Decision No.: 98-012

CANADA LABOUR CODE
PART II
OCCUPATIONAL SAFETY AND HEALTH

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

Applicant:	Correctional Service Canada Joyceville Institution Joyceville, Ontario Represented by: Ronald M. Snyder
Respondents:	Carm Willows and Lyle Blair, Safety and Health Representatives, and Ryan McGregor, USGE Representative
Mis-en-cause:	Chris Mattson Safety Officer Human Resources Development Canada
Before:	Serge Cadieux Regional Safety Officer Human Resources Development Canada

A hearing was held in Kingston on August 17, 1998. I was made aware at the hearing that both Mr.Willows and Mr. Blair were not union representatives acting on behalf of Ms.Warner, the refusing employee in this case. Mr. Ryan McGregor was identified as the union (USGE) representative and, as a result, was subsequently given a complete copy of the file, a copy of the tapes of the hearing and a full opportunity to respond to the submissions of Correctional Service Canada (CSC). The applicant was given an opportunity to provide a final reply to the respondent's submissions.

Background

At 8:00 a.m. on April 23, 1998, Jean Warner, a staff officer at the Joyceville Institution invoked her right to refuse to work because of danger. Safety officer Chris Mattson made arrangements with Mr. Don Hutchinson, Assistant Warden, Management Services, to come in the following day to investigate the refusal. The safety officer opined that since the conditions of the refusal to work were not changing he considered this to constitute a continued refusal to work.

Safety Officer Investigation

The safety officer arrived at the Institution at approximately 9:00 a.m. on April 24, 1998. For the first hour (or one hour and 20 minutes as claimed by management representatives) of his investigation, the safety officer was accompanied by employee representatives only i.e. Mr. Lyle Blair and Mr. Ryan McGregor, and the refusing employee Ms. Warner. Around 10:20 a.m. Mr. Tom Fraser, A/AWCP (Acting Assistant Warden Corrections Program) located the investigation team in the gymnasium and asked the safety officer the reason why there were no employer representative. The safety officer replied he mistook an employee representative, who met him at the sally-port, for a representative of the employer. The safety officer apologized for any inconvenience this may have caused management. The team completed the tour of the recreational facility at the Institution.

The investigation of the safety officer revealed that Ms. Warner is a staff officer assigned to the Personal and Social Development Area, the area targeted by the refusal to work. She described to the safety officer the danger she feared in the following manner:

> Due to lack of staff and the large number of inmates in my area of work I feel very strongly that I am working in an unsafe area.

Under the heading "2. Employee's description of the events" of his Investigation Report and Decision, the safety officer reports that Ms. Warner explained the circumstances of her refusal to work by stating "As of early December, due to the extended absences of two staff members, the Personal and Social Development area at Joyceville Institution has been operating at reduced staffing levels." Ms. Warner further described an incident that occurred between two inmates, two days prior to her refusal to work, which she felt placed her at increased risk due to insufficient staff to supervise and control the inmates. Ms. Warner felt that she was justified in refusing to work "…and that immediate action must be taken to increase the staff compliment to acceptable levels."

During his investigation the safety officer obtained various documents and studies that, in his opinion "were done by competent people in the system". Based on the information in his possession the safety officer upheld the refusal to work of Ms. Warner and issued a direction (APPENDIX) for danger.

Safety Officer Testimony

The safety officer testified that he is well aware that danger exists in a prison and, as a result, it was not necessary for him to determine whether danger existed at the time of his investigation but only whether measures were taken to protect employees. The safety officer stated that when he interviewed Ms. Warner and as he walked through the Institution, he did not encounter any signs of violence from inmates. In fact, the safety officer acknowledged that the Institution was quiet on the day of his investigation and that furthermore, there had been no physical assault in the Institution in the period of April 7[1] up to the day of the investigation.

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1 One report (No. 646) of a recreations officer indicates that he found a quantity of blood in the garbage in the inmates washroom. After carrying out a full inspection, no injuries were detected on the inmates.

