

**Canada Labour Code**  
**Part II**  
**Occupational Health and Safety**

Steve Nelson  
*applicant*

and

Duke Energy Gas Transmission  
*employer*

---

Decision No. 04-012  
March 16, 2004

This case was decided by Douglas Malanka, appeals officer.

- [1] On November 12, 2002, Mr. Barrie Bell, Multi Tech Operator with Westcoast Energy Inc. (carrying on business as Duke Energy Gas Transmission Canada), refused to operate the Gas Plant board and the Condensate and Fractionation board on his own without a backup employee. According to Mr. Bell's complaint, it was dangerous to operate both boards without backup because he could not shut down the Condensate and Fractionation Board safely while operating both boards on his own. He also complained that it was too stressful to operate the two boards on his own. After Mr. Bell refused to work, Mr. Mike Sandnes, a Gas Plant Operator, Tech I, with the Company was asked to perform the work. Mr. Sandnes refused to work for the same reasons as Mr. Bell.
- [2] Health and safety officer Lyn Peters investigated into the refusal to work and, following her investigation, decided that a danger did not exist for either employee. She explained that the facts in the case did not support a finding that the hazards feared by the employees who refused to work were capable of coming into existence or that the hazards could reasonably be expected to cause injury or illness to Mr. Bell or Mr. Sandnes before they could be corrected. She noted in her decision that the definition of "danger" in the *Code* allows for potential hazards or conditions to be taken into account, but, the concept of reasonable expectation excludes hypothetical or speculative situations. Health and safety officer Peters advised Messrs Bell and Sandnes of her decision on November 20, 2002.

- [3] On November 23, 2002, Mr. Steve Nelson, Employee Co-chair of health and safety committee at Duke Energy Gas Transmission appealed the decision of health and safety officer Peters pursuant to subsection 129.(7) of the *Canada Labour Code* on behalf of Messrs Bell and Sandnes and employee members of the aforementioned health and safety committee. However, Mr. Nelson subsequently withdrew the appeal on December 30, 2002, on behalf of Messrs Bell and Sandnes and employee members of the health and safety committee, stating that they were unable to give concrete evidence that an incident would occur in the future, even though they were convinced in their own mind that it would.
- [4] Notwithstanding the caveat in their withdrawal, which I regard as being somewhat disingenuous given the decision to withdraw their appeal, I hereby accept their withdrawal without prejudice, and confirm that the file is closed. Nothing by this action relieves Westcoast Energy Inc. employers or employees from their duties under the *Code* to ensure that the workplace is safe.

---

Douglas Malanka  
Appeals Officer

## **Summary of Decision**

**Decision No.:** 04-012

**Applicant:** Steve Nelson

**Employer:** Duke Energy Gas Transmission

**Key Words:** Decision, refusal to work, gas plant, board operator

**Provisions:** *Code* 129(7)  
Regulations

### **Summary:**

The applicant appealed a decision of no danger issued by a health and safety officer, following a refusal to work. The applicant further withdrew its appeal and the appeals officer closed the file.