board is satisfied that the Applicant failed to comply with five (5) Improvement Orders issued under Section 26(1) of the *Act*, and which Orders were subject to administrative penalties. The Board has further satisfied itself that the penalties imposed were established in accordance with the *Administrative Penalty Regulation 62/2003*. In the result, the administrative penalties issued on June 20, 2007, pursuant to Section 53(1) of the *Act*, are **HEREBY CONFIRMED** and the Applicant's appeal is **DISMISSED**.

T H E R E F O R E

The Manitoba Labour Board **HEREBY DISMISSES** the appeal of Protech Scale Ltd., filed with the Manitoba Labour Board on July 9, 2007.

DATED at **WINNIPEG**, Manitoba, this 13th day of February, 2008, and signed on behalf of the Manitoba Labour Board by

“Original signed by”

W.D. Hamilton, Chairperson

BJG/dlm/rb-s