In reply to several questions from counsel for the employer about his justification for not ensuring that an employer representative was present during the first hour of his investigation, the safety officer stated that he was uncertain whether the Canada Labour Code, Part II (hereafter the *Code*) required the presence of an employer representative during his investigation. He said he knew that an employee representative had to be present during his investigation however, attendance by an employer representative was, in his opinion, at the employer's discretion. He did indicate however that once he became aware that no one was representing the employer during his investigation, he made efforts to inform management of this situation.

From the material given to him during his investigation, the safety officer acknowledged that the minimum staffing policy for the Personal and Social Development Area required at least two staff members to be present when inmates were in that area, a policy that was adopted from the *General Security Investigation 3100-2-450-6075 dated 08 October 1996*. At the time of the refusal there were three staff members (including Ms. Warner) working in that area. It was also noted that a corrections supervisor was carrying out a dynamic security i.e. a daily tour, of that area pursuant to a post order. The safety officer conceded that even if the area in question had a full complement of six staff, this was not a guarantee that five of the six staff would be aware that an assault had occurred on one of the staff member. The safety officer also acknowledged that a PPA (Personal Protection Alarm) was available to Ms. Warner but observed that she was not wearing one.

When questioned about the imminency and immediacy of the danger that may have existed to Ms. Warner during his investigation, the safety officer replied that she was in an area of offenders, that she is not a guard and she does not have the training of a corrections officer, that she does not have people monitoring her movements to ensure she is protected, that she is not wearing any kind of device that would signal that she was in trouble, that the said equipment was available but it was not being used, that investigations recommendations were not being implemented and, to sum it up, that it was an accumulation of many things which causes the Institution to be and to remain in trouble unless steps are taken to protect the employees at work.

In the end, the safety officer repeated that danger existed in this Institution but admitted he was unable to say what was about to happen as he investigated. He testified that he had no knowledge of anything specific happening on that day and that an assault was not happening at the time of his investigation. He ruled that danger existed because there were, in his opinion, no protection afforded to Ms. Warner. As for the direction he issued, the safety officer confirmed he never reviewed each recommendation resulting from the *Analysis of Joyceville Institution's Vulnerability For Hostage Takings, November 24, 1995*, which are referred to in the direction. The safety officer also acknowledged that he never inquired with Mr. Fraser, or any other employer representative, the reasons why the employer did not implement some of the recommendations. The safety officer testified that although he has no formal training or in depth knowledge of the operations of corrections institutions, he accepted that people who made the recommendations were mandated and competent to do so. On this basis, the safety officer found that the Institution's failure to implement many of the recommendations constituted a danger to employees at work.

Submissions for the Employer

Mr. Snyder asserts that the issue to be decided in this case is whether a danger existed to Ms. Warner when the safety officer carried out his investigation on April 24, 1998. In support of this proposition, Mr. Snyder submits that the Federal Court of Appeal has dealt, in two instances, with the responsibility of the safety officer when investigating refusals to work . The cases cited are *Bidulka v. Canada (Treasury Board) (F.C.A.)* and *Canada (Attorney General) v. Bonfa (F.C.A.).* In both cases, the Court is of the view that the responsibility of the safety officer investigating a refusal to work is to determine whether at the time of his investigation a danger exists to the employee.

Mr. Snyder is of the view that Ms. Warner's reason for refusing to work which she verbalized as a lack of staff and the large number of inmates in her work area amounts to a concern over staffing in the Personal and Social Development Area. Accordingly Ms. Warner's fear was the potential threat of being assaulted by inmates. In support of his proposition that refusing for reasons of staffing was not uncommon in penitentiaries, Mr. Snyder reviewed the jurisprudence applicable to the case at hand. Essentially, the case law concludes that in a prison environment, the danger, if it exists, is in most cases part and parcel of the job of a correctional officer. Furthermore, many cases cited deal with staffing issues which, although cannot be clearly separated from health and safety issues, do not find support in the Code.

