

Canada Labour Code
Part II
Occupational Health and Safety

Securicor Canada Limited
applicant

and

National Automobile, Aerospace,
Transportation and general Workers Union
of Canada (CAW Canada) Local 114
the Union

Decision No. 04-023
July 23, 2004

This decision involved an appeal brought under section 146 of the *Canada Labour Code* (hereto referred to as the *Code* or Part II) of a letter, dated June 15, 2004 (that the employer considers a direction) of a health and safety officer explaining why he refused to intervene in a refusal to work.

Applicant:

Employer representative: Peter Archibald Legal Advisor
Davis and Company

This case was decided by Pierre Rousseau, appeals officer.

- [1] This case concerns an appeal made on July 14, 2004 by Peter Archibald Legal Advisor, from Davis and Company, on behalf of Securicor Canada Limited (The Employer), 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 letter dated June 15, 2004 of health and safety officer Mac Maxton not to pursue an investigation of a refusal to work made by employees Paul Luem and Rick Woodruff, on June 14 2004. The appeal reads as follows:

“1. This is an appeal of directions issued in a decision letter dated June 15, 2004 by Mac Maxton, Health and Safety Officer, Labour Program, BC/YT Region. (See Appendix A)

2. The June 15, 2004 decision is written confirmation of directions given verbally on June 14, 2004 when the Health and Safety Officer directed that an employee could proceed with a work refusal complaint under the Collective Agreement between the parties instead of Part II of the *Canada Labour Code*.
3. In essence, the Health and Safety Officer made two directions:
 - (a) that the selection of remedy was valid and that the issue in dispute could proceed to resolution under the collective agreement;
 - (b) that the scope of his jurisdiction did not include a consideration of the conditions precedent set out in section 128.(7).
4. The Health and”

- [3] In accordance with section 146 of Part II of the *Code*, an employer that feels aggrieved by a **direction issued** by a health and safety officer **under this Part** may appeal the direction in writing to an appeal officer.
- [4] A direction issued under Part II of the *Code* must be done in accordance with section 145, which stipulate what it should contain.

“Direction to terminate contravention

145. (1) A health and safety officer who is of the opinion that a provision of this Part is being contravened or has recently been contravened may direct the employer or employee concerned, or both, to

- (a) terminate the contravention within the time that the officer may specify; and
- (b) take steps, as specified by the officer and within the time that the officer may specify, to ensure that the contravention does not continue or reoccur.

Confirmation in writing

(1.1) A health and safety officer who has issued a direction orally shall provide a written version of it

- (a) before the officer leaves the work place, if the officer was in the work place when the direction was issued; or
- (b) as soon as possible by mail, or by facsimile or other electronic means, in any other case”.

- [5] Despite what Mr. Archibald may think, the decision of health and safety officer Maxton not to pursue Mr. Lumen and Mr. Woodruff refusal to work because they have decided to proceed under their collective agreement and the letter he wrote to confirm it, can not be considered as a direction issued under Part II.
- (a) First the health and safety officer has to be of the opinion that a provision of Part II is being contravened or has recently been contravened. In the present case the officer never mentioned in his letter that he was of the opinion that Part II was or had recently been contravened.

- (b) Second the health and safety officer did not direct the employer or employees concerned, or both, to terminate a contravention within the time that he could have specified; and to take steps, as specified by him and within the time that he could have specified, to ensure that the contravention does not continue or reoccur.
- (c) In his letter of June 15, 2004 to Securicor, officer Maxton mentions mainly that:

“You are correct in your observation that Securicor has effectively followed the process laid out in the *Canada Labour Code* Part II (sic) in regard to the ongoing Internal Complaint Resolution Process. Five of the matters which Securicor provided assurances for are completed, and the three outstanding items are close to resolution. Further, you are correct that HRSDC – Labour Program has an obligation to continue to be involved in matters relating to anything concerning the Health and Safety of Securicor employees insofar as we have regulatory authority granted under the *Canada Labour Code* Part II (sic).

On the matter of the Refusal to Work if Danger, the *Canada Labour Code* (sic) is clear on process. For ease of reference the relevant section follows:

128 (7) (sic).....

The above noted section leaves neither the employer or the Health and Safety Officer any latitude, but places the choice of recourse with the employees. Further section 128 does not depend on any other ongoing process or circumstances other than those prescribed in the body of Section 128. Therefore an employee may invoke their (sic) right to refuse dangerous work at any time, irrespective of other processes that may have already been initiated to address the employee's concerns.

The topic

In this case, HRSDC – Labour Program carried out its mandate as dictated by the *Code*. HSO Peters and I responded promptly to the refusal to work. However, once it was determined that the employees were refusing under the collective agreement, as permitted by 128.(7), our mandate ceased”.

In this letter, what I can read is that officer Maxton only justified his decision of not intervening to investigate the refusal to work of Luem and Woodruff.

- [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 officer Maxton in his 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 Mr. Archibald's request. This file is now closed.

Pierre Rousseau
Appeals Officer

Summary of Decision

Decision No.: 04-023

Applicant: Securicor

Union: CAW Canada Local 114

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 refusal to work if danger made by a health and safety officer, following a refusal to work under a collective agreement in place that provided for a redress mechanism. The appeals officer concluded that he did not have the legal authority to hear the appeal and therefore dismissed it.