Occupational Health and Safety Tribunal Canada

Tribunal de santé et sécurité au travail Canada

Ottawa, Canada K1A 0J2

**Citation:** Timothy Pearce v. Jazz Air Limited Partnership, 2011 OHSTC 14

**Date:** 2011-06-08
**Case No.:** 2010-03
**Rendered at:** Ottawa

**Between:**

Timothy Pearce, Appellant

and

Jazz Air Limited Partnership, Respondent

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| **Matter:** | Appeal under subsection 129(7) of the *Canada Labour Code* of a decision rendered by a health and safety officer |
| **Decision:** | The decision that a danger does not exist is rescinded |
| **Decision rendered by:** | Mr. Jean-Pierre Aubre, Appeals Officer |
| **Language of decision:** | English |
| **For the appellant:** | Mr. Timothy Pearce |
| **For the respondent:** | Ms. Gisele Lue, Manager, Occupational Health and Safety<br>Mr. Rajib Roy, Manager, Labour Relations |

## REASONS

[1] This case concerns an appeal brought under subsection 129(7) of the *Canada Labour Code* (the Code) of a decision of absence of danger issued by Health and Safety Officer (HSO) Francesco Misuraca on February 5, 2010.

### Background

[2] On February 2, 2010, HSO Misuraca initiated an investigation into a work refusal registered by the appellant on that same date. At the time of the refusal, the appellant was set to commence his regular work day shift, starting at 17:30 and ending at 5:30 the following morning, as Maintenance Crew Chief, at a work place identified as Jazz Air Limited Partnership, 6400 Airport Road, Mississauga, Ontario (Toronto Airport).

[3] The statement of work refusal provided by the appellant at the time and repeated at the hearing into this matter, indicated that the appellant is affected by a medical condition that is aggravated by working nights to the point that it may be life threatening. More specifically in relation to this medical condition, the appellant claimed that there existed and still exists the risk of his falling asleep while engaged in the normal tasks of his employment, 70% of which being described at the hearing as operational, therefore making it possible that he and/or others could get hurt.

[4] The investigation report prepared by HSO Misuraca was presented at the hearing and provides complete background information on the facts and circumstances that led to the decision of absence of danger issued by the HSO. It states that the appellant has been employed with Jazz Air for approximately 10 years and has held the position of Maintenance Crew Chief for the last five. Approximately two years prior to Mr. Pearce exercising his right to refuse to work, he began suffering from a medical condition, sought a medical opinion and was diagnosed with a disorder that required that he be put on a treatment plan. There resulted numerous absences from work and Mr. Pearce was required to attend a Culpable Absenteeism Program with the employer's Human Resources Specialist (Lynette James). Around that time, the appellant was working approximately 100 overtime hours per 15 day period on the night shift, which started at 17:30 and ended at 5:30 hours. This went on during a period of two years. Given those numbers, Mr. Pearce testified at the hearing that he prefers working nights and were he not prevented from doing so by his medical condition, his personal choice would be to exclusively work nights. Eventually, he found that his condition rendered him unable to function through four nights of regular work without suffering the symptoms of excessive sleepiness and persistent fatigue. This often forced him to stop work early and use up his accumulated leave credits.

[5] In November, 2009, Mr. Pearce spoke to Human Resources Specialist Lynette James and asked for an hours of work accommodation because of that medical condition. Towards that purpose, on November 12, 2009 (Exhibit E-11), he was asked by the employer's Occupational Health Nurse to provide supporting medical information to the employer and to sign a consent form allowing the sharing of such information with the

