Occupational Health and Safety Tribunal Canada

Tribunal de santé et sécurité au travail Canada

Ottawa, Canada K1A 0J2

Citation: Aviation General Partner Inc. c.o.b. as Jazz Aviation LP v. Mohamed Gus Jainudeen, 2013 OHSTC 32

Date: 2013-11-01
Case No.: 2012-11
Rendered at: Ottawa

Between:

Aviation General Partner Inc. c.o.b. as Jazz Aviation LP, Appellant

and

Mohamed Gus Jainudeen, Respondent

Matter:	Appeal under subsection 146(1) of the *Canada Labour Code* of a direction issued by a health and safety officer.
Decision:	The direction is rescinded.
Decision rendered by:	Mr. Peter Strahlendorf, Appeals Officer
Language of decision:	English
For the appellant:	Mr. Andrew Wood, Counsel, Harris & Company LLP
For the respondent:	Mr. Ben Bachl and Mr. Ian Bennie , National Safety & Health Coordinators, - CAW Local 2002

REASONS

[1] This is an appeal brought under subsection 146(1) of the *Canada Labour Code* (the Code) of a direction issued by Health and Safety Officer (HSO) Francesco Misuraca on February 10, 2012.

[2] A teleconference was held by me on June 18, 2013, with counsel for the appellant and a representative of the employee's union. It was determined then that the employee was no longer employed by the appellant. Both parties indicated they wished to continue. As part of their written submissions, I requested that both parties address the issue of mootness in light of the employee's resignation from his employer, the appellant.

[3] With the agreement of both parties, this appeal is being determined solely on the basis of the HSO's investigation report and written submissions by both parties. There has thus been no formal *in persona* hearing by an appeals officer.

Background

[4] This appeal has been brought by Aviation General Partner Inc. (c.o.b. as Jazz Aviation, LP – "Jazz") under subsection 146(1) of the Code of a direction issued by HSO Misuraca on February 10, 2012, in which he directed Jazz to take measures to correct a condition that constituted a danger to a Jazz employee, Mr. Mohamed Gus Jainudeen. The danger was in relation to Mr. Jainudeen's medical condition and the number of hours he worked in a week.

[5] On Sunday, January 29, 2012, Mr. Jainudeen, an Aircraft MTCE Engineer employed by Jazz, invoked his right to refuse work because he felt he had a reasonable cause to believe that his medical condition, the hours Jazz required him to work, and the hours he worked at a second job at Centennial College, together was a danger to himself once he exceeded the limitation of 40 hours of work per week set out by his primary care practitioner.

[6] HSO Misuraca began his investigation the same day. He spoke with Mr. Jainudeen as well as representatives of the employer: Mr. Jainudeen's supervisor, Jeffrey Lucas; Nurse Morant; and Dr. Sutton, the Jazz Medical consultant. He also received comments from Mr. Jainudeen's primary care physician, Dr. Vivian Wong and Mr. Jainudeen's cardiac specialist, Dr. Beth Abramson.

[7] The issue of whether a danger existed is primarily about Mr. Jainudeen's hours of work with two different employers. Mr. Jainudeen had worked full-time at Jazz and part-time at Centennial College for many years prior to the work refusal. In or about the fall of 2010, he was referred by Dr. Wong to a program at the Cardiac Prevention and Rehab Centre in Toronto due to cardiac problems. He followed this one year program, administered by Dr. Abramson, which involved diet, exercise and stress management.

[8] A return to work plan, dated December 12, 2011, prepared by Nurse Morant, in consultation with both Dr. Abramson and Dr. Sutton, established a 5 week period in which Mr. Jainudeen would begin working 2 days/week at Jazz ending with full employment 5 days/week with no heavy exertional activity.

[9] Mr. Jainudeen did not comply with the entire return to work plan because he believed the final step of 40 hours per week of employment was to be divided between Jazz and Centennial College, and he so informed his supervisor, Mr. Lucas, on December 18, 2011.

[10] Following this, Mr. Jainudeen took a vacation until the second week in January, 2012. At that time he was given a 5 day suspension by Jazz because he was not following the return to work plan. He returned to work after his suspension on January 28, 2012 and then invoked his right to refuse work on January 29, 2012.

