

AGREEMENT ON INTERNAL TRADE

REPORT ON A REQUEST MADE BY

MR. X OF QUÉBEC

QUÉBEC

Screener:

Ivan Bernier

Date of Decision:

February 15, 2011

Introduction

1. The complainant, Mr. X of Québec, has applied for permission to commence dispute resolution proceedings against Ontario under the provisions of Articles 1711 and 1712 of the *Agreement on Internal Trade*. In my capacity as screener appointed by Quebec, I have been asked to determine whether the complainant should be permitted to commence such dispute resolution procedures.

Subject of the complaint

2. The complainant, a crane operator by trade, alleges that the Government of Ontario refuses to grant him certification as a tower crane operator, which credential he has been acknowledged to have by the *Commission de la construction du Québec*. In his view, this would contravene the requirements of the Agreement concerning the certification of workers (Chapter Seven). In its defence, the Government of Ontario asserts that certification in the case of crane operators in Ontario, unlike that in Quebec, distinguishes between three areas of expertise: two on the basis of lifting capacity and a third relating more specifically to tower cranes. In the case of the latter area of expertise, an applicant is required to submit to a practical skills evaluation (Demonstration of Skills Test or DOST). The DOST is mandatory for all operators who have not completed their training in Ontario.

Actions taken by complainant

3. In January 2009, Mr. X contacted the authorities in Ontario. He informed them of his desire to have his Quebec-issued crane operator certificate recognized in Ontario and asked about the appropriate procedure. After several exchanges in this regard, he sent an application for crane operator certification to the Ontario Ministry of Training, Colleges and Universities in early April 2009. On April 8, he was informed by e-mail of the procedure he had to follow and was asked, at the same time, to indicate which types of licences he wanted to obtain from among the three prescribed by Ontario regulations. In his reply, he clearly stated that he wanted to obtain a licence for mobile cranes (Mobile Crane Br.1 339A) and one for tower cranes (Tower Crane 339 B). The next day, on April 9, he was informed that he would not be able to obtain a licence to operate a tower crane on the grounds that Ontario regulations were different from those in Quebec in that regard. On May 5, he received a temporary certificate to operate mobile cranes only (339A) which, according to him, was not recognized by employers on construction sites. As a result of that situation, he then turned to the Government of Quebec and asked for a complaint to be lodged on his behalf against the

Government of Ontario for refusal to recognize his Quebec accreditation as a crane operator. On May 28, 2009, Jacques Vachon, Labour Mobility Coordinator with the Quebec *Ministère de l'Emploi et de la solidarité sociale*, first informed him of developments concerning the accreditation of workers in the context of the *Agreement on Internal Trade* (the Parties have one year to finalize implementation of the new Chapter Seven) and then went on to explain the two avenues that were open to him, namely, either to pursue representations made by Quebec before the Government of Ontario, or to file a personal complaint before the Internal Trade Secretariat. In June 2010, Mr. X received partial satisfaction with regard to his application for recognition of his certificate when the Government of Ontario issued him a mobile crane operator licence. Over the course of the summer of 2010, i.e., at the end of the one-year period that the Parties had to implement Chapter Seven, he asked the Government of Quebec once again to put pressure on the Government of Ontario to have his credentials as a tower crane operator recognized as well. On November 11, 2011, the Labour Mobility Coordinator with the Quebec *Ministère de l'Emploi et de la solidarité sociale*, Julie Adam, informed him that, following discussion of the issue with the authorities in Ontario, it was impossible to obtain Ontario certification to operate tower cranes other than by completing the DOST. On December 21, 2010, the complainant filed an official complaint against the Province of Ontario for refusal to recognize his Quebec crane operator certification.

Applicable law in the case at issue

(A) On the process

4. Article 1710

Article 1710(1):

“A person of a Party may request that a Party with which the person has a substantial connection, within the meaning of Articles 1703(5), (6) or (7), initiate on the person's behalf dispute resolution Proceedings under Part A with another Party.”

Article 1710(2)

“The request shall be in writing and shall:

- (a) specify the actual measure complained of;

- (b) list the relevant provisions of this Agreement; and
- (c) provide a brief summary of the complaint."

Article 1710(4)

"The Party shall decide whether to initiate Proceedings on behalf of the person within 30 days after the date of delivery of the person's request and shall, within that period, provide written notice to the person of the decision. If the Party chooses to initiate Proceedings, it shall do so within 10 days after it has provided notice to the person. If the Party chooses not to initiate Proceedings, the notice shall include reasons for the decision. Failure to provide such notice to the person within the 30 day period is deemed to be notice for the purposes of Article 1711(1)(a)."

