Decision No.: 98-014

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:	Brinks Canada Limited Windsor, Ontario Represented by: G.J.A. Vassos, Counsel
Respondent:	Mr. Phil Prince
Mis-en-cause:	Mark Hawkins Safety Officer Human Resources Development Canada
Before:	Douglas Malanka Regional Safety Officer Human Resources Development Canada

Background

Shortly after commencing his route on Friday, March 27, 1998, Mr. Phil Prince, an employee of Brinks Canada Limited (Brinks), Windsor Terminal, felt that there was a problem with the brakes and steering on the armoured vehicle he was driving. He subsequently conducted a brake test in a client's parking lot and then communicated to his dispatcher by radio that he was returning the unsafe vehicle to the terminal. Upon his arrival at the terminal, Mr. Hand, the Operations Supervisor, informed him that the brakes and steering on the vehicle had been recently serviced on March 16, 1998. Mr. Hand then conducted a road test of the vehicle and decided it was safe. Nevertheless, Mr. Prince insisted that the vehicle was unsafe and continued to refuse to operate the vehicle for safety reasons. Mr. Hand then sent Mr. Prince home and completed the run in his place. Later that day, Mr. Prince called and complained to Human Resources Development Canada (HRDC).

The following Tuesday, March 31, 1998, Mr. Prince reported for work and was assigned to drive the same armoured vehicle. While on route to his second customer, he concluded that the brakes and steering were still unsafe. He contacted his dispatcher and was ordered by Mr. Mahew, the Terminal Manager to return to the terminal immediately. When he arrived, Mr. Hand advised him that the vehicle had been safety inspected on March 30, 1998, and was certified to be safe. Nonetheless, Mr. Prince continued to exercise his right to refuse to work and was then sent home by Mr. Mahew for the rest of the week.

Safety officer Mark Hawkins went to the Windsor Terminal of Brinks on April 6, 1998, and investigated Mr. Prince's right to refuse to work complaint. He arranged to have the vehicle inspected by an independent licensed mechanic who certified that the brakes and steering met the applicable provincial standards for the vehicle and were safe. Based on this, safety officer Hawkins decided that there was no danger for the employee and informed both the employer and employee of his decision. However, he further decided that the employer had contravened various provisions of the Canada Labour Code (hereto referred to as Part II or the Code) with regard to Mr. Prince's refusal to work.

On April 9, 1998, he issued a written direction to Brinks, pursuant to subsection 145.(1) of the Code, to confirm the oral direction he had given on April 6, 1998. A copy of the direction is attached in Appendix. The direction specified that the employer was in contravention of subparagraph 147(a)(iii) of the Code for disciplining Mr. Prince for invoking his right to refuse dangerous work on two occasions, being March 27 and 31, 1998. The direction also specified that the employer was in contravention of subsection 128.(7) of the Code for failing on both occasions to investigate an employee's refusals to work in the presence of at least one member of the safety and health committee, and in contravention of subsection 129.(1) of the Code for failing on the two occasions to notify a safety officer forthwith that an employee had continued to refuse to work. The direction ordered the employer to terminate the contraventions by no later than April 9, 1998.

On April 17, 1998, Mr. George Vassos requested a review of the direction on behalf of Brinks. He subsequently wrote to the Regional Safety Officer on April 27, 1998, and requested a summary ruling to rescind items 1 and 2 of the safety officer's direction. He argued that item 1 should be rescinded because the Federal Court in the Gilmore vs. Canadian National Railway[1] case confirmed that a safety officer is not authorized by subsection 145.(1) of the Code to issue a direction in respect of discipline arising from a refusal to work.

Prior to the oral hearing that was held on September 25, 1998, to review the direction, the Regional Safety Officer informed the parties that he was rescinding item 1 of the direction. He told the parties at the hearing that he would confirm his decision, and reasons therefore, in his written decision that would follow the hearing on items 2 and 3 of the direction.