[11] During his investigation, HSO Misuraca, with Mr. Jainudeen's approval, contacted both Dr. Wong and Dr. Abramson requesting them to comment on the return to work plan. Both physicians responded that Mr. Jainudeen was not to exceed 40 hours per week for all employment activities.

[12] On January 31, 2012, Mr. Jainudeen contacted HSO Misuraca and informed him that he suffers from other medical ailments and other stresses that may or may not be known to Jazz. He said his primary care physician had considered all of his personal health factors and not just his cardiac condition. Mr. Jainudeen told the HSO that his primary care physician had recommended two days per week at Jazz and the balance of his work hours with Centennial College.

[13] HSO Misuraca found that all of the medical notes submitted to Jazz were in reference to Mr. Jainudeen's cardiac illness with two exceptions: a reference to his diabetes which was under control at the time; and a mention by Mr. Jainudeen that he was under stress at home due to caring for his elderly mother.

[14] As to whether a personal medical condition should be considered when evaluating a danger, HSO Misuraca made reference to a decision by J.P. Aubre, *Timothy Pearce* v. *Jazz Air Limited Partnership*, 2011 OHSTC 14 where it was stated:

> [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.

[15] HSO Misuraca stated in his report:

> In consideration of the circumstances prevailing at the time of the investigation, to wit Mr. Jainudeen's cardiac illness, working for any combination of employers for more than 40 hours, and the likelihood that

this will cause injury or illness, I am of the opinion that a condition in the workplace under the circumstances described above constitutes a danger.

[16] HSO Misuraca's direction was as follows:

IN THE MATTER OF THE CANADA LABOUR CODE
PART II – OCCUPATIONAL HEALTH AND SAFETY

DIRECTION TO THE EMPLOYER UNDER PARAGRAPH 145(2)(*a*)

On January 29, 2012, the undersigned health and safety officer conducted an investigation following a refusal to work made by Mohamed Gus Jainudeen in the work place operated by Aviation General Partner Inc., being an employer subject to the *Canada Labour Code*, Part II, at 6400 Airport Road, Toronto, Ontario, L5P 1A2, the said work place being sometimes known as Jazz Aviation LP.

The said health and safety officer considers that a condition in a place constitutes a danger to an employee at work:

> The employer requires that Mohamed Gus Jainudeen work a total of 40 hours in a week and 8 hours per day. This requirement exceeds the current limitations set out by his medical practitioners when combined with all of his other employment activities.

Therefore, you are HEREBY DIRECTED, pursuant to paragraph 145(2)(*a*) of the *Canada Labour Code*, Part II, to take measures to correct the hazard or condition that constitutes the danger immediately.

Issued at Toronto, this 10th day of February, 2012.

(s) Francesco Misuraca
Health and Safety Officer

Issues

[17] I have to determine the following issues:

Whether the appeal is moot by virtue of the resignation of the employee who had initiated the work refusal?

Whether the appellant was exposed to a danger as defined under the Code when he exercised his right to refuse to work?

Submissions of the parties

A) Appellant's submissions

[18] According to the appellant, the appeal is not moot even though the employee engaging in the work refusal is no longer in the employ of the appellant. In the alternative, if the appeal is determined to be moot, then the appellant submits that I have discretion to decide the issue on the merits.

[19] Regarding the second issue of "danger", the appellant submits that at the time of the work refusal there was no danger present within the meaning of the Code and therefore there was no basis for the officer's direction.

[20] Dealing first with the issue of mootness, the appellant referred to the Supreme Court of Canada decision in *Borowski* v. *Canada (Attorney General)*, [1989] 1 S.C.R. 342, in which Justice Sopinka, speaking for the Court, said that a case is moot if the "required tangible and concrete dispute has disappeared and the issues have become academic." That is, if the case is no longer a "live controversy".

[21] The appellant submitted that where an issue has been determined to be moot, Justice Sopinka said that a court may nonetheless elect to address a moot issue if the circumstances warrant. Justice Sopinka set out three factors affecting the exercise of discretion:

a. the adversarial context wherein the parties continue to attach importance to the consequences of the dispute;

b. judicial economy; and

c. the Court's "proper law-making function".

