

Canada Labour Code
Part II
Occupational Health and Safety

Waldin Williams
applicant

and

Airport Group Canada Inc.
respondent

Decision No.: 05-031
July 8, 2005

This case was heard on June 22, 2005, by Katia Néron, Appeals Officer, in Toronto, Ontario.

Appearances

For the applicant

Ian Bennie, National Health and Safety Coordinator, Canadian Auto Workers, Airline Local #2002

Waldin Williams

For the respondent

Kathleen Chadwick, Manager, Baggage Operations, Airport Group Canada Inc.

Health and safety officer

Greg Garron, Human Resources and Skills Development Canada, Labour Program, Toronto, Ontario

- [1] This case concerns an appeal made on February 6, 2003 by Waldin Williams, under subsection 129(7) of the *Canada Labour Code*, Part II, against a decision of absence of danger issued by health and safety officer (HSO) Greg Garron after he investigated the employee's refusal to work on January 29, 2003.
- [2] According to the HSO Garron's investigation report, on January 28, 2003, W. Williams refused to work at the L21 Run-Out conveyor because he believed that, without jersey barriers to protect him, he could be hit by a tractor because:
- the vehicle operators were driving too fast, in a careless manner, and were losing control, especially when the floor was wet;

- the space at his work place was reduced by containers being double-parked and this increased the risk of being hit by a vehicle;
- a vehicle was recently unable to stop in time and hit the roll-up door at the end of the Lateral Door M1BP117A; and
- the door M1BP117A had been hit by vehicles a few times in the last months.

[3] Waldin Williams' refusal to work statement is as follows, as noted in HSO Garron's report:

I Waldin Williams sincerely believe working at L21 with out jersey barriers is a safety hazard to my life. I reported this issue to my supervisor and colleagues about my concern on January 26, 27, 28, 2003, in which they agree and move me to work in a different area.

On January 28, 2003, I report for my 15:00hr schedule. I was taken back to L21 to work. However they refuse to put something in place to protect my life. This area is heavily, used, tracks having ten carts without control.

I've see numerous accidents happen even under less condition, even put into consideration the weather condition. Take a look at the roll-up doors in this area and the barriers put in place to protect the belt system and you will understand my concern.

Even some of my colleagues (BSO) share the same safety hazard concern with me.

[4] The area where W. Williams was working when he refused to work was the Lateral 21 Run-Out Area (L21) of Terminal 3 at the Lester B. Pearson International Airport, in Toronto. This area is a baggage room where luggage is loaded onto baggage containers. The containers were parked adjacent to conveyors, loaded and then attached to a tractor to be brought outside to the aircraft.

[5] W. Williams' job was to record information from luggage coming on the L21 Run-out conveyor. It was a new duty created from the Baggage System Operator (BSO) position, to re-integrate W. Williams back to work following his absence due to an injury. At the time, no other BSOs were assigned to this function.

[6] HSO Garron decided that a danger did not exist for W. Williams because:

- he was authorized by his employer to be in the materials handling area while the materials handling operations were in progress;
- he was provided with a safety vest;
- he was familiar with working in this environment;

- the procedure was that baggage containers were not supposed to be double-parked, although, from time to time containers were double-parked while they were being staged;
- if containers were double-parked, employees had to report it to their supervisor, who would then contact the ground handler to have them removed;
- roll-up door M1BP117 at the opposite end of the Lateral had never been hit; and
- there was no known incident reported of employees working in this area who had been struck by a vehicle.

[7] HSO Garron confirmed his decision of absence of danger in writing on January 31, 2003. However, HSO Garron added in his report:

Notwithstanding this decision, there were risks associated with working in close proximity to motorized materials handling equipment. The damage to the steel I-Beam bollards and to the roll-up door is evidence to support Mr. Williams' claims that vehicle operators are driving in careless manner. Mr. Williams' concerns about vehicle operators driving at excessive speeds should be dealt with by the employer by continued supervision and enforcement of speed limits in the baggage rooms.

The workplace health and safety committee should review this incident to determine if there are other measures that could be implemented to enhance the safety of employees required to work at the Lateral 21 Run-out.

[8] HSO Garron also took pictures at L21 at the time of his investigation, which formed part of his report and that I examined closely.

