

CANADA LABOUR CODE
PART II
OCCUPATIONAL HEALTH AND SAFETY

Michelle Dawson

applicant

and

Canada Post Corporation

employer

and

Jessica Tran

health and safety officer

Decision No.02-023

October 23, 2002

This case proceeded by way of written submissions and was reviewed by appeals officer Douglas Malanka.

- [1] On March 26, 2002, Ms. Michelle Dawson, an employee with Canada Post Corporation (CPC), refused to work and attend a medical appointment required by CPC following an injury on duty absence. Ms. Dawson suffers from autism and complained that CPC had not given her sufficient prior notice of the medical appointment in writing to prepare for it.
- [2] Health and safety officer Jessica Tran investigated the refusal to work and decided that a danger did not exist for Ms. Dawson. She provided Ms. Dawson with a written notice of her decision on April 5, 2002. Ms. Dawson appealed the decision of no danger to an appeals officer pursuant to section 129(7) of the *Canada Labour Code*, Part II (hereto referred to as the Code or Part II).
- [3] In her written decision given to Ms. Dawson, health and safety officer Tran made the following finding in Part III of her written decision:

Part III Health and Safety Officer's decision

As to whether Ms. Dawson was in danger within the meaning of the *Canada Labour Code* when she refused to work on March 26, 2002, the following are the provisions of Part II of the *Canada Labour Code* with regard to work if danger:

128.(1) Subject to this section, an employee may refuse to use or operate a machine or thing, to work in a place or to perform an activity, if the employee while at work has reasonable cause to believe that

- (a) the use or operation of the machine or thing constitutes a danger to the employee or to another employee;*
- (b) a condition exists in the place that constitutes a danger to the employee; or*
- (c) the performance of the activity constitutes a danger to the employee or to another employee.*

Part II of the *Canada Labour Code* defines danger as follows:

“danger” means 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 hazardous substance that is likely to result in a chronic illness, in disease or in damage to the reproductive system.

Although the medical appointment scheduled for 2:00 pm, March 26, 2002 at Medisys did not take place and a medical appointment was to be scheduled, the concept of potential hazard is inherent to this refusal because the hazard, condition or activity (task) could occur and was likely to cause injury or illness to the person exposed before the hazard or condition could be corrected, or the activity altered.

Consequently, Ms. Dawson could refuse to work if she had reasonable cause to believe that the task she had to perform constituted a danger to her.

The danger perceived by Ms. Dawson must be related to a hazard, condition or activity (task) in her workplace. It must be in keeping with the spirit of section 122.1, Part II of the *Canada Labour Code*, as follows:

122.1 The purpose of this Part is to prevent accidents and injury to health arising out of, linked with or occurring in the course of employment to which this Part applies.

The *Dictionnaire canadien des relations de travail*, 2nd edition, by Gérard Dion, defines “task” as follows:

1. *A specific job to be carried out by someone.*
2. *A specific job to be carried out by the incumbent of a position. A position may consist of several tasks. (transl)*

The Employer’s order requiring that Ms. Dawson go to an appointment for a medical opinion does not constitute an activity (task), as set out in Part II of the *Canada Labour Code*. A description of profile of the tasks performed by a postal worker is appended to this report. The “activity” stipulated in Part II of the *Canada Labour Code* must be directly related to the complainant’s postal worker duties. The medical appointment therefore falls within the Employer’s governance.

The complainant’s autism and all related factors must be taken into consideration **only** to determine whether the danger was caused by a machine, an activity or a physical condition of the workplace and not by her medical condition.

Thus, Part II of the *Canada Labour Code* protects employees against dangers that may exist in the workplace and does not seem to extend its protection to employees who may be in danger because of their own medical conditions.

In the case before us, the danger cited by Ms. Dawson is related to her medical appointment. The medical appointment as described does not fall within the domain of Part II of the *Canada Labour Code*.

I feel that the danger to Ms. Dawson does not exist.

- [4] In her response, Ms. Dawson provided information regarding her disability (autism), the events that led to her refusal to work and the nature of the danger related to her disability. She disagreed with health and safety officer Tran’s conclusion that the requirement to submit to a medical appointment following a leave of absence does not constitute an activity as set out in the Code and so a danger under the Code did not exist. The information Ms. Dawson provided remains part of the file but will not be repeated here in deference to her privacy.

- [5] Despite my greatest respect for Ms. Dawson’s medical situation, I essentially agree with health and safety officers Tran’s conclusion in Part III of her report. Under the Code, Ms. Dawson’s autism and related factors may be considered in respect of a danger connected with the use or operation of a machine or thing, a hazardous condition that exists in a work place or the performance of a work activity. However, where the hazard related to an activity is linked solely to the employee’s

own medical condition, as in this case, it is not a danger covered by the Code. I find that health and safety officer Tran's investigation and consideration of the facts in the case was reasonable and her decision of no danger to be the correct in the circumstances. For this reason, I confirm her finding.

Douglas Malanka
Appeals Officer

Decision No.: 02-023

Applicant: Michelle Dawson

Respondent: Canada Post Corporation

KEY WORDS: Refusal to work, danger, medical appointment, autism.

PROVISIONS: C.L.C: 122.1, 128, 129.(7), 146.1(1)

SUMMARY:

On March 26, 2002, Ms. Michelle Dawson, an employee with Canada Post Corporation (CPC), refused to work and attend a medical appointment required by CPC following an injury on duty absence. Ms. Dawson suffers from autism and complained that CPC had not given her sufficient prior notice of the medical appointment in writing to prepare for the medical appointment

Health and safety officer Jessica Tran investigated the refusal to work by Ms. Dawson and decided that a danger did not exist.

Following his review of the case by way of written submission, the appeals officer confirmed the health and safety officer's decision of no danger.