[22] In support of its position that the appeal is not moot, the appellant noted that decisions of the Tribunal dismissing appeals on the basis of mootness (due to employee resigning) were cases where it was the employee who was the appellant. See *Tremblay and Air Canada*¸ Case No. 2008-20, 2009 LNOHSTC 4; *Ouellette* v. *SaskTel*, Case No. 2008-14, 2010 LNOHSTC 13; *Harper* v. *Canada (Canadian Food Inspection Agency)*, Case No. 2010-27, 2011 LNOHSTC 19; and *Thiel* v. *Canada (Correctional Service)*, Case No. 2010-04, 2012 LNOHSTC 39.

[23] The appellant submits in cases where it is the appellant employee who has resigned there is no meaningful remedy that an appeals officer could award, but where the appellant is the employer (as in the present case) the continuing existence of a direction that a danger existed represents a live controversy, and therefore the issue is not moot.

[24] The appellant submitted that this case is similar, on the issue of mootness, to previous rulings of appeals officers that appeals are not moot if the issues could rise again and if there was every indication that the issues would be well and fully argued by the parties, referring in support to: *Lalonde and Canada (Correctional Services)*, Case No. 2006-65 [2007] C.L.C.A.O.D. No 24; and *Babb and Canada (Revenue Agency)*, Case No. 2006-43, 2010 LNOHSTC 4.

[25] The appellant argues that the HSO's finding that a danger existed, if not over-turned, would mean that the appellant would have the burden of dealing with similar situations in the future. In the appellant's view such situations "could easily arise again".

[26] In support of its position that an adversarial context remains after the employee who initiated the work refusal has resigned, the appellant pointed to the continuing participation in the appeal of both itself and the union representative.

[27] If the appeal is found to be moot, the appellant argues, in the alternative, that I should exercise my discretion to decide the appeal in any event on the basis that:

a. There is sufficient adversarial context by virtue of the participation of both Jazz and the union representatives in the appeal;

b. Judicial economy is satisfied by the agreement of the parties to proceed by way of written submissions; and

c. the Tribunal as an administrative entity, has greater latitude in its "proper law making function" than a court - a clarification of the law surrounding the issues would "provide valuable guidance to employers, employees, trade unions and to the Officers" enforcing the Code.

[28] On the second issue, whether a danger existed, the appellant argues that the employee was not exposed to a danger as defined under the Code when he exercised his right to refuse to work, because the hours of work the appellant required him to work did not exceed the limitations set out by the employee's physicians.

[29] The appellant's position is that insofar as the employee faced a danger, it was not a danger that the work refusal procedure in section 128 of the Code is concerned with because it was a danger that, if it existed at all, was caused by Mr. Jainudeen's personal decision to work at two jobs for two different employers at two different work places thereby exceeding the 40 hours of work directed by his physicians.

[30] Mr. Jainudeen was hired in November 2002 as permanent full-time employee at the Jazz maintenance facility in Toronto and he remained in that capacity until he resigned on February 25, 2013. In addition to his full-time employment with Jazz, Mr. Jainudeen had a part time position as an instructor at Centennial College.

[31] For some time prior to Mr. Jainudeen's work refusal there were times when Mr. Jainudeen's schedule at Centennial College caused him to miss work at Jazz for which he was disciplined on several occasions.

[32] From September 2010 to April 2011, Mr. Jainudeen was off work at Jazz because of treatment for cardiovascular disease, during which time he received short term disability benefits. In April 2011, Jazz's short term disability carrier discontinued his benefits because his continued employment at Centennial College while on leave from Jazz made him ineligible for such benefits.

[33] Mr. Jainudeen returned to work at Jazz on July 11, 2011 on a modified work schedule of 3 shifts per week, 8 hours per shift as an accommodation for his cardiovascular condition.

[34] When Mr. Jainudeen requested on September 6, 2011 that his workload be further reduced to 2 shifts per week, 8 hours per shift he was advised by Jazz to provide medical information to support his request.

[35] On November 24, 2011 a Gradual Return to Work Plan ("GRTW Plan") was agreed upon by Mr. Jainudeen's cardiologist, Dr. Abramson, and Jazz's medical advisor, Dr. Sutton, as follows:

Start as of December 18, 2011
2 days/week (or rotation) x 1 week then
3 days/week (or rotation) x 2 weeks then
4 days/week (or rotation) x 2 weeks then
Full days
No heavy exertion; activities, i.e., lifting/pushing/pulling/carrying.
N.B. while on this graduated return to work program, overtime is not permitted.
Medical appointments are to be scheduled outside of modified hours.

