

Canada Labour Code
Part II
Occupational Health and Safety

Louise Chiasson
applicant

and

Human Resources
Development Canada
employer

and

Denis R. Mador
health and safety officer

Decision No. 02-015
July 12, 2002

This case was decided by Michèle Beauchamp, appeals officer, following a hearing in Bathurst, New Brunswick, on February 5, 2002.

Appearances:

For the employees

Louise Chiasson, employee member of the local Occupational Health and Safety Committee at the Human Resources Development Canada (HRDC)

Employment Insurance Centre in Bathurst;

Colette Hébert, union representative and member of the local Occupational Health and Safety Committee at the HRDC Employment Insurance Centre in Bathurst.

For the employer

Normand Doiron, Supervisor, HRDC Employment Insurance Centre, Bathurst

Health and Safety Officer

Denis R. Mador, HRDC Labour Program

- [1] This case concerns an appeal made by Louise Chiasson, an employee member of the HRDC Occupational Health and Safety Committee in Bathurst, New Brunswick, under subsection 129(7) of the *Canada Labour Code*, Part II. The appeal follows a decision of no danger issued by health and safety officer Denis Mador, HRDC Labour Program.

- [2] Health and safety officer Mador related the facts as described in the following paragraphs taken from his investigation report and from the hearing.
- [3] Normand Doiron, Employment Insurance Centre supervisor, informed officer Mador around 1 p.m. on August 15, 2001 that employee Anne Savoie had refused to work at the Bathurst office after taking a disturbing telephone call in which all she heard was a ticking sound. She then called her immediate supervisor who listened to the call in the presence of Ms. Savoie and approximately ten other employees: the ticking noise continued while the person at the other end remained silent for approximately ten minutes before hanging up. In the meantime, the employer had called the Bathurst police, who investigated but failed to trace the call through NBTel. The police concluded that it was simply a harassment call. The employer tried unsuccessfully to resolve this refusal to work through the internal process.
- [4] Because she was not feeling well, Ms. Savoie then asked her supervisor for permission to leave the building and the other employees who had also listened to the telephone call did the same thing. Once outside, Ms. Savoie and the other employees refused to return to the workplace since they felt that there was the risk of a bomb there. Over the next hour, between 100 and 125 other employees also left the building.
- [5] Health and safety officer Mador then contacted constable McDonald of the Bathurst police who confirmed that this was certainly a harassment call since there was no evidence of anything more serious — there was no voice or written message and no suspect package indicating that there was a bomb in the workplace.
- [6] After coming to the workplace around 4 p.m., health and safety officer Mador met with Normand Doiron and Jacques Bourdages, representing the employer, and Louise Chiasson and Linda Boudreault, employee members of the local occupational health and safety committee. Ms. Savoie was unavailable
- [7] Health and safety officer Mador listened to the facts of the situation as related by the parties and already knew that the employer and the local occupational health and safety committee had developed and implemented evacuation and bomb alert procedures in that particular workplace. He then informed the parties about the conclusions that Inspector Poitras of the Bathurst police had shared with him — namely, that in the absence of any evidence that a bomb might be in the workplace, police policy was to treat this type of incident as a harassment call. Officer Mador agreed with this decision, since there had been no bomb threat as such and Ms. Savoie had only heard a ticking sound.
- [8] In officer Mador's view, the employer had complied with Part II of the Canada Labour Code in basing his decision on the police report. After looking into the matter, the officer based his decision of no danger on both the verbal police report and his own previous personal experience as a health and safety officer at National Defence where he had come in contact with similar cases.

- [9] Normand Doiron, representing the employer, stated that he was the only management representative in the building at the time of the phone call. The employees were already on strike at the time and were picketing outside the building. As soon as Mr. Doiron was told of the call, he went to where the call had been taken and saw that the employees were in a somewhat panicky state. He then followed established procedure, i.e., call the police before deciding whether an evacuation is necessary. Police officers responded immediately and constable McDonald tried unsuccessfully to trace the call. Since the police concluded that the call was not a bomb threat but simply a call that was designed to intimidate, the building was not searched.
- [10] Mr. Doiron allowed the employees who so wished to leave the building. He also contacted management, whose offices are in the same building and who had met with the employees outside, to explain the facts and ask them to return to work. After consulting with the union, management notified the employees who still felt they were in danger that they should go to the cathedral across the road until a health and safety officer conducted an investigation and came to a decision.
- [11] Since the members of the local health and safety committee were on strike and picketing outside the building on that particular day, Mr. Doiron was unable to follow the letter of the law on normal bomb threat procedure. He explained that when a previous threat had been received, proper procedure had been followed, the building had been searched, and a suspicious package had been found.
- [12] Mr. Doiron concluded his testimony by pointing out that the local health and safety committee was scheduled to meet the same day as the hearing to study the requirements of Part II of the Code as management wanted to become more knowledgeable and thereby be able to manage this type of situation better.
- [13] Colette Hébert, representing the employees, stated that Ms. Sirois first lodged an appeal under the internal settlement procedure around 10:45 a.m. and then refused to work around 1 p.m. August 15 was a day of general strike and it was designated employees who were working in the building's two call centres. Since three union locals were represented in the building and the local health and safety committee contained members from each one, Ms. Hébert wondered why Mr. Doiron had not at least contacted replacement members from the local health and safety committee to collaborate with him in investigating the refusal.
- [14] According to Ms. Hébert, the *Canada Labour Code* requires that employees be informed of all situations of this type and she felt that the bomb alert procedure developed by the local health and safety committee was not followed in this instance. Nonetheless, between 10:45 and 11:30 a.m., no management representative came to inform the union representatives and the local occupational health and safety committee employees about the situation. Then, around 11:30 a.m., the union representatives were able to describe the incident to all the designated employees, as well as the students who had gone outside to eat, and inform them about their right to refuse to work. Ms. Hébert also contacted the Bathurst police who told her that only those in charge of the workplace, and not the police, could order any evacuation.

