

CANADA LABOUR CODE
PART II
OCCUPATIONAL SAFETY AND HEALTH

Review under section 146
of the Canada Labour Code, Part II
of a direction issued by a safety officer

Applicant: Les Blindés Loomis Ltée
Montreal, Quebec
Represented by:
Suzanne Thibaudeau, Counsel

Interested Party: Claude Guilbault
Security guard, messenger
Les Blindés Loomis Ltée
Represented by:
François Blais, Counsel

Mis-en-cause: Guy Lauzon
Safety Officer
Labour Canada

Before: Serge Cadieux
Regional Safety Officer
Labour Canada

The oral evidence was heard at Montreal on June 23, 1992. The hearing was preceded by a visit to the premises where the refusal to work was exercised by Mr Guilbault on March 23, 1992, *ie* Magasin M located at 7850 boul. Champlain in Ville LaSalle, Quebec. All the parties in the matter were represented at the view.

Context

The chief activity of Les Blindés Loomis Ltée is the transportation of valuables, in particular money, for various companies across Canada. To carry out this activity, the company hires and trains employees, whose main task is to protect the valuables picked up from or delivered to various clients. On being hired, every company employee receives a manual entitled **Rules of Employment** (translation). This manual, which must be signed, dated and co-signed by a witness representing the company, explains the rules that apply to Loomis employees in the performance of their duties. Strict observance of these rules is a condition of employment. The

company uses two-person teams in the Canadian cities where it operates, except in certain cases where it uses three-person teams, *ie* after six in the evening and when the amount to be transported justifies it, according to a standard not disclosed by the company.

However, the company regularly uses three-person teams in Ottawa and throughout the province of Quebec, except in Sherbrooke. It seems that this practice was maintained following the purchase of the company that had previously operated on this territory.

The employees are called on to perform specific tasks during the delivery and pick up of the valuables. These tasks are described as follows by the safety officer in the summary which he prepared for the hearing:

"Driver: the person responsible for the truck who must not leave it at any time.

Messenger: the person responsible for the money which is transported between the business and the truck and from the truck to a safe place.

Guard: the person who is responsible for ensuring the messenger's safety -- "the messenger's other pair of eyes" who checks to see that the route to be taken represents no danger and who signals the driver."

These tasks and the procedure followed during a deposit are set out in detail in the Rules of Employment. The same procedure applies when the route is reversed, from the truck to a safe place.

The company notified its employees at the Montreal branch on March 11, 1992, that it intended to assign two-member teams, consisting of a driver and a messenger, during the day to certain routes. Those routes were ones serving commercial clients (eg: restaurants or stores), when the amount in question was below a certain maximum.

The company also informed all employees that they should take the same training course again that they had received on hiring. This course, it must be explained, was designed for three-person teams. The only apparent change is that a radio communication system is mentioned. These radios provide liaison between the driver of the truck and the messenger. Radio communication can also in some cases be used as a preventive measure. For example, if the driver detects the presence of suspicious individuals, he may inform the messenger. Nonetheless, in such situations, the driver does not leave the truck.

The report submitted by Mrs Thibaudeau states that "on the morning of March 23, 1992, Claude Guilbault was assigned as a messenger on one of the new routes. At about nine-thirty, Mr Guilbault telephoned the Montreal branch. He said he was at Magasin M located at 7850, boul Champlain in Ville Lasalle. He asked the supervisor if he could be escorted by a guard when he left Magasin M and returned to the truck. After the supervisor told him that a guard was not required in the circumstances, Mr Guilbault told the supervisor that he was refusing to work."

As a result of his investigation, the safety officer decided that there was a danger in terms of the Code for Mr Guilbault to work in the place in question. The officer defined the danger as follows:

"Lack of a guard to escort the messenger transporting money from the pick-up location at Magasin M, located at 7850 boul Champlain in Ville LaSalle to an armoured truck located outside the building. This constitutes a loss of protection required for an employee's safety."

On the basis of that decision, the safety officer issued the following direction to the employer:

"IT IS HEREBY ORDERED THAT the said employer, pursuant to paragraph 145(2)(a) of the Canada Labour Code, Part II, take immediate measures to guard the source of danger and to protect any person from this danger."

Les Blindés Loomis Ltée asked for the direction to be reviewed.

Decision

In the case before me, I must decide whether the lack of a guard to escort Mr Guilbault, the messenger carrying the money, created an unusual danger likely to cause him injury such as to justify the issuance of a direction to protect him. In my opinion, the safety officer's direction was not justified in this case for the following reasons.