In closing, Mr. Snyder reminded me that, in his testimony, the safety officer admitted that there was no immediate and real danger that existed at the time of his investigation. He submitted that the safety officer was dealing with hypothetical potentialities of assault on staff members and that, on this basis alone, the Regional Safety Officer can vitiate the direction made by the safety officer.

Submissions for the Employees

Mr. Lyle Blair, Safety and Health Representative

Mr. Blair explained that most of the decisions entered into evidence by Mr. Snyder either do not concern Correctional Service Canada or, of the five of those that do, four concern correctional officers and only one concerns a librarian. He agreed with the passage of the Stephenson case in which the Board (PSSRB) member stated:

> "The problem here is not being addressed. Let us begin with the hard fact. Since June 1987, this Board has hear a total of 27 applications under the health and safety provisions of the Canada Labour code. Of those 27 applications, 14 originated with employees of correctional institutions. There is a problem here and it is not being addressed." (emphasis added)

Mr. Blair stated that the problem is not being addressed because employees "are coming to the safety and health committee to have them [the committee] address the problem." Mr. Blair asserted the employer has a responsibility of due diligence to ensure the workplace is safe, an argument fully supported by Mr. Snyder who added that this responsibility falls upon the employer "pursuant to sections 124 and 125 of the Code and not under section 128" respecting the right to refuse

unsafe work. Mr. Blair stated that Ms. Warner felt her work environment was unusually unsafe when she refused to work because there were too few staff and too many inmates in her area to do the job safely. In this respect, she could only rely on the recommendations of the security committee. This committee recommended the use of PPAs which had not been offered to the staff at the time of the refusal. Had they been offered, Ms. Warner would probably have picked the PPA assigned to her.

Mr. Ryan McGregor, U.S.G.E. Representative

The detailed submission of Mr. McGregor is on record and will not be repeated in detail here. Mr. McGregor went to great length to explain the conditions that existed when Ms. Warner refused to work. Being aware that Ms. Warner had expressed concerns in the past about the staffing of the Personal and Social Development area, he notes that she did not exercise a refusal to work for those situations.

Mr. McGregor notes that the case law submitted by Mr. Snyder "…deal with individuals who are employed in the Correctional Service of Canada as Correctional Officers - guards." Mr. McGregor emphasizes that Ms. Warner is not a correctional officer, and as such, she does not have the training of a correctional officer.

Mr. McGregor then turned his attention to the jurisprudence entered into evidence by Mr. Snyder. He agrees with both the Bidulka and the Bonfa decisions to the effect that the responsibility of the safety officer is to determine whether a danger existed for the refusing employee at the time of his investigation such that the employee was justified in refusing to work. This however, said Mr. McGregor, is where "…the relevance of this case to the case at bar ends." As for the Stephenson case, Mr. McGregor looks at the similarities and differences of the case in light of Ms. Warner's situation. He quotes a passage from the decision in which the Board member stated that

> "The root of the problem is that the danger, under the law, must be actual and real whereas, the reality in a correctional institution is that the source of the danger, the inmate, has intelligence and free will."

and concludes his analysis of this case by declaring

> It is the employee representative position then that it is incumbent on management, through appropriate staff compliment (sic), training, policies and procedures, to mitigate that danger, as it cannot be removed at the source. And that this is the root of the problem in the case at bar, not a staffing issue.

Mr. McGregor stated that many of the cases cited by Mr. Snyder do not apply to the case of Ms. Warner because she is not a correctional officer whereas the jurisprudence cited deals primarily with correctional officers. Also, he noted that Ms. Warner did not have access to a PPA whereas correctional officers do have access to this type of alarm and furthermore she does not have the same training that is given to a correctional officer. Furthermore, Mr. McGregor

challenges the minimum staffing policy for the Personal and Social Development area entered into evidence by the employer which he asserts to be non-existent.

