

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

Canada Customs and Revenue Agency

applicants

and

Public Service Alliance of Canada

employee representatives

Decision No.: 02-024

October 22, 2002

Appearances:

Mr. Roger Léger, Director of Sudbury Tax Centre, and Ms. Nicole Beskorowany,
Manager Staff Relations, Sudbury Tax Centre.

Mr. David Doyle, Regional Representative, Public Service Alliance of Canada and
Mr. John Kosiba, President Local 00042, Union of Taxation Employees, Public Service
Alliance of Canada.

Ms. Fancy Smith, health and safety officer, Human Resources Development Canada.

This case involved the review of a direction issued by health and safety officer Smith
made pursuant to section 145.(1) of the *Canada Labour Code*, Part II. An oral hearing
was held for this purpose on January 24, 2002 in Sudbury, Ontario.

- [1] On September 10, 2001, health and safety officer Fancy Smith investigated into a complaint by Mr. John Kosiba, President Local 00042, Union of Taxation Employees, Public Service Alliance of Canada, that the Canada Customs and Revenue Agency, (CCRA) had failed to establish a health and safety committee for the new satellite office located at 80 National Street in Sudbury, Ontario.
- [2] During her investigation, health and safety officer Smith met with Mr. Roger Léger, Director of Sudbury Tax Centre, CCRA. According to officer Smith, Mr. Léger said that he would not voluntarily comply with section 135.(1) of the *Canada Labour Code*, Part II, and establish a work place health and safety committee until he and Mr. Kosiba agreed on terms of reference for a committee. He said that he wished to avoid establishing a dysfunctional committee like the one at 1050 Notre Dame Street, Sudbury, and that management would continue to assure the health and safety of employees at 80 National Street until terms of reference for a committee were established.
- [3] Health and safety officer Smith issued a direction to Mr. Leger on September 19, 2001 and ordered him to comply with section 135.(1) of the Code and establish a health and safety committee by no later than October 1, 2001. See appendix.
- [4] Mr. Léger wrote to health and safety officer Smith on September 26, 2001, to appeal her direction pursuant to section 146.(1) of the Code. He held that her direction was untimely and unnecessary as he had, in fact, voluntarily agreed with her to establish the required work place health and safety committee for 80 National Street prior to her direction. His request was forwarded to an appeals officer.
- [5] At the hearing held on January 24, 2002, Mr. Léger cross-examined health and safety officer Smith following her narrative testimony. During his cross-examination, health and safety officer Smith disagreed under oath that Mr. Léger had voluntarily agreed to comply with section 135.(1) of the Code prior to the direction and establish the committee before she issued her direction. At that point, Mr. Léger withdrew his appeal and indicated that he did not wish to continue. The hearing was terminated and the file is now closed.

Douglas Malanka
Appeals Officer

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

DIRECTION TO THE EMPLOYER UNDER SUBSECTION 145(1)

On Monday, September 10, 2001, the undersigned health and safety officer conducted an inquiry at 1050 Notre Dame in the work place operated by Canada Customs and Revenue Agency, being an employer subject to the *Canada Labour Code*, Part II, at 80 National Street, Sudbury, Ontario, P3A 4C4, the said work place being sometimes known as Canada Customs and Revenue Agency, satellite office.

The said health and safety officer is of the opinion that the following provision of the *Canada Labour Code*, Part II, is being contravened:

1. Section 135.(1) of the *Canada Labour Code*, Part II

No work place health and safety committee established in accordance with the *Canada Labour Code*, Part II, , for the 80 National Street, satellite office location of Canada Customs and Revenue Agency.

Therefore, you are HEREBY DIRECTED, pursuant to subsection 145(1)(a) of the *Canada Labour Code*, Part II, to terminate the contravention no later than October 1, 2001.

Further, you are HEREBY DIRECTED, pursuant to paragraph 145(1)(b) of the *Canada Labour Code*, Part II, within the time specified by the health and safety officer, to take steps to ensure that the contravention does not continue or reoccur.

Issued at Sudbury, on, this 19th day of September, 2001.

FANCY SMITH
Health & safety officer

To: Canada Customs and Revenue Agency
80 National Street
Sudbury, Ontario
P3A 4C4

SUMMARY OF APPEALS OFFICER'S DECISION

Decision No.: 02-024

Appellant: Canada Customs and Revenue Agency

Respondent: Public Service Alliance of Canada

Provisions:

Canada Labour Code: 135.(1), 145.(1) 146.(1), 146.1(1)

Keywords: establish work place health and safety committee, dysfunctional, work place health and safety committee, voluntary compliance, direction

Summary:

On September 10, 2001, health and safety officer Fancy Smith investigated into a complaint that Canada Customs and Revenue Agency, (CCRA) failed to establish a health and safety committee for the new satellite office located at 80 National Street in Sudbury, Ontario.

Following her investigation, officer Smith issued a direction and ordered (CCRA) to comply with section 135.(1) of the Code and establish a health and safety committee by no later than October 1, 2001.

The employer wrote to health and safety officer Smith to appeal her direction pursuant to section 146.(1) of the Code. He held that her direction was untimely and unnecessary as he had, in fact, voluntarily agreed with her to establish the required work place health and safety committee for 80 National Street prior to her direction. His request was forwarded to an appeals officer.

At the hearing held on January 24, 2002, the employer withdrew his appeal and indicated that he did not wish to continue. The hearing was terminated and the file is now closed.