Canada Appeals Office on Occupational Health and Safety
Bureau d'appel canadien en santé et sécurité au travail

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Canada Labour Code
Part II
Occupational Health and Safety

Michel Roy
applicant

and

Air Canada
employer

Decision No.: 04-007
March 12, 2004

This case was decided by Pierre Rousseau, appeals officer.

[1] This case concerns an appeal made on August 8, 2003 by Beth Symes, from Eberts Symes Street Pinto and Jull, on behalf of the Air Canada Component of the Airline Division of the Canadian Union of Public employees (The Union) and the Montreal Workplace Committee for Michel Roy, an employee of Air Canada, under sections 146 and 146.1 of the *Canada Labour Code* (the *Code*), Part II.

[2] The appeal was made as a result of the decision of Occupational Health and Safety Inspector Marie-Anyk Côté not to pursue a complaint of Mr. Roy against his employer Air Canada, to the effect that they had not received a written response to a recommendation of the Workplace Safety and Health Committee. The complaint read as follows:

> "Whereas November 6th 2002 and again January 6th 2003 a recommendation was submitted by our Workplace Committee to AOSH Manager Mark Olivier.
>
> To this date, we still have not received any written response to our recommendation.
>
> We believe this to be in contravention of the *Canada Labour Code (sic*), Part II paragraph 125.(1)(*z.10*).
>
> Herewith we respectfully ask that you exercise your jurisdiction as TC Health and Safety Officer in regards to our complaint (*sic*)"

[3] In her answer dated July 10, 2003 to the complainant Mr. Roy, Inspector Côté informed him that the issue on which the complaint was based upon was not covered by the *Code* nor in its pursuant *Aviation Occupational Health and Safety Regulations* and she concludes her letter by mentioning that:

> "We regret that we cannot be of more assistance and wish you success in pursuing the matter under your collective agreement."

[4] In her notice of appeal dated August 8, 2003, pursuant to sections 146 and 146.1 of the *Code,* Beth Symes appeals for her client the Decision and Direction of Health and safety Officer Marie-Anyk Côté dated July 10, 2003. The grounds for appeal included:

> "1. The safety officer failed to investigate and / or to address the only issue in the Union's complaint dated February 7, 2003, namely that the employer failed to respond en writing within thirty (30) days to a recommendation made by the Montreal Workplace Committee which is contrary to section 125(1)(*z.10*) (*sic*) of Part II – Occupational Safety and Health of the *Canada Labour Code*.
>
> 2. In the alternative the Decision and direction contain serious errors of law in the interpretation of the *Code* and the *Occupational Health and Safety Regulations*.
>
> 3. The safety officer was not asked to investigate the health and safety issue of nourishment for cabin personnel. Nonetheless, she erroneously ruled that this matter was not covered by the *Code.* The employer's failure to provide nourishment to cabin personnel for very lengthy periods of work is contrary to the employer's obligation to protect the health and safety of its workers as set out in section 124 of the *Code*.
>
> 4. The safety officer was wrong in law to refuse to investigate and / or address the health and safety issue on the basis that there is provision for meal allowances in the collective agreement. Specifically, the employer's obligations under the collective agreement do not relieve the company from its health and safety obligations under the *Code*.
>
> 5. Such further and other grounds that may arise from the safety inspector's report.
>
> Dated at Toronto this 8th day of August 2003."

[5] Despite what Ms. Symes may think, the decision of Safety Officer Côté not to pursue Mr. Roy's complaint (which complaint might be justified), does not constitute a decision that can be appealed under subsection 129(7) or section 146 of the *Canada Labour Code,* Part II. As specified in section 128 of the *Code*, a decision of no danger, which would give Ms. Symes the right to appeal, can only exist after an employee has refused to work and, as stipulated in subsection 129(4) of the *Code*, a health and safety officer has rendered a decision concerning the absence of danger. As indicated in subsection 129(7) of the *Code*, this is the only type of decision that can be appealed. These provisions read as follows:

> 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.

129. (1) On being notified that an employee continues to refuse to use or operate a machine or thing, work in a place or perform an activity under subsection 128(13), the health and safety officer shall without delay investigate or cause another officer to investigate the matter in the presence of the employer, the employee and one other person who is an employee member of the work place committee; the health and safety representative; or if a person mentioned in paragraph (*a*) or (*b*) is not available, another employee from the work place who is designated by the employee

(4) A health and safety officer shall, on completion of an investigation made under subsection (1), decide whether the danger exists and shall immediately give written notification of the decision to the employer and the employee.

(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.

[6] In short, an appeals officer only has the legal authority to intervene in a situation when, as stipulated in section 146.1 of the *Canada Labour Code*, the law authorizes him or her to do so: 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…

[7] As Safety Officer Côté in her intervention did not issue a direction but only sent a letter, and as section 146 refers only to a direction issued by a health and safety officer under Part II of the *Code* and not his decision, I don't have the authority to receive such an appeal.

[8] I conclude in this particular case that I have no legal authority to hear this case. I therefore dismiss Ms. Symes' request. This file is now closed.

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Pierre Rousseau
Appeals Officer

Summary of Decision

Decision No.: 04-007

Applicant: Michel Roy

Employer: Air Canada

Key Words: Decision, direction, complaint

Provisions:

***Code*:** 128(1), 129(1), 129(4), 129(7), 146.1

***Regulations*:**

Summary:

The applicant appealed a decision of not intervening in a complaint made by a health and safety officer, following a complaint investigation. The appeals officer concluded that he did not have the legal authority to hear the appeal and therefore dismissed it.