Rebuttal from Mr. Snyder to Mr. McGregor's submissions

The detailed reply of Mr. Snyder to the submissions of Mr. McGregor is on record and will not be repeated here. Essentially, Mr. Snyder reiterates his primary argument that there was no danger at the time of the safety officer's investigation and that Mr. Mattson acknowledged and admitted to the absence of danger at that time. Mr. Snyder addressed himself to what he considers to be an inappropriate conduct of the safety officer. Mr. Snyder is of the view that Mr. McGregor erred in alleging that Ms. Warner did not refused to work because of a staffing concern either because Mr. McGregor had a complete disregard for the evidence on file or because he did not appreciate the said evidence. Finally, Mr. Snyder addressed the jurisprudence cited by Mr. McGregor particularly to the new cases cited by him and which, in Mr. Snyder's opinion, are not relevant to the proceeding that took place before the Regional Safety Officer.

Decision

Before deciding this case, I am advising the parties that I am not prepared to comment on Mr. Snyder's allegations to the effect that the safety officer's conduct was tainted with partiality and bias towards the employer during his investigation. There are other avenues for him to raise this matter. The proceedings before the Regional Safety Officer is not such an avenue unless it is established that the alleged misconduct directly influenced the decision of the safety officer. I have not been convinced the safety officer acted in such a manner.

The issue to be decided in this case, as it has been submitted by Mr. Snyder, is whether danger existed to the refusing employee at the time of the safety officer's investigation. The safety officer's responsibilities when investigating a refusal to work under the Canada Labour Code, Part II (hereafter the Code) have been clearly delineated in the *Bonfa* case by the Honorable Judge Pratte of the Federal Court of Appeal who wrote:

> *These considerations were unrelated to the questions which the regional safety 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 workplace 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).*

In consideration of the above excerpt, it is my opinion that the situation investigated by the safety officer on April 24, 1998 presented no real and immediate danger to Ms. Warner, a staff officer, such that she was justified in refusing to work. On this basis, I must rescind the direction. I need not concern myself with the fact that Ms. Warner is not a correctional officer, that she has not

received the training of a correctional officer and therefore, that a different standard should apply to her. If she was not in immediate and real danger on the day the safety officer investigated her refusal, I can arrive at no other conclusion but that there is absence of danger.

There are many reasons for this conclusion. Let us review the most important ones in view of the following provisions of the Code:

> **129. (1).**Where an employee continues to refuse to use or operate a machine or thing or to work in a place pursuant to subsection 128(8), the employer and the employee shall each forthwith notify a safety officer, and the safety officer shall forthwith, on receipt of either notification, investigate or cause another safety officer to investigate the matter in the presence of the employer and the employee or the employee's representative. (emphasis added)
>
> **(2).**A safety officer shall, on completion of an investigation made pursuant to subsection (1), decide whether or not
> (*a*).the use or operation of the machine or thing in respect of which the investigation was made constitutes a danger to any employee, or
> (*b*).a condition exists in the place in respect of which the investigation was made that constitutes a danger to the employee referred to in subsection (1), and he shall forthwith notify the employer and the employee of his decision. (emphasis added)

The safety officer delayed his investigation into the refusal to work of Ms. Warner one full day. This, in my opinion, is both contrary to the law and prejudicial to the interests of the employer and the refusing employee. Subsection 129(1) stipulates that, once a safety officer has been notified by either the employer or the employee or his representative of a refusal to work, he/she is to investigate the refusal "forthwith, on receipt of either notification". The safety officer has no discretion to delay the process unless exceptional circumstances prevent him/her from investigating the refusal without delay. I was not made aware that any such circumstances prevailed on the day of notification of the safety officer.