Occupational Health Services of the employer. While an appointment that would be two weeks later was made for that purpose, two days after making his request for accommodation, Mr. Pearce had to go to hospital to receive emergency medical care and treatment related to his disorder. On that occasion, the treating physician advised in a note dated December 16, 2009 (Exhibit E-6), that Mr. Pearce be switched off working nights and put on a 6:00 to 18:00 hours, four days on, four days off work regimen. As a result, Mr. Pearce was temporarily accommodated. However, Mr. Pearce had been informed by the employer's Occupational Health Nurse that a decision on a permanent accommodation due to medical restrictions would be made only after more objective information had been provided, as per the employer's applicable policy on permanent accommodation. The information required under that policy included diagnosis, prognosis, tests and results, ongoing treatment programs, referrals/consultations with specialist(s) as well as the physician's opinion on the requirement for a medical restriction of "day shift only". It was the appellant's position at that time that the request was too invasive of his privacy rights and he thus refused to provide the information to the employer. Given that, and pending production of the said information, the employer elected not to continue accommodating Mr. Pearce. This brought about his work refusal of February 2, 2010. At that time, the appellant refused to perform his normal duties and responsibilities as an Aircraft Maintenance Engineer and Crew Chief on the night shift because he believed that while at work, his medical condition was likely to create a danger to himself and/or another employee.

[6] HSO Misuraca issued his decision of absence of danger on the basis of the evidence gathered during his investigation and also after a confidential explanation provided by Mr. Pearce regarding his medical condition. It is important to note that HSO Misuraca indicated in his investigation report and reiterated in his testimony before the undersigned Appeals Officer that even though Mr. Pearce was reluctant to inform his employer in detail as to the actual nature of his medical condition, the HSO had been informed by Mr. Pearce, albeit confidentially, as to the nature of that condition. HSO Misuraca was thus fully cognizant of that medical condition at the time of his decision of absence of danger, while, as established before the undersigned, the employer remained incompletely informed until some time after issuance of the HSO's decision of absence of danger, when two medical notes dated March 01, 2010 (Exhibit E-7), and July 19, 2010 (Exhibit E-8) and copies of test results and consultation were provided to the employer. It should be noted at this point that following provision of such additional medical information to the Occupational Health Nurse of the employer after the HSO decision of absence of danger, as recognized at the hearing by employer representatives, a recommendation to accommodate his condition followed and Mr. Pearce was subsequently put on day shift rotation.

[7] The HSO's conclusion that resulted in a decision of absence of danger was that the "danger" claimed by the refusing employee was not caused by the use of a thing, by a condition existing in the work place or by the performance of an activity, but rather by a change in the employee's actual personal condition. As such, the HSO reasoned that the employee's physical disorder and all relevant factors must be taken into consideration only to determine whether the danger is/was caused by, referring to section 128 of the

Code, a machine, an activity or a physical condition of the actual work place, and not by the employee's medical condition. According to the HSO, "Part II of the *Canada Labour Code* protects employees against dangers that may exist in the work place, but does not address the issue of employees and their own individual medical condition." The HSO's rationale was thus that the actual medical/health condition of the refusing employee could not be considered as one of the elements of the analysis or evaluation as to whether there is in the work place a condition that presents a danger.

[8] The HSO based his conclusion on a brief decision by another Appeals Officer (*M. Dawson* and *Canada Post Corporation*, Decision No. OHSTC 02-023) confirming a decision of absence of danger made by an HSO who determined that the attendance by an employee at a medical appointment required by that employee's employer in order to obtain a medical opinion following an injury on duty absence did "not constitute an activity (task), as set out in Part II of the *Canada Labour Code*", which could represent a danger to the employee. The HSO in that case expressed the opinion that the term ""activity" stipulated in Part II of the (Code) must be directly related to the complainant's (…) duties" and that therefore the medical appointment fell within the employer's governance. The Appeals Officer reviewing that case thus formulated the following brief conclusion:

> Despite my greatest respect for Ms. Dawson's medical situation, I essentially agree with health and safety officer Tran's conclusion (…). Under the Code, Ms. Dawson's autism and related factors may be considered in respect of a danger connected with the use or operation of a machine or thing, a hazardous condition that exists in a work place or the performance of a work activity. However, where the hazard related to an activity is linked solely to the employee's own medical condition, (…), it is not a danger covered by the Code.