[36] Mr. Jainudeen worked as scheduled on December 18 and 19, 2011 but then advised his employer that he would not follow the GRTW Plan because it contradicted what his family doctor had advised him.

[37] Mr. Jainudeen came to work at Jazz irregularly between December 19, 2011 and January 29, 2012. He was given a disciplinary suspension on January 20, 2012 "for culpable attendance [issues] including pattern of lateness, and not showing up for work as scheduled with the GRTW".

[38] On January 29, 2011, Mr. Jainudeen invoked his right to refuse to work, stating on a Refusal to Work Registration form: "exceeding physician's recommendation of limited hours at Jazz will jeopardize my recovery from illness and affect my long-term health."

[39] Following HSO Misuraca's commencement on January 29, 2012 of his investigation of Mr. Jainudeen's work refusal, he obtained clarification from Mr. Jainudeen's primary care physician and his cardiologist that under the GRTW Plan Mr. Jainudeen was to work no more than 8 hours per day and 40 hours per week in all his employment activity, not just his employment with Jazz.

[40] On February 10, 2012, HSO Misuraca issued his direction to the employer under paragraph 145(2)(*a*) of the Code.

[41] The appellant submits that there was no danger to Mr. Jainudeen within the meaning of the Code and so the HSO erred in issuing the direction to the employer.

[42] The appellant's position is that it complied with the GRTW Plan and therefore there was no condition in the appellant's work place that constituted a danger to Mr. Jainudeen.

[43] The appellant submits that it was under no obligation to take into account Mr. Jainudeen's work hours at Centennial College. Mr. Jainudeen's personal choice as to his activity outside the appellant's work place was not part of any condition in the appellant's work place that could be the basis of a danger. The appellant argued that if Mr. Jainudeen had prioritized his work at Jazz over his work at Centennial College then his 40 hours of work at Jazz would be, in theory, part of a condition in the Centennial College which would then, again in theory, be the basis of a "danger" to Mr. Jainudeen - at Centennial College. The appellant submits that Mr. Jainudeen's choice as to which work hours to prioritize - 40 hours at Jazz or 8 hours at Centennial – would shift the danger from work place to work place. Mr. Jainudeen's choice of work prioritization could not be the basis of a danger.

[44] The appellant submitted that a section 128 work refusal is not intended to allow an employee to refuse work for personal reasons or preferences or for promoting other agendas, referring to *Zafar* v. *Canadian National Railway Co.*, (1996) 102 di 154 (Can. L.R.B). In the appellant's view, Mr. Jainudeen was using his right to refuse work as a means of continuing to work at Centennial College; the work which conflicted with his schedule at Jazz and which had resulted in disciplinary action by Jazz.

[45] The appellant also submitted that Mr. Jainudeen's medical condition was the sole basis of any possible danger but such a danger was not covered by the Code, referring to: *Dawson and Canada Post Corporation*, Decision No. 02-023, [2002] C.L.C.A.O.D. No. 22 (Appeals Officer Malanka); and *Leblanc and NAV Canada*, *Decision* No. 06-023, [2006] C.L.C.A.O.D. No. 41 (Appeals Officer S. Cadieux).

[46] The appellant further submitted that HSO Misuraca based his decision heavily on the Tribunal decision in *Pearce* (cited previously), but that he misinterpreted and misapplied the decision in *Pearce.*

[47] The appellant argued that in *Pearce*, Appeals Officer Aubre held that a medical condition may be a relevant factor but that it was a factor that had to be 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". The appellant submitted that HSO Misuraca erred by focussing exclusively on Mr. Jainudeen's medical condition and the overall hours he was required to work without considering the work Jazz required him to perform and the place where the work was being performed for Jazz. Considering Mr. Jainudeen's medical condition in light of the work at Jazz and what the work was being performed for Jazz, there was no condition in Jazz's work place that constituted a danger to Mr. Jainudeen.

[48] The appellant concludes by saying that since there was no danger the HSO's direction should be rescinded.

B) Respondent's Submissions

[49] The respondent's written submissions were brief. The respondent did not address the issue of mootness in its written submissions, reflecting its agreement with the appellant during the teleconference that the issue was not moot.