Safety Officer:

In addition to testifying at the hearing, Safety officer Hawkins submitted a written report prior to the hearing. The document forms part of the file and will not be repeated here. The facts that I retain from his evidence at the hearing are as follows.

Safety officer Hawkins first spoke to Mr. Prince on April 3, 1998, when Mr. Prince called to inquire about the status of his complaint filed with HRDC on March 30, 1998. Mr. Prince told safety officer Hawkins that he had complained to HRDC on March 27 and March 30, 1998, concerning his refusals to work. Safety officer Hawkins did not know why there was no HRDC record of the March 27 call, but confirmed that Mr. Prince's subsequent complaint form was

[1] Federal Court of Canada, Trial Division, Gilmore v. Canadian National Railway, (1995) F.J.C. No. 1601. This ruling confirmed the earlier decision of Regional Safety Officer Cadieux that a safety officer is not authorized by the Code to issue a direction in respect of discipline arising from a refusal to work. Regional Safety Officer decision 93-105.

received at HRDC on April 2, 1998. Safety officer Hawkins was unable to explain why neither of the HRDC duty safety officers contacted by Mr. Prince on March 27 and March 30, 1998, treated his complaint as a refusal to work complaint. However, he said that it was clear to him that Mr. Prince had exercised his right to refuse to work under Part II on the two occasions.

On April 3, 1998, safety officer Hawkins spoke to Mr. Mahew who confirmed being aware that Mr. Prince had the right to refuse to work because of "danger"[2] under Part II. However, he did not explain why management had not investigated Mr. Prince's two refusals to work in the presence of Mr. Prince and an employee member of the safety and health committee. Later that day, safety officer Hawkins spoke to Mr. Gerald Riendeau, Manager, Labour Relations, Brinks. Mr. Riendeau stated that Mr. Prince had not identified to the employer that he was refusing to work pursuant to section 128 of the Code on either occasion.

Safety officer Hawkins testified he issued items 2 and 3 of his direction to ensure that Brinks investigates and reports future refusals to work in accordance with Part II.

Applicant:

Prior to the hearing, Mr. Vassos submitted documents outlining reasons for requesting that the direction be rescinded in its entirety. The documents form part of the file and will not be repeated here. In addition, Mr. Hand and Mr. Mahew testified on behalf of Brinks. I retained the following facts from their testimony.

Mr. Hand testified that he has worked for Brinks for approximately 28 years and joined management approximately 13 years ago. He has extensive experience driving 100 series vehicles, like the one in question. He confirmed that he tested the vehicle following both of Mr. Prince's refusals and did not find anything wrong with the steering or the brakes.

Mr. Mahew testified that he has worked for Brinks for approximately 20 years and joined management ranks approximately 10 years ago. He has been a employer member of the safety and health committee for approximately 10 years. He recalled speaking to Mr. Prince following both refusals to work on March 27 and 31, 1998, and authorizing the vehicle to be used following Mr. Hand's road tests. He confirmed that the vehicle was sent to Bavarian Auto on March 30, to be re-checked.

Mr. Mahew confirmed that Mr. Milanie, the employee member of the safety and health committee, had not received any safety and health committee member training while at Brinks. He confirmed that Mr. Milanie was available the day safety officer Hawkins conducted his investigation of the refusals to work, but Mr. Milanie did not participate in the investigation and the safety officer did not insist on his presence. He testified that he did not feel he had any responsibility to advise employees concerning the exercise of their right to refuse to work. That, he said, is the responsibility of the union.

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[2] danger is defined in Part II as:

> "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."

Respondent:

Mr. Prince was not represented by legal counsel and testified on his own behalf. I retain the following facts from his testimony.

Mr. Prince had 10 years of driving experience but was only employed at Brinks for approximately 9 months prior to his refusals to work. He said that he was convinced that the vehicle was unsafe on both occasions, but was unaware of his right to refuse to work under Part II. He felt that, since the brakes and steering on the vehicle were found to be safe, the problem had to be related to the load being carried by the vehicle. He insisted that the vehicle should have been road tested by the certified mechanic with the same load that he carried on the days of his refusals to work. He further testified that a copy of Part II was not posted at the work place as required by the Code.