[9] As previously stated, the tasks of the appellant were described as 70% operational. In this respect, HSO Misuraca testified that Mr. Pearce had expressed to him that his main concern evolved around the fact that his work requires him to move and operate large pieces of machinery, more specifically aircraft, and other vehicles, on the Toronto airport apron or tarmac and that as such, his medical condition (sudden sleep) could cause such operation to be dangerous. Mr. Pearce himself, in his testimony, provided an example of such a situation when he stated that as Maintenance Crew Chief, he is required to ascertain whether maintenance of aircraft engines has been satisfactorily completed and that as such, he may need to take the controls and operate the engines at a high level of power while ensuring that the aircraft remains stationary. He also pointed out that as Maintenance Crew chief and Engineer, he is the only member of his crew who can move aircraft on the apron or tarmac. The position description of Maintenance Crew Chief that was presented by employer representatives at the hearing states among other responsibilities and qualifications that Mr. Pearce is required to hold a "driver/apron permit for Toronto airport and an Airport Vehicle Operators Permit (AVOP). Both parties elected to represent themselves at the hearing and testimony was provided solely by the HSO and Mr. Pearce. Submissions were presented in writing.

**Issue**

[10] In the case at hand, the issue to be determined is whether at the time of his refusal, there existed for Mr. Pearce a danger, as defined by the Code, caused by a condition in that work place. However, prior to making such a determination as pertains specifically to Mr. Pearce, one needs first to consider whether personal circumstances such as those offered by this case can, in and of themselves, be considered in determining whether there exists a danger covered by the Code to justify a refusal to work.

[11] It bears mentioning here that the appellant claims that such a danger existed as caused primarily by a condition existing in the work place, such danger being to the appellant.

**Submissions of the parties**

**Appellant's submissions**

[12] On the whole, the appellant's submissions can be drawn from both his written opening statement as well as his very brief final submissions. According to Mr. Pearce, the evidence shows that he has a medical condition and that it is linked directly to an activity at work, more specifically working night shift. As such, while the evidence shows that he was initially granted accommodation by the employer for said condition, the latter then removed said accommodation without demonstrating undue hardship and jeopardized his health and safety as well as the safety of other employees. Given the persuasive evidence that he was affected by a medical condition at the time of the refusal and evidence that said illness was or could have been aggravated by what he described as a condition while at work, namely the harassment and discrimination that constituted the denial of a medical accommodation and the decision by the employer to modify his work schedule from an accommodated day shift to night work, contrary to medical recommendation, he was of the opinion that this represented the condition(s) at work required to conclude that a danger, as defined by the Code, be deemed to have existed.

[13] Mr. Pearce stated that he found support for his position in the decision by Appeals Officer Katia Néron in *Ian David Tench* and *National Defence-Maritime Forces Atlantic, Nova Scotia* (Decision No: OHSTC-09-001) who stated, with reference to the word "condition" found in the definition of "danger" in the Code (and thus with reference to the same word found in the work refusal provisions of the Code at subsection 128(1), "*that it can be interpreted as including any situation, while at work, that can affect an employee's functioning or existence, including acts of harassment or racial discrimination directed at an employee while at work, when the consequences of these acts affect the mental health of the employee.*". It is the appellant's contention that this interpretation can be extended to more than mental health when one takes into account the purpose clause of the legislation at section 122.1 of the Code.

[14] It is also the appellant's contention that the HSO himself may have acted in a discriminatory manner towards him since Mr. Misuraca's limited interpretation of the

Code was inappropriate for the situation he was facing. According to Mr. Pearce, the HSO's report demonstrated that he was clearly aware of the conflict over requested medical information and the denied accommodation. Furthermore, the HSO had clearly indicated therein being aware that the courts have ruled that employers have a duty to accommodate although he failed to apply the guiding principles of the *Canadian Human Rights Act* to his own decision regarding the refusal, even though the application of every Canadian statute must be consistent with the aforementioned legislation.