The safety officer stated that since the conditions of the refusal to work were not changing he considered this to constitute a continued refusal to work. The fact is that the situation that allegedly threatened the security of Ms.Warner was not new to her and had not occurred unexpectedly. It is a series of events that progressed in time, from the moment the Security Investigations took place in 1995 and 1996 to the absence of identified staff in December 1997 and February 1998, to an incident that occurred on April 21, 1998, all of which culminated in her refusal to work on April 23, 1998. At the root of the problem is a staffing issue. Ms. Warner clearly said so in her statement of refusal to work. Mr. McGregor acknowledged this when he wrote, on page 3 of his submission, last paragraph:

> When Jean Warner exercised her right to refuse unsafe work under Part II of the Canada Labour Code, Sec 128.1b on April 23, 1998, she offered as reasons for her refusal the fact that the area in which she was to work was short staffed, and that there were large numbers of inmates in the area. This can be capsulated as Warner stating that there were conditions existing other than normal which gave rise to her having reasonable cause to believe that a

> condition existed in that place that constituted a danger to her. Although she indicated that staffing was a component to her refusal, it was neither the sole nor the main reason… (My underlining)

While Mr. McGregor interprets Ms. Warner's refusal to work to be more than a labour relations issue, as is indicated by the case law he cited, I share Mr. Snyder's view that Ms. Warner's fear was the potential threat of being assaulted by inmates due to the lack of staff and the large number of inmates in her area. Clearly, the potential threat of being assaulted by inmates in a prison setting is an ever present risk in such an environment. However, this threat does not meet the definition of danger of the Code. The jurisprudence has established that danger must be real, immediate and present during the investigation of the safety officer. In simple terms, the danger must be on the point of happening when the safety officer investigates and unless he intervenes at that moment, the employee is likely to be injured upon returning to work. That situation did not exist on April 24, 1998 when Mr. Mattson investigated.

The safety officer testified it was not necessary for him to decide whether danger existed at the time of his investigation because he was well aware that danger exists in a prison. Rather, the safety officer simply considered whether or not measures were taken to protect the refusing employee. However, this approach is inconsistent with subsection 129(2) which provides:

> 129. (2) A safety officer shall…decide whether or not…a condition exists in the place…that constitute a danger to the employee.

That is, the mandate of the safety officer is to decide, strictly on a factual basis, whether danger exists in the employee's workplace at the time of his investigation. Again, the safety officer had no discretion in this respect since the legislation places a mandatory requirement on the safety officer to decide first and foremost on the existence of danger. His sole purpose was to decide whether, in the instant case, a condition existed in Ms. Warner's workplace which constituted a danger to her as he investigated her refusal to work and nothing else. By failing to make the required decision on a factual basis, with regards to the conditions that existed at the time of his investigation, one could reasonably conclude that those conditions were not investigated by the safety officer. Unfortunately Ms. Warner was further placed at a disadvantage by not having her situation investigated on the day she refused to work. I also note that many, if not most, of Mr. McGregor's arguments concern Ms. Warner's situation on the day of her refusal to work and not at the time of the safety officer's investigation. In my opinion, both Ms. Warner and Mr. McGregor have suffered a prejudice by a delayed investigation.

The safety officer testified that when he carried out his investigation on April 24, 1998, the Institution was calm, he did not encounter any signs of violence from inmates, no assaults had occurred for quite some time and he admitted he was unable to say what was about to happen. He testified that he had no knowledge of anything specific happening on that day. He ruled that danger existed because there was, in his opinion, insufficient protection afforded to Ms. Warner. The bottom line in this case is that the safety officer should have concluded that no condition existed at the time of his investigation, on April 24, 1998, that constituted a danger to Ms. Warner regardless of what condition might have existed on April 23, 1998, the day of Ms. Warner's refusal to work. As Judge Pratt wrote, "*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;"

There is no doubt that employment in a medium security prison, such as Joyceville Penitentiary, is generally speaking "inherently dangerous". That is the nature of a prison where people have been incarcerated because they broke the rules of society and in many cases committed violent acts. However, not all actions of inmates would meet the criteria of danger as defined in the Code. The concept of danger in the Code requires that the hazard or condition that can reasonably be expected to cause injury or illness to a person be about to happen unless something is done immediately to prevent its occurrence. Some inmates will never present a threat to staff or to a correctional officer as they will never act in a violent manner. The dangers referred to by the safety officer are prospective dangers which are outside the scope of the Code.