Submissions:

Mr. Vassos said he would not provide further argument regarding item 1 of the direction since I had already decided to rescind this item.

Mr. Vassos argued that I should rescind items 2 and 3 of the direction for the following reasons:

1) the purpose of the Code is to prevent accidents and injury to employees. Part II encourages parties to collaborate and resolve workplace occupational health and safety issues before involving a safety officer. Albeit late, the parties collaborated in this case and finally came to an agreement concerning the refusal. No one was injured relative to the refusal to work;

2) the collective agreement at Brinks deals with vehicle safety under section 23.09[3]. The collective agreement addresses unsafe work conditions for employees while respecting the employer's right to manage the business. Mr. Prince filed a grievance with Brinks respecting his refusal to work on March 27, 1998, on the advise of his shop steward. Brinks then had the vehicle inspected and re-certified in accordance with the collective agreement. The safety matter was resolved and a direction was not needed;

3) the language in subsection 145.(1) of the Code is in the present tense. Therefore, as a matter of statutory interpretation and law, a safety officer is only authorized by subsection 145.(1) to issue a direction if the contravention is on-going at the time of the direction. Moreover, the direction in question serves no purpose since the safety officer had already investigated the refusal and decided that there was no danger. In addition, there is no practical way for the employer to comply with the direction;

4) The employer's obligation to notify a safety officer is also only a matter of form and failure to comply should not result in a direction. The Canada Labour Relations Board (Board) ruled in the Atkinson case that, despite the fact that the word "shall" is used in section 128, a failure by parties to comply with every provision in the refusal process does not nullify the process.

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[3]. Section 23.09 of the collective agreement reads:
"Section 23.09 - No employee shall be required to take out any vehicle which is in an unsafe operating condition or which is not properly equipped to conform to Municipal, Provincial or Dominion regulations. …"

Similarly, the Board ruled, in the Lambert Case, that a safety officer's decision in a work refusal is not rendered invalid because an employee member of the safety and health committee is not included in the safety officer's investigation. So, the employer's failure to comply with 128.(7) and 129.(1) of the Code is only a question of form;

5) the wording in item 2 of the direction only cites the employer for failing to investigate the refusal in the presence of a member of the safety and health committee and does not refer, as does subsection 128.(7) of the Code, to an employee member of the safety and health committee. Brinks did investigate the work refusal in the presence of Mr. Mahew, the employer member of the safety and health committee; and,

6) A safety officer cannot incorporate contraventions of section 128 of the Code in a direction made pursuant to subsection 145(1) of the Code. This is what the Federal Court ruled in the Gilmore versus CNR case.

Respondent:

Mr. Prince stated that he did not consider the agreement between Brinks and himself to be a settlement. Rather, he was convinced that he could not win in the case, and capitulated. He argued during the hearing that Mr. Mahew demonstrated a knowledge of Part II and should have notified a safety officer of the continued refusals to work. He also felt that Mr. Mahew should have advised him of the right to refuse provisions under Part II and explained the process to be followed. He confirmed that minutes of the safety and health committee meetings are posted at Brinks. In retrospect, he realized that he should have contacted Mr. Milanie, the employee member of the safety and health committee, concerning his refusals to work.

After the hearing, he provided me with various extracts from "The 1998 Annotated Canada Labour Code" by Ronald Snyder. Since he did not identify which provisions of the Part II he was raising and link them to the case at hand, I cannot base conclusions on the page extracts submitted.

Decision:

The direction issued by safety officer Hawkins on April 9, 1998, related to the right to refuse provisions in the Code and consists of 3 items. However, prior to reviewing the direction and items therein, I must decide whether or not Mr. Prince exercised his right to refuse on March 27 and 31, 1998, since this was disputed by Mr. Riendeau, Manager, Labour Relations. For this, I must consider section 124 of the Code, and the particular facts in the case.