[15] The appellant concluded his submissions by reading into the record the following brief comment:

> I was accommodated by Air Canada Jazz, for a medical disability. Air Canada Jazz and I became involved in a conflict,(sic) over what information they were entitled to. I exercised my right to refuse, because I felt that it was the only option available to me when Air Canada Jazz began to abuse it (sic) power to bully a resolution to our dispute. The Health and safety officer (sic) investigated and ruled that "No Danger" existed.
>
> I believe that this ruling is inaccurate. Contrary to what the Health and Safety Officer stated, I believe that The Code addresses more that just something physical in the workplace. A condition did exist in the workplace, whether it is the conflict that lead to my refusal, my medical condition, or the nightshift schedule, there was a condition. I have argued that my medical disability was aggravated by a condition in the workplace, working the nightshift, and I believe that I have supported this with medical information.(…)

**Respondent's submissions**

[16] Stated in a nutshell in written submissions, the employer's position is that the employee who, while at work, has reasonable cause to believe that a machine or condition constitutes a danger, may refuse to work, and that the case law indicates that the danger perceived by the employee must relate to a machine, thing or to the "physical" condition of the work place. In the respondent's opinion therefore, the Code protects the employee from dangers that exist in the work place, but does not appear to go so far as to protect the employee in cases where the danger is caused by his own medical condition. In short therefore, the position of the employer can be taken as meaning that the word "condition" found in the definition of "danger" at subsection 122(1) of the Code and at paragraph 128(1)(b) of that same legislation is to be interpreted as not being capable of incorporating the physical/medical condition of a person at work in a work place.

[17] The respondent pointed out that at the time of the appellant's initial request for accommodation due to a medical condition in November 2009, and also at the time of the work refusal on February 2, 2010, Mr. Pearce had refused to provide objective medical information, asserting that the request for such information by the Occupational Health Nurse of the respondent was contrary to his employee rights and responsibilities prescribed by the *Canadian Human Rights Act*, and more specifically that the respondent's request for a diagnosis violated his right to privacy. As such then, at the

time of the work refusal, there was no objective medical evidence presented to support work restrictions sought by Mr. Pearce and consequently, the respondent/employer was under no obligation to maintain the work accommodation it had previously granted to Mr. Pearce. Given the limited objective medical information in its possession at the time of the refusal, the respondent "does not believe a danger to Mr. Pearce or other employees existed in accordance with Part II of the (Code) which would have prevented Mr. Pearce from performing his duties as a Crew Chief" on February 2, 2010.

[18] It is the position of the respondent that the allegations of harassment and discrimination raised by the appellant are not warranted nor are they relevant to the decision by HSO Misuraca on whether a danger existed to Mr. Pearce or his fellow co-workers on February 2, 2010. As such, the respondent supports the finding of the HSO that at the time of the work refusal on February 2, 2010, no danger existed under the stipulations of section 128 of the Code. Furthermore, no objective medical evidence was present on the date in question to support the existence of a condition requiring permanent accommodation for the appellant, although the respondent had maintained some sort of accommodation for Mr. Pearce since such a request had been formulated in 2009.

[19] In conclusion, the respondent noted that following the work refusal and the decision of the HSO, the appellant elected to provide additional medical information from a physician supporting the existence of a medical condition and that as a consequence, all recommended medical restrictions concerning Mr. Pearce have since been accommodated and his case monitored by Jazz Aviation Occupational Health Nurses.