5. Article 1711

Article 1711(1):

"A person of a Party may commence dispute resolution Proceedings in respect of all matters, other than those covered by Chapter Five (*Procurement*), where the person has received:

- (a) notice under Article 1710(4) that a Party will not initiate dispute resolution Proceedings on the person's behalf; or
- (b) notice under Article 1710(5) that a Party will not request the establishment of a panel."

Article 1711(4):

"A person may not commence Proceedings under this Article if the person has failed to:

- (a) request a Party to initiate dispute resolution Proceedings under Article 1711(1); or
- (b) request a contact point to initiate dispute resolution Proceedings under Article 513(4) (*Complaint Procedures - Provinces*)

within two years after the date on which the person acquired, or should have acquired, knowledge of the alleged inconsistent measure and knowledge that the person incurred loss or damage or suffered a denial of benefit."

(B) On the merits

6. Article 706(1):

"Subject to paragraphs 2, 3, 4 and 6 and Article 708, any worker certified for an occupation by a regulatory authority of a Party shall, upon application, be certified for that occupation by each other Party which regulates that occupation without any requirement for any material additional training, experience, examinations or assessments as part of that certification procedure."

The screener's role

Article 1712

7. The screener shall, under the terms of Article 1712(2), "follow the Screener Process Guidelines filed with the Secretariat." The guidelines filed by Ontario state, for example, that the screener will determine whether the request (a) specifies the measures constituting the essential substance of the dispute; (b) lists the provisions of the AIT relevant to the dispute; (c) provides an overview of the dispute; and (d) explains the outcome of the request made by the person to initiate a dispute resolution process on his behalf. Further guidance is provided to the screener in the screener process guidelines wherein it states that the screener should not pronounce or conclude on consistency with the AIT and the arguments involved, the extent of the injury or the outcome of any further dispute resolution process.

8. For its part, Article 1712(4) states: "In deciding whether the person should be permitted to commence dispute resolution Proceedings, the screener shall take into account the following:

- (a) whether the complaint is frivolous [or vexatious];
- (b) whether the complaint has been instituted merely to harass the Party complained against; and
- (c) whether there is a reasonable case of injury or denial of benefit to the person or, in the case of a trade union, injury or denial of benefit to its members."

Analysis and conclusions

7. The complainant, a resident of Quebec, holds permission to carry out a trade as granted to him by Quebec and has suffered injury and denial of benefit, as evidenced by his exchange of e-mails with the Government of Ontario. He was therefore within his rights to ask Quebec to lodge a complaint on his behalf against the Government of Ontario, as prescribed by Article 1710(1).

8. The complainant's request for the Government of Quebec to intervene was sent by e-mail in the first weeks of May 2009 and included sufficient information to identify the measures complained of, the relevant provisions of the Agreement and a brief summary of the complaint, in accordance with Article 1710(2).

9. In its reply on May 28, 2009, the Government of Quebec suggested to Mr. X either that he ask the Government of Quebec to continue making representations before the Government of Ontario, or that he file a personal complaint with the Internal Trade Secretariat. As formulated, it is difficult to interpret this reply other than as a refusal to initiate proceedings on behalf of Mr. X within the meaning of Article 1711(1)(a) and, after checking with the Quebec Labour Mobility Coordinator, it was indeed interpreted that way by Quebec.

9. The complaint was made within the timeframe prescribed by Article 1711(4) of the Agreement. It was made, in fact, on December 21, 2010, that is, less than two years after the date on which the complainant was informed of the Government of Ontario's refusal to recognize, as is, the crane operator certificate issued by the Government of Quebec, that is, on April 9, 2009.

10. More specifically, the complaint refers to the Government of Ontario's refusal to recognize his Quebec crane operator certification, which covers, among other activities, that of tower crane operator, as evidenced by a letter from the *Commission de la construction du Québec* dated January 31.

11. On the merits, the complaint refers to the provisions of Chapter Seven of the *Agreement on Internal Trade* (as amended by the Ninth Protocol of Amendment that entered into force on August 11, 2009) and more specifically to Articles 706 and 708. In view of the commitment of the Parties, under the terms of Article 706(1), which prescribes that workers in regulated occupations may ask to be recognized for the same occupation in another province or territory without any requirement for any material additional training, experience, examinations or assessments, and in view also of the

injury alleged by the complainant, it would appear that the complaint is neither frivolous or vexatious, nor intended merely to harass Ontario.

12. This in no way prejudices the issue of whether or not the complaint should be allowed with regard to the provisions of the *Agreement on Internal Trade*. That issue, of fact, is outside the role conferred on the screener as specified in Ontario's screener process rules.

Decision

The Complainant, Mr. X of Québec, is authorized to commence person-to-government dispute resolution procedures against Ontario as prescribed by Article 1712(6) of the AIT.