Section 124 of the Code clarifies that the employer is generally responsible for ensuring the safety and health of his employees. In order to comply with this responsibility, it is my view that employers must be aware of their duties and responsibilities under the Code, which includes the right to refuse to work provisions. As a result, the employer, including managers and supervisors, should be able to recognize a refusal to work when an employee identifies a safety or health concern and indicates that they will not do the work because of it. In this case, Mr. Mahew confirmed that he was familiar with the right to refuse work provisions in Part II.

Section 124 of the Code reads:

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

Mr. Prince testified that he was unaware of the right to refuse to work provisions in the Code when he exercised his right to refuse on March 27 and 30, 1998, and did not specify to his employer that he was exercising his right to refuse pursuant to Part II. However, he did communicate to his employer that he was refusing to work because of danger related to the truck he was driving. The undisputed evidence is that he advised the dispatcher of his safety concerns and returned to base with the vehicle. The fact that the employer then tested the safety of the vehicle shows that they understood that Mr. Prince's refusal to work was related to safety.

For the these reasons, I am satisfied that Mr. Prince exercised his right to refuse to work under Part II on March 27 and 31, 1998.

Having so decided, I now turn my attention to the direction and the 3 items contained therein.

Item 1

Subparagraph 147.(a)(iii) of the Code specifies that an employer may not discipline an employee for having acted in accordance with the Part II. This would include an employee who has exercised the right to refuse work under the Code. Subparagraph 147.(a)(iii) reads:

> *No employer shall*
> *(a) dismiss, suspend, lay off or demote an employee or impose any financial or other penalty on an employee or refuse to pay the employee remuneration in respect of any period of time that the employee would, but for the exercise of his rights under this Part, have worked or take any disciplinary action against or threaten to take any such action against an employee because that employee…*
>
> *iii) has acted in accordance with this Part or has sought the enforcement of any of the provisions of this Part; or*

Notwithstanding this, subsection 133.(1) of the Code clarifies that employee complaints arising out of the fact that the employee has exercised the right to refuse in accordance with sections 128 and 129 of the Code must be addressed to the Board. Section 133.(1) of the Code specifies that:

> *"Subsection 133. (1) Where an employee alleges that an employer has taken action against the employee in contravention of paragraph 147(a) because the employee has acted in accordance with section 128 or 129, the employee may, subject to subsection (3), make a complaint in writing to the Board of the alleged contravention." (my underline)*

The Federal Court ruled in Gilmore versus CN Rail that:

> "…The Code grants the Board full powers to conduct an investigation and make a determination together with full remedial powers. It is clear from a reading of the Code that Parliament intended any such complaints under Part II to be dealt with exclusively by the Board."

It also specified that:

> "…Nowhere in Part II of the Code is the safety officer given the remedial power to deal with disciplinary measures taken by the employer by reason of the employee's exercise of his or her rights under that part."

For these reasons, **I HEREBY RESCIND** item 1 of the direction.

Item 2

When an employee advises the employer that he or she is refusing to work, the employer is required, pursuant to subsection 128.(7) of the Code to investigate the refusal in the presence of the employee and an employee member of the safety and health committee. Subsection 128.(7) reads:

> *"Subsection 128.(7) An employer shall forthwith on receipt of a report under subsection (6) investigate the report in the presence of the employee who made the report and in the presence of*
> *(a) at least one member of the safety and health committee, if any, to which the report was made under subsection (6) who does not exercise managerial functions;*
> *(b) the safety and health representative, if any; or*
> *(c) where no safety and health committee or safety and health representative has been established or appointed for the work place affected, at least one person selected by the employee."* [my underline]

The evidence in this case is that the investigation conducted by the employer on both occasions did not include Mr. Prince or an employee member of the safety and health committee. Consequently the employer did not act in accordance with subsection 128.(7) of the Code.