**Analysis**

[20] Prior to considering the specific issues raised by this appeal, the point needs to be made that the present appeal concerns and brings about a review of the decision rendered by a Health and Safety Officer on the basis of the information passed on to or acquired by said HSO, and not a review of the decision made by the employer that may have led to the continuation of a refusal to work by the latter's employee, and brought about eventually the involvement of the HSO. Furthermore, in my capacity as Appeals Officer, I can proceed to hear any case in a *de novo* manner and thus can consider evidence that may not have been available at the time of the HSO's investigation, as well as evidence that was disclosed by the latter upon making his decision or that was obtained after said decision has been rendered and appealed.

[21] As stated earlier in this decision, prior to determining whether the facts of this case, as they relate specifically to the appellant, justified the latter in refusing to work, one has to consider first whether circumstances, for lack of a better word, of the nature of those presented by this case, in and of themselves, are capable of being considered as a danger covered by the Code to support or justify a refusal to work, having in mind that what was claimed by the employee concerned paragraph (b) of subsection 128(1) of the Code to wit, that there existed a condition in the work place that constituted a danger to the latter. When presenting his case, the appellant did make mention of his executing tasks that

could represent a danger to himself or others, which could be considered as invoking paragraph 128(1)(c) relating to the performance of an activity that could present a danger. However, upon considering the whole of his submissions as well as what was reported by the HSO, I would consider this as merely a different way for the appellant of invoking a condition in the work place as generated by, among other factors, a personal medical condition under paragraph (b) of subsection 128(1). The HSO who issued the decision of absence of danger in this case essentially concluded that a personal (medical) condition such as what prevailed in the case of the appellant was not capable of satisfying the requirements of the legislation to justify a refusal to work, as only the "physical" condition of the work place could come into play, a conclusion I cannot support.

[22] In my opinion, the answer to the first issue raised by this case lies in the proper comprehension of the terminology used in the legislation. As such, one has to not only consider generally the right to refuse provision at subsection 128(1), and more particularly paragraph (b), but also relevant terminology found in both this paragraph and elsewhere in the Code, some of which is defined by the legislation, and some that is not and thus needs to be understood through consideration of other sources, in order that all such fundamental or constructive terms of the legislation receive their full meaning under the far reaching purpose clause of said legislation, such being to "prevent accidents and injury to health arising out of, linked with or occurring in the course of employment (…)". Those particular terms are "danger", "work place" and "condition". It also needs to be stated that rules of statutory interpretation require that where the same terms are used in the same manner (without qualifier) in various parts of the same legislation, they are to receive the same meaning and interpretation.

[23] Central to the issue at hand is the term "danger", defined in part at subsection 122(1) of the Code as "any existing or potential hazard or condition or any current or future activity that could reasonably be expected to cause injury or illness to a person exposed to it before the condition can be corrected, or the activity altered, (…)". (underline added) The use of the word "any" in the definition indicates that within the text of the legislation, there is no limit as to the type of condition or activity that can be envisaged as being capable of causing injury or illness to a person. In fact, "any" is defined by the *Canadian Oxford Dictionary* as meaning: "some, no matter how much or many or of what sort", "whichever" and "one, no matter which, of several". Furthermore, the word "condition", as used in the definition as well as in paragraph 128(1)(b), without any qualifying or restrictive adjective such as "physical" used by the HSO in his decision of absence of danger from which this appeal has originated, and by the employer in his submissions, is however not defined in the legislation.

[24] While the definition of "danger" categorizes the possible causes of injury or illness as "hazard", "condition" and "activity" without defining those terms, one must state anew that in order for a work refusal to be justifiable, the "danger" must be found in a work place, as provided by the work refusal provisions of the Code. It is true that subparagraph 128(1)(b) of the Code uses only the word "place" ("lieu" in French). However, there is no doubt, given the context, that the intended meaning for all of section 128 is "work place" ("lieu de travail"), a term defined in the Code and central to the determination of this