- [15] Around 12:20 p.m., Normand Doiron and Jacques Bourdages informed the union representatives, the employee members of the local health and safety committee and the employees who were outside the building that they believed that the call did not pose a threat but was related rather to the ongoing strike. The union representatives said that they were not pleased that management had looked into the situation without the involvement of the employee members of the committee and had determined without these employees that the call was not a genuine threat and that there was no danger.
- [16] According to Ms. Hébert, subsection 127(1) of the *Canada Labour Code* states that before resorting to the forms of recourse prescribed in Part II of the Code, an employee, who believes that the Code is being violated and that a situation that could cause an accident or illness exists, should make a complaint to his or her immediate superior. The employee and the superior should then try to settle the complaint by mutual agreement as soon as possible. In her opinion, the aim of this new compulsory approach is to ensure that the employer addresses the employees' health and safety concerns without their having to resort to their right to refuse to work. In her view, failure to take this approach violates the Code.
- [17] The employee representatives were unable to resolve the issue with management, stating that they were unhappy with the way management was handling the situation. All the same, management was not prepared to evacuate the building and conduct an investigation together with the employees' health and safety representatives. Around 1:00 p.m., management met with the employees outside and then the two employee representatives, Louise Chiasson and Linda Boudreault, went with them so as to be present when they met with the other employees. Most of the employees who had been informed of the right of refusal to work under section 128 decided not to go back to work, basing their refusal on the sense of uncertainty and lack of safety that still existed.
- [18] Ms. Hébert pointed out that point 7 of the bomb alert procedure stipulates that the centre director must consult the police, the bomb alert team and the co-chairs of the health and safety committee before deciding when employees should return to the building. Management, however, had decided to consider the call received by Ms. Sirois as non-threatening without either searching the building or asking the building's security officer whether he had noticed anything unusual. Furthermore, the employee members of the local health and safety committee had not had the opportunity to consult with Constable McDonald about his investigation.
- [19] According to Ms. Hébert, it is essential that managers and supervisors be familiar with the scope and repercussions of the new definition of danger as well as the many conditions and circumstances it applies to, including the fact that the danger can be either existing or simply potential. The same goes for labour relations officers dealing with cases of refusal to work and occupational health and safety employees who are mandated to provide advice in this regard.

- [20] Ms. Sirois heard a ticking sound that she considered threatening as evidenced by the fact that she notified her immediate superior. This noise clearly represented a potential or real danger since it could have indicated an explosive device. The definition of danger implies that someone could be injured if the risk is not removed or the situation rectified before the person is exposed to the danger. This is the principle that health and safety officers must apply when they investigate a case of refusal to work.

- [21] Subsections 146.1(1) and (2) of the *Canada Labour Code*, Part II, describe the appeal officer's role when contacted about a decision of no danger issued under subsection 129(7):

146.1(1). If an appeal is brought under subsection 129(7) or section 146, the appeals officer shall, in a summary way and without delay, inquire into the circumstances of the decision or direction, as the case may be, and the reasons for it and may

(a) vary, rescind or confirm the decision or direction; and

(b) issue any direction that the appeals officer considers appropriate under subsection 145(2) or (2.1).

(2) The appeals officer shall provide a written decision, with reasons, and a copy of any direction to the employer, employee or trade union concerned, and the employer shall, without delay, give a copy of it to the work place committee or health and safety representative.

- [22] Subsection 122(1) of the *Canada Labour Code* defines "danger" as follows:

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.

- [23] Ms. Sirois, who received the call, and the other employees who were subsequently informed of the situation undoubtedly had reasonable grounds for believing that a danger existed in their workplace. Ms. Sirois informed her supervisor, who also heard the call and then contacted Mr. Doiron. As part of his investigation, Mr. Doiron contacted the police who came to the workplace and determined that the call was simply a case of harassment, since the caller had not spoken and there were no suspicious indications in the workplace.
- [24] Management then authorized the employees to go outside the building where their colleagues were picketing. Management also informed health and safety officer Mador about the refusal to work.

- [25] Officer Mador contacted the police and then met the interested parties, including the employee members of the occupational health and safety committee. After investigation, he decided that the call received was only to intimidate and that there was no real danger for the employees to work in the workplace.
- [26] I agree with officer Mador's decision. Ms. Hébert did not contradict the facts upon which health and safety officer Mador based his decision in what was for him not the first investigation of this type: the caller remained silent for around ten minutes, the call was not traced, and no suspicious parcel was found on the premises. Moreover, nothing in his testimony gives the impression that the call Ms. Sirois received was anything other than an attempt to create an intimidating work atmosphere.
- [27] Ms. Hébert claimed at length that the procedure jointly adopted by the local health and safety committee was not followed. This, in my view, is the only "bone of contention" that induced the union to appeal officer Mador's decision of no danger. Furthermore, this question was already being resolved at the time of the hearing.
- [28] For these reasons, I confirm health and safety officer Mador's decision of no danger.

Michèle Beauchamp
Appeals Officer

Summary of Appeals Officer Decision

Decision No. 02-015

Applicant: Louise Chiasson

Employer: HRDC Employment Insurance Centre, Bathurst

Key Word: Danger

Provisions: *Code* 122(1)
COSHR: n/a

Summary:

A female employee received a threatening phone call during which the caller remained silent for around ten minutes. The health and safety officer investigated and then based his decision of no danger on both the police report and his previous experience of this type of situation. The real thrust of the union's appeal was that the employer had not followed the bomb alert procedure developed by the local health and safety committee.