Item 3

When an employee continues to refuse to work because of danger, the legislation requires that the employer and the employee contact a safety officer. Subsection 129.(1) of the Code reads:

> *"Subsection 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."* [my underline]

Based on the facts in the case, it is my view that Mr. Prince continued to exercise his right to refuse on both occasions when the employer disagreed that there was a danger.

Having established that the employer did not act in accordance with Part II concerning the requirement to investigate the refusals to work and the requirement to notify a safety officer on both refusals, I must consider evidence and arguments presented by the parties prior to and during the hearing, and decide if items 2 or 3 of the direction should be confirmed, varied or rescinded.

Mr. Vassos argued that the purpose of the Code is to prevent accidents and injury to employees, and for this Part II encourages collaboration between the employer and the employees. He said that no-one was injured as a result of the refusals, that the employer has been enlightened on refusals, and that, albeit late, the parties did reach agreement on the discipline issue prior to the hearing. Therefore the direction serves no purpose.

While I agree with Mr. Vassos that collaboration between employers and employees is important in terms of work place occupational safety and health, that collaboration cannot supplant the need for the employer and employee to respect the minimum requirements of the Code. Employers are encouraged to exceed the minimum occupational safety and health standards under Part II, but are not permitted to fall below them notwithstanding their collaboration with employees.

Mr. Vassos argued next that there was a provision in the collective agreement dealing with vehicle safety and this is what the Company followed to investigate the refusals to work. However, section 131 of the Code clarifies that employees may not be excluded from sections 128 to 130 of the Code unless the parties to the collective agreement file a joint application to the Minister, and the Minister is satisfied that the provisions in the collective agreement are at least as effective as those under sections 128 to 130. Section 131 reads:

> *"Section 131. The Minister may, on the joint application of the parties to a collective agreement if the Minister is satisfied that the agreement contains provisions that are at least as effective as those under sections 128 to 130 in protecting the employees to whom the agreement relates from danger to their safety or health, exclude the employees from the application of those sections for the period during which the agreement remains in force."*

The employer did not file any evidence to show that such an application was filed or that the Minister agreed to exclude Brinks employees from the application of the Code. Consequently, Brinks is obliged to handle right to refuse complaints in accordance with Part II provisions. Therefore, I am satisfied that Mr. Prince exercised his right to refuse under the Code and this was the proper vehicle for Brinks to investigate the matter.

Mr. Vassos argued that items 2 and 3 of the direction must be rescinded because a safety officer is only authorized by subsection 145.(1) of the Code to issue a direction if the contravention is on-going at the time of the direction. He said that there is no practical way for the employer to comply with these items and they make no sense since the safety officer has already investigated the refusal and decided that there was no danger.

During the hearing, safety officer Hawkins testified that items 2 and 3 of his direction dated April 9, 1998, were necessary to ensure that management at Brinks Windsor Terminal comply with subsection 128.(7) and 129.(1) of the Code the next time that an employee exercises the right to refuse to work under Part II. His assertion is consistent with his direction which specifies that the contravention is "ongoing" and specifies, in items 2 and 3, that the employer is to terminate the contravention of subsections 128.(7) and 129.(1). The two items in question do not refer specifically to Mr. Prince. Thus, I conclude that safety officer Hawkins felt that conditions that led to the violations still existed at Brinks Windsor Terminal at time he issued his verbal direction, confirmed by his written direction of April 9, 1998, and that remedial measures were required to avoid a further contravention of the provisions.