issue. That definition reads: “work place means any place where an employee is engaged in work for the employee’s employer” (underline added), and from that wording, it is very clear that in order for a particular location to qualify as a work place under the legislation, there needs to be present three elements to wit, a physical place, a person and an activity or task performed by the latter for his or her employer. While the wording of paragraphs (a) and (c) of subsection 128(1) can be said to apply to situations of more specificity in a work place (use or operation of a machine or thing, performance of the activity), the actual wording of paragraph (b), the fact that it mentions specifically the work place (“place”) as to the location where a condition exists (“in the place”) and attaches to the term “condition” an indefinite article (“a”) which in context has the same meaning as “any”, in my opinion leads to the inescapable conclusion that determination of the presence of a danger as per subparagraph (b) requires that all three elements of what constitutes a work place be taken in consideration in assessing the specific circumstances of a particular case or situation.

[25] As I stated earlier, a term used in the same manner in various provisions of a statute must receive the same meaning and interpretation all through the statute unless it can be derived from accompanying qualifying terminology that a differing meaning is intended. In his decision, the HSO, referring to paragraph 128(1)(b) which reads: “a condition exists in the place that constitutes a danger (…)”, restricted the coverage of the provision to the “physical condition of the work place” to exclude the medical condition of the appellant as an element to be considered in arriving at a conclusion under such paragraph. It is however necessary to point out, as I have done previously, that the legislation does not attach such a qualifier to the term “condition”, wherever the term is used. Furthermore, the so-called “condition” needs to be determined relative to its existence within the work place and thus, as stated above, in consideration of all three elements that make up a work place. The term “condition” however is not defined in the Code and consequently, its meaning needs to be found in other sources.

[26] The *Canadian Oxford Dictionary* defines “condition” as “circumstances, especially those affecting the functioning or existence of something”. Consequently, applying this definition to that of “work place”, I would have no difficulty in concluding that the evaluation of whether a work refusal is justified pursuant to 128(1)(b) of the Code requires that all circumstances relative to all three elements that constitute the “work place” need be considered as a whole, and thus I find that the actual personal condition of the employee is an element that can and must be taken in consideration. One must not loose sight of the fact that such evaluation is factually driven and thus will turn on its own facts. In other words, a medical condition affecting an employee at work does not automatically result in bringing about a condition in the work place that would constitute a danger, although the fact of the employee at work being affected may be seen as being related to the first element of what constitutes the work place to wit, the employee or person. The question as to whether there exits, in the situation of said employee, a condition justifying refusing to work can only be answered when a medical condition is considered in light of the work to be executed, thus the activities to be performed, and the place where such performance is to occur for the employer. It is that result or combination that may, or may not constitute a “condition” in the work place within the

meaning of 128(1) (b) of the Code. In this respect, I share the opinion formulated by my colleague K. Néron in *I. D. Tench* and *National Defence-Maritime Forces Atlantic, Nova Scotia* (cited above) relative to the meaning to be put on the word "condition" found in the definition of "danger" and also used at paragraph 128(1)(b) stated as follows: *In my opinion, this means that the word "condition" (…) can be interpreted as including any situation, while at work, that can affect an employee's functioning or existence* (…).

[27] I actually find support for this conclusion in the decision of my colleague D. Malanka mentioned above (*Michelle Dawson* and *Canada Post Corporation*) on which HSO Misuraca based his decision of absence of danger, and which in my opinion the latter misconstrued. While it is true that Appeals Officer Malanka did state that "where the hazard related to an activity is linked solely to the employee's own medical condition,(…) it is not a danger covered by the Code", that statement referred to a situation where the employee was claiming that attending a medical appointment as requested by her employer, thus not a work activity, constituted a danger by reason of that employee's medical condition (autism), a situation quite different than the situation at hand, where it is claimed that the medical situation in combination with the elements of the work place, thus the tasks to be performed and the place where performance occurs, translates into a condition in the work place constituting a danger. Appeals Officer Malanka did however state that under the Code, the employee's medical situation and related factors "*may be considered in respect of a danger connected with the use or operation of a machine or thing, a hazardous condition that exists in a work place or the performance of a work activity*".