It cannot be denied that the work of Loomis employees involves very grave hazards to their health and safety. In fact, the risk of being attacked or robbed is one constantly faced by Loomis employees responsible for transporting and protecting valuables, for the most part, money. Few would deny that this hazard is serious enough to characterize it as danger in the general meaning of the term. However, such a danger does not necessarily constitute danger as defined in the Code.

The risk of being attacked or robbed is inherent in the operation of this sort of business. It is thus also part of the duties of Loomis employees in the sense that it constitutes an on-going and daily threat. The company instituted, as it should in such a situation, a whole series of measures aimed at reducing the chances of an attack or robbery to a minimum. We need only look at the measures taken to protect the valuables to be persuaded of the high level of risk to which Loomis employees are exposed. Armoured trucks are used, with strict procedures and work methods, designed to discourage any criminal who might be tempted to perpetrate a theft of money.

"Danger" is defined in subsection 122(1) of the Code as follows:

"Danger" means any hazard or condition that could reasonably be expected to cause injury or illness to a person exposed thereto before the hazard or condition can be corrected.

A number of decisions of the Canada Labour Relations Board were filed by Mrs Thibaudeau in support of her submissions. These decisions stress a very important point. In a refusal to work situation, the danger to which the employee is exposed is characterized as a danger about to happen. Thus, the Board is of the opinion that the term "danger", as defined in the Code, is for all practical purposes identical to the concept of "imminent danger" as it existed before the Code was amended. The Board uses this concept of imminent danger in linking it to the notion of immediate threat to life and health. Moreover, only objective criteria can be used in confirming the actual presence of such a threat.

In the type of business with which we are concerned, the risk of attack or theft likely to cause injury occurs randomly. This means that the threat against the life and safety of Mr Guilbault may materialize in a minute, a day, a month or a year. It is possible that the threat will never materialize. That is the nature of the work of Loomis employees. That is the risk accepted by the employees.

In a refusal to work situation, the safety officer must determine at the time of his investigation whether there actually exists a danger in the work place of the employee who refuses to work. In so doing, he must rely on objective criteria. Furthermore, The Hon Mr Justice Louis Pratte of the Federal Court of Appeal has confirmed that requirement in Bonfa v. Attorney General of Canada, File No. A-138-89 in explaining that:

"These considerations were unrelated to the questions which the regional officer had to answer, and in particular to the first of these questions as to whether at the time the safety officer did his investigation the respondent's work place presented such dangers that employees were justified in not working there until the situation was corrected. The fact that before the safety officer did his investigation the respondent may have had legitimate grounds for refusing to do the work assigned to him cannot affect the answer to be given to this question; and the fact that under s. 145(1) the safety officer could have found that the employer was in breach of Part II and directed it to terminate this breach was also not germane to the issue, since the safety officer never found such a breach to exist and never gave a direction to the employer under s. 145(1).

If the regional officer had asked himself the question he should have asked, he could only have given it one answer, namely that at the time the safety officer did his investigation the respondent's workplace presented no danger. He should therefore simply have rescinded the direction given by the safety officer. (emphasis added)

The work place of Mr Guilbault in this case was the Magasin M located at 7850 boul. Champlain in Ville LaSalle, Quebec and also the distance separating him from the store and the truck. The investigation conducted by the safety officer showed no abnormal or unusual circumstances in this place. Mr Guilbault had no new information that a theft was in preparation. Moreover, the route that the messenger usually takes at that location was sufficiently short and well-lit that he could exercise adequate surveillance over this work place. There was therefore no indication that there was at that time a danger for Mr Guilbault in working in that particular place.

However, the safety officer thought that the lack of a guard, *ie* the procedure used at that time, was insufficient to protect the messenger fully from possible attacks. Although I agree with the officer, this situation should not be resolved by the exercise of the right to refuse to work.

In order for the withdrawal of the guard to justify Mr Guilbault's refusal, it must be shown that this practice significantly increases the risk of attack and theft to the point that the hazard, which is an integral part of the work of these employees, becomes unusual and unacceptable for the safety of the employees. Les Blindés Loomis Inc stated that it already uses two-person teams, without problems, throughout Canada except in certain cases listed above. This argument, which was uncontradicted at the hearing, is very persuasive.

It is clear that Mr Guilbault's refusal to work is aimed for the most part at correcting a method of work that he and a number of his colleagues consider dangerous. The solution to this problem resides in the discussions and recommendations that can and should be formulated by the occupational safety and health committee.

The right to refuse is clearly an inadequate vehicle to express the grievances of these employees. Whatever my personal feelings in the matter, my decision can only reflect the limitations fixed by the Code.

For all the reasons set out above, I hereby rescind the direction issued on March 23, 1992 by safety officer Guy Lauzon to Les Blindés Loomis Ltée.

Decision made at Ottawa on August 31, 1992

Serge Cadieux
Regional Safety Officer