[50] On the second issue, the respondent simply stated its agreement with HSO Misuraca's interpretation of the *Pearce* decision and that the officer was correct in finding that there was a danger.

[51] The respondent's position is that HSO's direction be upheld.

Analysis

Is the issue moot?

[52] On the issue of mootness, it is my view that the issue is not moot, but that if it were moot, I would exercise my discretion to hear the appeal on the merits.

[53] It might be said that where an employee is no longer employed with the employer there is no longer a party to the proceedings other than the employer. However, I view Mr. Jainudeen's union to be a party to the proceedings. Subsection 146(1) suggests that a trade union could appeal a direction if it feels aggrieved by a direction, and it follows that a trade union can respond to an appeal in like manner:

> 146. (1) An employer, employee or trade union that feels aggrieved by a direction issued by a health and safety officer under this Part may appeal the direction in writing to an appeals officer within thirty days after the date of the direction being issued or confirmed in writing.

[54] In any event, under paragraph 146.2(*g*), I have discretion to add a party to the proceedings, and I have implicitly done so by hearing the union representative at the

teleconference and by requesting the union representative to provide written submissions. Neither the appellant nor the union have indicated that they do not view the union as a party. Paragraph 146.2(*g*) states:

> 146.2 For the purposes of a proceeding under subsection 146.1(1), an appeals officer may
>
> (g) make a party to the proceeding, at any stage of the proceeding, any person who, or any group that, in the officer's opinion has substantially the same interest as one of the parties and could be affected by the decision;

[55] Following Justice Sopinka's test in *Borowski* (cited previously), I do not view the issue in the appeal as being merely academic. It is an important issue whether an employee's activities outside the work place should be considered when determining whether there is a danger in the work place. This is an issue which could arise again. The employer does have an interest in having the HSO's direction rescinded so that people in the employer's work place do not conduct their affairs on the basis that the direction was correct. In its written submissions the union clearly believes that it has an interest, on behalf of the remaining employees in the Jazz work place, in the direction being upheld.

[56] For the same reasons, I believe there is an "adversarial context" within the meaning of the first criterion set out by Justice Sopinka for exercising discretion to hear the case even if it were moot.

[57] The second criterion for the exercise of discretion is judicial economy, and I am of the view that proceeding by way of written submissions rather than a hearing satisfies this criterion.

[58] Regarding the third criterion, I am satisfied that a decision in this case may be useful to the work place parties and to the officers charged with enforcing the Code, as the appellant argued in its submission. I therefore proceed to decide the appeal on the merits.

Was Mr. Jainudeen exposed to a danger pursuant to the Code?

[59] On the second question, the issue of danger, the employee, Mr. Jainudeen, exercised his right to refuse to do dangerous work under subsection 128(1) of the Code:

> 128. (1) Subject to this section, an employee may refuse to use or operate a machine or thing, to work in a place or to perform an activity, if the employee while at work has reasonable cause to believe that
>
> (a) the use or operation of the machine or thing constitutes a danger to the employee or to another employee;
>
> (b) a condition exists in the place that constitutes a danger to the employee; or
>
> (c) the performance of the activity constitutes a danger to the employee or to another employee.

[60] The employee's right to refuse work is contingent upon there being a "danger", which is defined in subsection 122(1) as:

> "danger" means 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 hazard or condition can be corrected, or the activity altered, whether or not the injury or illness occurs immediately after the exposure to the hazard, condition or activity, and includes any exposure to a hazardous substance that is likely to result in a chronic illness, in disease or in damage to the reproductive system;

[61] Legislation such as the Code should be interpreted so as to further the purpose of the legislation, which is stated is section 122.1 of the Code as follows:

> The purpose of this Part is to prevent accidents and injury to health arising out of, linked with or occurring in the course of employment to which this Part applies.

[62] Section 122.1 locates the causes of accidents and injury to health that are the subject of the Code to those which are in "the course of employment". As indicated in subsection 125(1) below, both places under the control of the employer, and work activities of the employee while not in a place controlled by the employer, are subject to the employer's duties to protect employees:

> 125. (1) Without restricting the generality of section 124, every employer shall, in respect of every work place controlled by the employer and, in respect of every work activity carried out by an employee in a work place that is not controlled by the employer, to the extent that the employer controls the activity, […]

[63] It is clear that a "hazard", a "condition" or an "activity" referred to in the definition of "danger" must be something in the course of employment that a person is exposed to that could reasonably be expected to be a cause of an accident or injury to health.