[28] I therefore find that the personal medical condition of an employee is an element that can enter into consideration in determining whether there exists a condition in the work place that constitutes a danger as defined by the Code.

[29] Turning to the issue of whether there existed, in this specific case, a condition in the work place which amounted to a danger, the evidence, in my view, supports such a finding. While I cannot say that much time was spent at the hearing providing factual particulars as to the place where Mr. Pearce worked for his employer, or the activities that made up his work for said employer, I am nonetheless satisfied that the evidence presented was of a persuasive nature, if only because it was not questioned or contested. Generally speaking, the tasks of the appellant have been described as 70% operational, involving the operation and moving of heavy machinery, including aircraft, over the apron/tarmac at the Toronto airport. Towards that purpose, he is to hold a driver/apron permit for Toronto airport and an AVOP. As part of the responsibilities listed in the position description presented at the hearing, he is to "maintain a hands-on presence to ensure that tasks are completed on time to meet scheduled down time", and "perform duties in accordance with established policies and procedures while giving primary consideration to personal safety, the safety of co-workers and customers". The medical condition of Mr. Pearce is obviously not in doubt and is not questioned by the employer. A number of documents filed as exhibits, as well as the actual uncontested testimony of the appellant and the HSO, serve to confirm the fact. As described previously, the impact of his medical condition is that he is prone to falling asleep while engaged in the above-

noted tasks, particularly when he works at night. The combination of these factors amounted, in my view, to a condition in the work place as a result of which the appellant could reasonably have expected to be injured while performing his tasks at the time of his refusal.

[30] The evidence is also to the effect that at the time of the refusal, the appellant was still refusing to provide his employer with what the employer considered, according to its policies, sufficient information to allow the making of a decision regarding the accommodation sought by the appellant, and thus it has been the employer's position throughout that it could not ascribe to the appellant's request for accommodated hours of work due to lack of information. While I cannot ignore that fact, I must repeat what I stated earlier to the effect that it is not the decision of the employer that is under review, but that of the Health and Safety Officer. In that regard, there is uncontested evidence that in the course of his investigation of Mr. Pearce's refusal, HSO Misuraca was made privy to the medical condition of the appellant, and thus at the time of making his decision on the refusal, was fully apprised as to the nature of that medical condition. This should have been taken in consideration in the making of his decision.

[31] I have already decided that the HSO was in error in his rationale for deciding on a refusal pursuant to paragraph 128(1)(b) of the Code. It is now my additional conclusion that when Mr. Pearce refused to work on February 2, 2010, there existed a condition in his work place that constituted a danger. The appeal is therefore granted and the decision of absence of danger rescinded.

[32] Given the preceding conclusions, I also find it unnecessary to deal with the submissions of the appellant concerning the claimed rights and violations under the *Canadian Human Rights Act*, or the claimed discrimination by the HSO. Suffice it to say that considering those matters has not proven necessary to arrive at a determination in this case and should be left to another forum. Furthermore, one cannot ignore that while such violations of privacy rights were claimed, the information objected to by the appellant was provided to the employer by the latter shortly after the decision of the HSO was rendered.

[33] Having found that a danger existed at the time of the refusal, a direction to address the danger should issue to the employer pursuant to subsection 145(2) of the Code. However, in this particular situation, the evidence has shown that shortly after the HSO's decision of absence of danger, and consequently before this matter came before the undersigned Appeals Officer, the information sought from the appellant by the employer was obtained and corrective action in the nature of what was sought by Mr. Pearce was taken and remained in place at the time of the hearing. As a result, I am of the opinion that nothing more would be achieved by seeking to correct by a direction a situation that the parties, for all intents and purposes, have indicated to the undersigned has already been corrected. For this reason, no direction will be issued as a result of the preceding conclusion.

Jean-Pierre Aubre
Appeals Officer