

## **SUMMARY OF APPEALS OFFICER'S DECISION**

**Decision No.**                      **02-011**

**Applicant:**                        William J. Thater

**Employer:**                        Canadian National Railways

**KEY WORDS:**                      Appeal

### **PROVISIONS:**

**Code:**                                129(7)

### **SUMMARY:**

The applicant appealed a decision of no-danger under paragraph 129(7) of the *Canada Labour Code*, Part II, after the time-limit of ten days prescribed in subsection 129(7) had elapsed. The applicant was advised of the appeals officer's intention to dismiss the appeal for this reason and extended the opportunity to present submissions on its timeliness before a final decision was rendered. Since no submissions were received and after reviewing the case, I dismissed the applicant's appeal because it was not submitted within ten days of his receiving notice of the health and safety officer's decision.

**CANADA LABOUR CODE  
PART II  
OCCUPATIONAL HEALTH AND SAFETY**

William J. Thater  
*applicant*

and

Canadian National Railway  
*employer*

and

Judith Harris  
*health and safety officer*

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Decision No. 02-011  
June 12, 2002

This case was decided by Michèle Beauchamp, appeals officer

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[1] This case concerns an appeal made by William J. Thater on July 1, 2001 under subsection 129(7) of the *Canada Labour Code*, Part II, following a decision of no-danger issued by health and safety officer Judith Harris after her investigation of Mr. Thater's refusal to work on June 5, 2001.

[2] It appeared from the Investigation Report and Decision sent to the Canada Appeals Office on Occupational Health and Safety by health and safety officer Judith Harris that Mr. Thater made his refusal to work on June 5, 2001, that health and safety officer Harris gave him a verbal decision on the same day and that her written decision was sent to him on June 15, 2001.

[3] Consequently, on December 6, 2001, I wrote to the applicant to advise him of my intention to dismiss his appeal because the time-limit of ten days set by subsection 129(7) of the *Canada Labour Code*, Part II, to submit it had elapsed. Subsection 129(7) reads:

129(7) If a health and safety officer decides that the danger does not exist, the employee is not entitled under section 128 or this section to continue to refuse to use or operate the machine or thing, work in that place or perform that activity, but the employee, or a person designated by the employee for the purpose, **may appeal the decision in writing to an appeals officer within ten days after receiving notice of the decision.**

[1] I also extended to the applicant, before rendering a final decision in this matter and in the spirit of fairness at the basis of the appeals process, the opportunity to present submissions on the timeliness of his appeal. I received no submission from the applicant on this issue.

[2] As the appeals officer responsible for this case, after reviewing the case, I dismiss Mr. Thater's appeal because it was not submitted within ten days after receiving notice of health and safety officer Harris' decision, as required by the *Canada Labour Code*, Part II.

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Michèle Beauchamp  
Appeals Officer