With regard to the interpretation of legislative provisions, I note that the Interpretation Act specifies in section 12 and in subsection 31.(2) that:

> *"Section 12. Every enactment is deemed remedial, and shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objectives.R.S., C 1-23, S. 11"* (my underline); and,
>
> *"Subsection 31.(2) Where power is given to a person, officer or functionary to do or enforce the doing of any act or thing, all such powers as are necessary to enable the person, officer or functionary to do or enforce the doing of the act or thing are deemed to be also given."*

I interpret these sections to say that a safety officer can issue a direction pursuant to subsection 145.(1) of the Code, if the safety officer is of the opinion that the conditions in the work place that led to the violation still exist or are "on-going." Despite the arguments presented on behalf of Brinks to rescind the direction, Brinks Windsor Terminal management did not indicate that they had taken remedial measures. I infer from this that the conditions that led to the violations were "on-going" at Brinks Windsor Terminal at the time safety officer Hawkins issued his verbal direction on April 6, 1998, confirmed by his written direction on April 9, 1998.

In another argument, Mr. Vassos opined that, since the CLRB ruled in the Atkinson case that the failure to comply with the right to refuse to work procedures does not nullify the right to refuse work process, logic and fairness would suggest that such failure does not constitute a violation of Part II. However, such a view is inconsistent with the importance that Parliament assigned to the employee's right to refuse to work provisions in an occupational safety and health prevention scheme when it included right to refuse to work provisions in Part II, and specified right to refuse to work procedures connected with them. Subsection 145.(1) of the Code authorizes a safety officer to direct the employer or employee to terminate the contravention of any provision of Part II, and that, in my view, includes violations of subsection 128.(7) and 129.(1) of the Code. Part II further specifies that failure to comply with the safety officer's direction is a violation of paragraph 125.(w) of the Code in respect of employers and paragraph 126.(i) in respect of employees. The Board rulings cited do not establish that employees and employers are not expected to comply with the right to refuse to work procedures, or that a safety officer should be prevented from interceding where the process is not respected.

In terms of fairness, the safety officer's power to issue an oral or written direction pursuant to subsection 145.(1) of the Code is discretionary. Therefore, a situation can arise and does where a direction is issued to one party and not the other. Parties who wish to object to this as a discriminatory practice can raise their objection with the Department. Mr. Vassos confirmed during the hearing that he was not raising the fairness question relative to the Charter. As a result, I will not comment on it further.

Mr. Vassos argued that item 2 of the direction should be rescinded because it does not refer to an employee member of the safety and health committee as found in subsection 128.(7) of the Code. However, section 146 of the Code empowers me to vary a direction to correct an error to a citation, which I will do in this case. So I cannot give any weight to this argument.

Mr. Vassos finally argued that the Federal Court ruled in the Gilmore case that a safety officer cannot direct the employer or employee pursuant to subsection 145.(1) of the Code to terminate a violation under section 128. However, I do not agree with this interpretation for the following reason. In the ruling, the Federal Court clarified that the question before it was whether the safety officer has jurisdiction under subsection 145.(1) of the Code to issue a direction in respect of paragraph 147.(a) of the Code. Following the Court's review of the relevant Part II provisions, the Court ruled that a safety officer is not so authorized. I do not interpret this ruling to say that a safety officer cannot use subsection 145.(1) of the Code to direct an employer or employee to terminate a violation of section 128 of the Code. This was not the question to which the Court addressed itself.

For all of the above reasons, and taking into consideration that I have already rescinded item 1 of the original direction, **I HEREBY VARY**, as follows, the direction safety officer M. Hawkins issued to Brink's Canada Limited, on April 9, 1998, pursuant to subsection 145.(1) of the Code;

a) delete item 1 of the direction;
b) re-number item 2 as item 1, and vary the item by adding the words, " who does not exercise managerial functions" to the end of the sentence; and,
c) re-number item 3 as item 2.

The varied part of the direction now reads:

> "The said safety officer is of the opinion that the following provisions of the Canada Labour Code, Part II, are being contravened:
>
> 1. Subsection 128(7) of the Canada Labour Code, Part II.
>
> The employer upon notification of a refusal to work failed, on two occasions, March 27, 1998, and March 31, 1998, to investigate the refusal to work in the presence of at least one member of the safety and health committee who does not exercise managerial functions.