When inmates threaten officers or carry out their treats, correctional officers are expected to deal with those situations because they have the proper qualifications to do so. In this case I need not ask myself whether Ms. Warner required additional measures to protect her because on the day of the safety officer's investigation, she was not in immediate danger since no violent act was about to be or was being perpetrated on her during the investigation of the safety officer. The mandate of the safety officer is solely to decide whether danger exists at that moment. It should nevertheless be understood that although Ms. Warner is not a correctional officer and that she has not received the training of a correctional officer, her job requires her to work in a prison environment, surrounded by delinquents, a workplace which is far more stressful than most conventional workplaces.

In my opinion, the safety officer decided the work procedures in general were deficient in respect of protecting the safety and health of Ms. Warner and that the deficiencies could be mitigated by adopting an unspecified number of the recommendations in the security reports. He decided this despite acknowledging that he had no formal training or in depth knowledge of the operations of corrections institutions. Those corrections had already been addressed, in his view, by tasks forces mandated to look at the security of the Institution and to make appropriate recommendations. Hence the direction issued by the safety officer. This however was not the mandate of the safety officer under s. 129 which is solely to decide whether danger exists.

Subsection 129(1) also requires the safety officer <u>to investigate the matter in the presence of the employer and the employee</u> or the employee's representative. I must admit that the employer was justified in being frustrated for not being advised for a period of time of the ongoing investigation early on April 24, 1998. However, I have no reason to doubt the integrity of the safety officer who acknowledged he mistook an employee representative for an employer representative. I was however surprised to hear the safety officer testify that he was uncertain whether the employer had the right to accompany the safety officer in his investigation. Clearly, ss.129(1) entitles the employer to be present during the investigation.

Once the safety officer has accomplished his mandate and ruled that no danger exists, then nothing prevents the safety officer from looking at whether the employer is in contravention of the Code. Again, as stated by Judge Pratt, "*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)". Evidently, Judge Pratt was well aware that safety officers can intervene in penitentiaries since subsection 123 of the Code provides that:

> **123. (1)** Notwithstanding any other Act of Parliament or any regulations thereunder, this Part applies to and in respect of employment… (my underlining)

As noted by Mr. Blair, there is a duty of due diligence on the employer to ensure that the safety and health of its employees at work is protected. The safety officer is authorised to intervene in safety and health matters to enforce the Code in the manner indicated above.

For all the above reasons, **I HEREBY RESCIND** the direction issued on April 29, 1998 under paragraph 145(2)(a) of the Code by safety officer Chris Mattson to Correctional Service Canada, Joyceville Penitentiary.

Decision rendered on October 26, 1998

Serge Cadieux
Regional Safety Officer

ANNEX

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

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

On April 24th, 1998, the undersigned safety officer conducted an inquiry following the refusal to work made by Jean Warner Rec./Canteen officer. In the work place operated by CORRECTIONAL SERVICE CANADA, being an employer subject to the Canada Labour Code, Part II, at JOYCEVILLE PENITENTIARY, PO BOX 880, HWY15, JOYCEVILLE, ONTARIO, the said work place being sometimes known as Rec. Area.

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

Because of lack of Implementation of the majority of recommendations made by HIGH RISK AREA REVIEW COMMITTEE IN THEIR (ANALYSIS OF JOYCEVILLE INSTITUTION'S VULNERABILITY FOR HOSTAGE TAKING STUDY) & (GENERAL SECURITY INVESTIGATION 3100-2-450-6075)..

THE FOLLOWING RECOMMENDATIONS WERE NOT IMPLEMENTED AT THE TIME OF MY INVESTIGATION.

