

Canada Labour Code
Part II
Occupational Health and Safety

Mario Laroche

and

Canadian Auto Workers
applicants

Decision No. 04-002
February 12, 2004

This case was decided by appeals officer Michèle Beauchamp, on the basis of documents received from the health and safety officer and the union

Health and Safety Officer

Alain Messier, Human Resources Development Canada, Labour Program, Quebec Region

- [1] This case concerns an appeal submitted on September 5, 2003 pursuant to the *Canada Labour Code* Part II, on behalf of Mario Laroche, an employee of Via Rail Canada Inc., Montreal, by Robert Massé, regional representative, Canadian Auto Workers, National Council 4000.
- [2] The appeal resulted from a letter sent by health and safety officer Alain Messier on July 28, 2003 to Serge Auger, Mario Laroche's union representative, concerning a complaint Mr. Auger had submitted on the employee's behalf on June 9, 2003.
- [3] The complaint was to the effect that Via Rail Canada's local occupational health and safety committee had failed to respond appropriately to a complaint filed by employee Laroche on March 3, 2003.
- [4] Health and safety officer Alain Messier duly followed up on Mr. Laroche's complaint and met with the parties involved. He conducted a thorough investigation, after which he was assured that the employer would provide a satisfactory response to the employee's complaint.
- [5] The health and safety officer wrote the applicant on July 28, 2003 to inform him of the outcome of his investigation, and, since the employer had complied, he closed the file.

- [6] It was in relation to this letter from health and safety officer Alain Messier that Robert Massé filed the appeal on Mario Laroche's behalf.
- [7] Only two provisions of the *Canada Labour Code* Part II authorize the appeals officer to hear an appeal, these being subsections 129(7) and 146(1). These provisions address two entirely different situations.
- [8] Under subsection 129(7), an employee who refuses to work may appeal the decision of no danger rendered by the health and safety officer investigating the employee's refusal to work. This subsection reads as follows:
- 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.**
- (underlining mine)*
- [9] Under subsection 146(1), this appeal shall pertain to the direction issued by the health and safety officer and shall be filed by an employer, an employee or a trade union that feels aggrieved by the direction. The subsection reads as follows:
- 146(1) An employer, employee or trade union that feels aggrieved by a direction issued by a health and safety officer under this Part may appeal the direction in writing to an appeals officer within thirty days after the date of the direction being issued or confirmed in writing.**
- [10] In this case, the appeal filed by Robert Massé on Mario Laroche's behalf does not concern a decision of no danger by health and safety officer Messier following an investigation of a refusal to work since Mario Laroche had not refused to work.
- [11] Nor does the appeal concern any directions by health and safety officer Messier after he investigated the complaint by Mario Laroche that purportedly aggrieved the employer, employee or trade union concerned, since the health and safety officer did not give the employer any direction.
- [12] Consequently, as an appeals officer authorized by the *Canada Labour Code* Part II, I have no legal authority to hear this case, since it does not relate to a decision of no danger or the issuance of a direction.
- [13] The case is dismissed.

Michèle Beauchamp
Appeals Officer

Summary of Appeals Officer's Decision

Decision No.: 04-002

Applicants: Mario Laroche and Canadian Auto Workers

Key words: Complaint, appeal

Provisions: *Code* 129(7), 146(1)
Regulations

Summary:

The appeal concerns a letter sent to an employee by a health and safety officer following an investigation by the latter into a complaint filed with him by the employee pertaining to the fact that the local health and safety committee had failed to appropriately address a complaint he had made to it.

The appeals officer has no legal authority, under the *Canada Labour Code*, Part II, to hear the appeal in question. The appeal is not related to a decision of no danger by the health and safety officer since the employee did not refuse to work, nor to a direction that purportedly aggrieved the employer, employee or trade union concerned, since the health and safety officer did not give the employer any direction after investigating the employee's complaint.