[64] Nevertheless, it is a matter of common sense that accidents and the exposures that lead to injuries to health are very often caused by several things that all occurred or existed simultaneously. Causes can be sequential as well as simultaneous. Accidents and injuries to health are rarely due to a single cause. A person's physical and mental attributes, whether in a state of health or when having a medical condition, are factors that, combined with other causes in the work place, can cause accidents or injuries to health. The discipline of ergonomics is predicated on the principle that an individual's attributes are relevant when designing safe and healthy work places. Industrial hygienists recognize that an individual's medical condition is relevant when deciding whether otherwise safe levels of chemicals in the work place might be too high in the circumstances. It is now commonplace that personal attributes in the form of what human

rights legislation refer to as disabilities are relevant when making adjustments in the work place so that an individual will be safe.

[65] In the present case, there is potentially strenuous work in the work place, and Mr. Jainudeen and his medical condition were in the work place. While strenuous work and a medical condition in combination could, in principle, be a danger, the issue at hand is whether Mr. Jainudeen's part time job at Centennial College is a factor that should be combined with the aforementioned two factors when considering whether there is a "danger".

[66] The appellant has referred to both the *Pearce* and the *Dawson* decisions in support of its position. In *Pearce*, the employee had a medical condition which was held to be relevant to causation in the work place. In *Dawson*, the employee based the work refusal on an activity outside the work place -- attending at a medical appointment -- which was held to be irrelevant to causation in the work place.

[67] Following *Pearce*, I find that Mr. Jainudeen's medical condition is relevant as it is a factor in the work place, which, in combination with the work (whether strenuous or of greater than normal length of time) could, in principle, amount to a danger.

[68] Following *Dawson*, I find that the employee's part time work at Centennial College was an activity outside the Jazz work place and was not in the same category as the kinds of personal attributes that an individual may possess that, in combination with other causes in the work place, could amount to a danger.

[69] To include voluntary activities outside the work place as relevant to what may be a danger in the work place would lead to somewhat absurd results. Outside activities might consist of strenuous sports activities voluntarily entered into. It would not make sense to say that an employer should reduce the number of hours at work so as to allow for an employee's strenuous sports activities. Mr. Jainudeen's activities outside the work place consisted of a part time job at Centennial College, and while one may believe a part time job to be a more serious activity than sports, it remains a fact that Mr. Jainudeen's outside activities were voluntary and were outside the control of the employer.

[70] While Mr. Jainudeen's medical condition in combination with his work at Jazz could amount to a danger, I find that at the time of Mr. Jainudeen's work refusal there was no danger within the meaning of the Code. The employer, through the GRTW Plan, took steps to ensure that the employee's work activity in combination with his medical condition was not a danger. Mr. Jainudeen's medical advisors indicated a maximum of 40 hours of work per week for all employment. Jazz was not requiring Mr. Jainudeen to work more than 40 hours a week at Jazz. The extra hours worked at Centennial College were not a factor Jazz had to consider in preventing a danger to Mr. Jainudeen in the Jazz work place. Considering the purpose of the Code, Mr. Jainudeen's hours at Centennial College were one of many "lifestyle" choices Mr. Jainudeen could make concerning his health that are not relevant to the question of danger in the Jazz work place.

[71] HSO Misuraca made reference to factors other than the hours of work at Centennial College. He stated that the employee had told him that he was under the influence of stressors outside the work place related to his family situation. In principle, stressors outside the work place that are not voluntary and not within the control of the employee could be factors that, in combination with causes in the work place, are relevant to whether a danger exists in the work place. In this case, however, there was insufficient evidence connecting the stressors with Mr. Jainudeen's medical condition and his hours of work.

[72] I note in passing that I am not giving any weight to the appellant's argument that Mr. Jainudeen's work refusal was entirely in response to the discipline taken against him for his attendance record. I am satisfied that there was sufficient concern on Mr. Jainudeen's part about his health that this issue is not relevant.

[73] In summary, I find that there was not a danger to Mr. Jainudeen in the Jazz work place at the time of his work refusal.

Decision

[74] For these reasons, I rescind the direction issued on February 10, 2012 by HSO Misuraca.

Peter Strahlendorf
Appeals Officer