

CANADA LABOUR CODE
PART II
OCCUPATIONAL HEALTH AND SAFETY

Roy Peter Brown, Claude H. Fortin and
James D. Harris

applicants

and

Canadian Pacific Railway Company

employer

Decision No: 02-025
October 25, 2002

This case was heard by appeals officer Douglas Malanka on July 10, 2002 in Ottawa, Ontario and on September 17, 18 and 19, 2002, in Chapleau, Ontario.

Appearances

Ms. N. Jones, Counsel, Canadian Council of Operating Unions (United Transportation Component).

Ms. K. Fleming, Counsel, Canadian Pacific Railway Company.

Ms. B. Barca, health and safety officer, Human Resources Development Canada.

[1] On August 23, 2001, Mr. Claude Fortin, conductor, Canadian Pacific Railway Company (CPR), refused to work. He complained that he had been called upon to travel by taxi from Chapleau, Ontario to Cartier, Ontario and refused to travel on an 80 kilometer logging road. The employer informed three other employees expected to participate in the same activity for which Mr. Fortin was refusing to work. The three other employees being Messrs. R.P. Brown, J.D. Harris and R. Lortie also refused to work. The employees complained respectively:

- Refusing to travel on industrial road that is not being maintained on a regular basis. Not safe;
- Refusing to travel on an industrial road that in my opinion is not maintained on a regular basis and not safe. 50 miles of gravel and dust; and,
- Refusing to travel on an 80 kilometer logging road.

[2] Following the employer's investigation of the refusals to work, Mr. Lortie discontinued his refusal to work. The other three employees continued their refusals to work and the CPR management informed health and safety Birgit Barca of this fact.

[3] Health and safety officer Barca investigated into the refusals to work without actually attending at the work place in question and decided that a danger did not exist.

[4] The three employees who had continued to refuse to work appealed health and safety officer Barca's decision to an appeals officer pursuant to section 129.(7) of the *Canada Labour Code*, Part II.

[5] On September 19, 2002, the third day of the hearing, parties submitted a memorandum of agreement signed by Mr. Timothy Secord for the Canadian Council of Operating Unions (United Transportation Union Component), Mr. Mike Imbeault for the Canadian Pacific Railway Company and employees Roy Peter Brown, Claude H. Fortin and James D. Harris. The memorandum of agreement asked that I rescind without prejudice health and safety officer Barca's decision that a danger did not exist.

[6] In accordance with section 146.1(1) of the Code, where an appeal is brought under section 146 or under subsection 129.(7) (as with this case), an appeals officer is required to inquire into the circumstances of the direction or decision, and the reasons for it. The appeals officer may vary, rescind or confirm the direction or decision. Section 146.1(1) of the Code reads:

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). . [Underlined for emphasis.]

- [7] Having regard to the circumstances surrounding the decision of health and safety Birgit Barca dated August 30, 2001, whereby the officer did not attend at the work place in question, and noting the consent of parties dated September 19, 2002 (attached as Schedule “A”), I hereby rescind health and safety officer Barca’s decision of August 30, 2001, that a danger did not exist for Messrs Roy Peter Brown, Claude H. Fortin and James D. Harris.

Douglas Malanka
Appeals Officer

MEMORANDUM OF AGREEMENT

BETWEEN:

CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS
(UNITED TRANSPORTATION UNION COMPONENT)

("Union")

- and-

CANADIAN PACIFIC RAILWAY COMPANY

("Employer")

- and-

CLAUDE FORTIN, JAMES HARRIS, and ROY BROWN

("Refusing Employees")

WHEREAS the Union, the Employer and the Refusing Employees are parties to an appeal of the Health and Safety Officer's Decision, dated August 30, 2001 (Appeal File No. 891-2-1);

AND WHEREAS the parties are desirous of resolving this matter without recourse to further litigation;

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

1. The parties agree that the following sub-paragraphs shall issue as a Consent Order of the Appeals Officer:
 - a) The Appeals Officer, on the consent of the parties, hereby orders that the decision (including reasons dated September 18, 2001) of Health and Safety Officer Barca, dated August 30, 2001 is rescinded in its entirety.
 - b) The parties agree that the consequences of rescinding the August 30, 2001 decision are as follows:
 - i) for any and all purposes, it will be as though the decision and subsequent reasons were never issued and neither party will rely on them for any purpose;
 - ii) the rights and responsibilities of all parties and any affected employees are fully restored to those existing before the commencement of the work refusal of August 23, 2001, under the *Canada Labour Code* or otherwise;

- iii) there is no finding as to the existence or non-existence of a danger respecting the Sultan Industrial Road in whole or in part or the use thereof or travel thereon;
 - iv) the parties agree that the rescinding of the decision is without prejudice to any position any party may take with respect to the existence or non-existence of a danger on the Sultan Industrial Road in whole or in part or the use thereof or travel thereon in any future or other matter.
- c) The parties have agreed to refer the safety of and related issues arising from travel on the Sultan Industrial Road to the Local Workplace Occupational Health and Safety Committee in order to permit a full Risk Assessment to occur in accordance with the CPR Safety Plan.
2. The foregoing is a full and final settlement of all matters in dispute in Appeals File No. 891-2-1 and this settlement is without prejudice or precedent in any other matter.

DATED at Chapleau, Ontario this 19th day of September, 2002.

Employer
Signed by: M. Imbeault

Union
Signed by: T. Secord

Signed by: Claude Fortin

Signed by: James Harris

Signed by: Roy Brown

Decision No.: 02-025

Applicant: Roy Peter Brown, Claude H. Fortin and James D. Harris.

Respondent: Canadian Pacific Railway Company.

KEY WORDS: Refusal to work, danger, deadhead, logging road, dust, maintenance.

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

SUMMARY:

On August 23, 2001, four employees of Canadian Pacific Railway Company (CPR) refused to work complaining that it was unsafe to travel by taxi from Chapleau to Cartier, Ontario on an 80 kilometer logging road. Following the employer's investigation of their refusals to work, one of the employees discontinued his refusal to work. The other three employees continued their refusals to work and the CPR management informed a health and safety officer of this fact.

A health and safety officer investigated the continued refusals to work without actually attending the work place in question and decided that a danger did not exist. The employees appealed her decision of no danger to an appeals officer pursuant to section 129.(7) of the *Canada Labour Code*.

During the hearing, parties jointly requested that the decision of health and safety officer be rescinded, and agreed that the safety issues related to travel on the industrial road be referred to the local work place health and safety committee for a full risk assessment in accordance with the CPR Safety Plan.

Having regard to the circumstances related to the health and safety officer's decision dated August 30, 2001, that a danger did not exist, and noting the consent of parties, the appeals officer rescinded the decision.