1. ALL STAFF IN HIGH RISK AREAS MUST WEAR A PPA AT ALL TIMES.

2. ALL OFFICES IN HIGH RISK AREA TO HAVE A FIXED POINT ALARM.

3. ALL AREAS MUST HAVE AT LEAST TWO ACESSES INTO THEM.

4. ALL NON CORRECTIONAL STAFF BE PROVIDED WITH TRAINING IN THE AREA OF OBSERVING AND ANALYZING OFFENDER BEHAVOUR.

5. ALL AREAS DEEMED TO BE A HIGH RISK AREA SHOULD HAVE SOME SORT OF SECURITY PRESENCE.

6. ALL STAFF TO BE GIVEN A COMPREHENSIVE TRAINING PACKAGE ON HOSTAGE TAKING AND HOSTAGE BEHAVOUR.

7. A PROCEDURE TO BE DEVISED TO ACCOUNT FOR ALL STAFF BOTH DURING AND AT THE END OF THE DAY.

8. GREATER CONTROL OVER THE PASS SYSTEM. THE REGULATION OF OFFENDER MOVEMENT IS A KEY TO REDUCING RISK IN A NUMBER OF HIGH RISK AREAS.

9. ALL NON CORRECTIONAL STAFF BE PROVIDED WITH TRAINING IN CRISIS INTERVENTION.

10. THAT A STANDING ORDER BE AMENDED TO INCLUDE A REGULAR TOUR BY A CORRECTIONAL SUPERVISOR THROUGH THIS AREA ON REGULAR INTERVALS THROUGHOUT THE DAY SHIFT.

Jean Warner Rec./Canteen officer exercised her right to refuse.

General duty of employer

Sec. 124. Every employer shall ensure that the safety and health at work of every person employed by the employer is protected.

Therefore, you are HEREBY DIRECTED, pursuant to paragraph 145(2)(a) of the Canada Labour Code, Part II, to protect any person from danger immediately.

Issued at ., (sic) this 29th day of April 1998

CHRIS MATTSON
Safety Officer
1764

To: CORRECTIONAL SERVICE CANADA
JOYCEVILLE PENITENTIARY
PO BOX 880, HWY 15
JOYCEVILLE, ONTARIO
K7L 4X9

Decision No.: 98-012

SUMMARY OF REGIONAL SAFETY OFFICER DECISION

Applicant: Correctional Service Canada
Joyceville Institution

Respondent: Union of Solicitor General Employees (U.S.G.E.)

KEYWORDS

Staffing, potential threat of assault, delayed investigation, presence of employer, danger real and immediate, danger present during safety officer investigation, decide danger, prison, Bonfa, Bidulka, due diligence, continued refusal to work,

PROVISIONS

Code: 123(1), 129(1), 129(2), 145(1), 145(2)(a)
Reg: N/A

SUMMARY

A staff officer of the Joyceville Institution refused to work in the Social and Personal Development Area of the prison because of the lack of staff and the large number of inmates in that area. A safety officer investigated the following day and upheld the refusal to work on the basis of recommendations that had been made following security investigations carried out several years prior to the refusal. The safety officer opined that failure by management to implement many of the said recommendations constituted a danger to the refusing employee.

Upon review, the Regional Safety Officer (RSO) disagreed with the conclusion of danger of the safety officer for several reasons. The safety officer had delayed his investigation one full day which is contrary to section 129 of the Code. The safety officer investigated part of the refusal without an employer representative being present which was also found to be contrary to section 129. The safety officer accepted that danger exists in prisons and failed to decide that danger existed to the refusing employee. By doing this the RSO stated this amounted to not investigating the conditions that existed at the time of his investigation. The RSO concluded that the root cause of the problem was a staffing issue and the fear of the refusing employee was the potential threat of assault. The RSO concluded there existed no danger to the employee on the day of the investigation of the safety officer. The RSO **RESCINDED** the direction.