2 Subsection 129(1) of the Canada Labour Code, Part II.

The employer failed on two occasions March 27, 1998, and March 31, 1998, to notify a safety officer forthwith that an employee had continued to refuse to work."

Decision rendered on December 23, 1998

Douglas Malanka
Regional Safety Officer

APPENDIX

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

DIRECTION TO EMPLOYER UNDER SUBSECTION 145(1)

On April 6th, 1998, the undersigned safety officer conducted an inquiry at the work place operated by BRINKS CANADA LIMITED, being an employer subject to the Canada Labour Code, Part II, at 3275 Electricity Drive, Windsor, ONTARIO.

The said safety officer is of the opinion that the following provisions of the Canada Labour Code, Part II, are being contravened:

1. Sub-paragraph 147(a)(iii) of the Canada Labour Code, Part II.

   An employee, Phil Prince, has been disciplined on two occasions March 27, 1998, and March 31, 1998, by his employer because he invoked his right to refuse what he perceived to be dangerous work.

2. Subsection 128(7) of the Canada Labour Code, Part II.

   The employer upon notification of a refusal to work failed, on two occasions, March 27, 1998, and March 31, 1998, to investigate the refusal to work in the presence of at least one member of the safety and health committee.

3. Subsection 129(1) of the Canada Labour Code, Part II.

   The employer failed on two occasions March 27, 1998, and March 31, 1998, to notify a safety officer forthwith that an employee had continued to refuse to work.

Therefore, you are HEREBY DIRECTED, pursuant to subsection 145(1) of the Canada Labour Code, Part II, to terminate the contravention no later than April 9th, 1998.

Issued at London, Ontario, this 9th day of April 1998.

MARK HAWKINS
Safety Officer
1777

To: BRINK'S CANADA LIMITED
Electricity Drive
Windsor, Ontario
N9A 5C9

Decision: 98-014

SUMMARY OF REGIONAL SAFETY OFFICER DECISION

Applicant: Brinks Canada Limited
Windsor, Ontario

Respondent: Mr. Phil Prince (employee of Brinks at the time of the direction)

KEY WORDS

Danger, right to refuse to work, collective agreement, discipline, safety officer investigation, safety of vehicle, steering, brakes, no danger, employer investigation, notification of safety officer, remedial measures not taken, on-going contravention.

PROVISIONS

Code: 124,128.(7),129.(1), 131,133.(1),145.(1), 147.(a)

SUMMARY

A safety officer investigated two refusals to work by an employee of the above company who felt that there was a problem with the brakes and steering on the armoured vehicle he was driving. The safety officer had the vehicle inspected and tested by an independent licensed mechanic who certified that the brakes and steering met the applicable provincial standards for the vehicle and were safe. The safety officer decided that there was no danger for the employee and informed both the employer and employee of his decision. However, he issued a written direction to Brinks, pursuant to subsection 145.(1) of the Code which included 3 items. Item 1 specified that the employer was in contravention of subparagraph 147(a)(iii) of the Code for disciplining the employee for invoking his right to refuse dangerous work on two occasions. Item 2 specified that the employer was in contravention of subsection 128.(7) of the Code for failing on both occasions to investigate an employee's refusals to work in the presence of at least one member of the safety and health committee. Item 3 specified that the employer was in contravention of subsection 129.(1) of the Code for failing on the two occasions to notify a safety officer forthwith that an employee had continued to refuse to work. The employer argued, amongst other things, that the violations were not on-going at the time the safety officer issued his direction and should be rescinded.

Upon review, the Regional Safety Officer **RESCINDED** item 1 of the direction because a safety officer is not authorized by subsection 145.(1) to issue a direction in respect of disciplinary action taken by an employer against an employee who has exercised his right to refuse to work under Part II. The Regional Safety Officer agreed with the safety officer that items 2 and 3 constituted violations of Part II, and **VARIED** the direction in the following manner. Item 2 was re-numbered it as item 1, and the words " who does not exercise managerial functions" added. Item 3 was re-numbered as item 2.