[9] Several of the pictures showed that bollards were set up in front of each two conveyors present in the area. However, I noticed that there was not enough space for the employee to stand between the conveyors and the bollards put there to protect the employee. Also, there was no clearly marked pathway along the conveyors for the exclusive use of pedestrians or an employee working in front of the conveyors. On other pictures, bollards and a caution tape were set up in front of the corner chair placed beside the roll-up door. On some others, there were pools of water and water marks on the floor left by the tractor and container wheels, and some accumulation of water on the floor near a roll-up door. I also observed that the roll-up door and the base of a yellow I-beam had been damaged. Finally, I could see that most of the bollards were covered by black mats.

[10] Based on my observations and because I found that HSO Garron's investigation report did not explain clearly how the job was done, I decided to hold a telephone conference call with both parties on June 1, 2005, to clarify three different points:

- did the worksite involved in the refusal to work (Lateral 21 Run-Out Area) still exist?

- were the employees still doing the job involved in the refusal to work and in the same way that W. Williams did?
- how was W. Williams doing his job exactly?

[11] At the telephone conference call, K. Chadwick stated that:

- the Lateral 21 Run-Out (L21) still existed, but changes had been made in the work place since W. Williams' refusal to work;
- employees worked there as Baggage System Operators but using a different procedure than at the time that W. Williams refused to work;
- W. Williams' job had been created to re-integrate him back to work after an absence due to an injury;
- W. Williams was not doing his job sitting on the corner chair but had to move around in front of the L21 conveyor.

[12] Following this information, as part of my hearing on the matter, I decided to visit the work place on June 22, 2005, in the presence of both parties, to better gather all the information needed to make a sound decision.

[13] W. Williams testified at the hearing. I retain the following from his testimony.

[14] W. Williams stated that he had to do his job standing in front of conveyor L21 at the same time as the baggage containers attached to a tractor were entering the work place and passing rapidly in close proximity behind him.

[15] Because there was no barricade to protect him, he felt that he was exposed to contact with moving vehicles during his job. He stated that bollards were protecting the conveyor from any contact with moving vehicles but that he did not feel protected in the same way as the conveyor.

[16] Because he had seen jersey barriers in front of conveyors in another baggage room area, Mr. Williams asked for that type of barrier which could, in his mind, ensure his protection.

[17] W. Williams argued that, at the time of his refusal to work, the floor inside the work place was getting wet due to the tractor and baggage containers coming from outside, because it was wintertime. In this regard, he pointed out different pictures taken by HSO Garron, which showed pools of water and water marks on the floor left by the tractor and container wheels and the wet floor near the roll-up door. W. Williams argued that this situation caused moving vehicles to slide. He believed that the wheel marks left on the floor proved that vehicles had already skidded across the floor and that could increase the possibility that moving vehicles could strike him.

- [18] W. Williams argued that the damages to the roll-up door and to the steel I-beam bollards throughout the baggage room, which could be seen in several pictures taken by HSO Garron, were the result of being struck by with moving vehicles. He believed that it proved that the vehicles were being driven fast and in a careless manner.
- [19] W. Williams also mentioned that, to his knowledge, there was one incident where a BSO had been hit by a tractor, which was reported in the minutes of a work place health and safety committee meeting.
- [20] W. Williams finally stated that he did not receive any instruction on how to protect himself from contact with moving vehicles. In his mind, when he had to record information from the luggage coming on the conveyor, he had to stay in front of the conveyor to do so even with moving vehicles passing right behind him.
- [21] K. Chadwick, Baggage Operations Manager for the employer, also testified during the hearing. I retain the following from her testimony.
- [22] K. Chadwick stated that bollards were placed in front of each conveyor to ensure the protection of the equipment, *i.e.* emergency cord, belt and the conveyor itself, from being hit by moving vehicles.
- [23] K. Chadwick said that the jersey barriers to which W. Williams previously referred were set up adjacent to a conveyor in another area as a security perimeter, because of construction work being performed at the time.
- [24] K. Chadwick also stated that there were drains to prevent the accumulation of water on the floor. She added that the floor is shot-blasted to make the surface less slippery.
- [25] Concerning the speed of the vehicles, K. Chadwick declared that the tractors were driven by employees hired by another company. However, to her knowledge, the speed of the tractors was controlled by a governor system and limited to approximately 4 to 5 kph.
- [26] In addition, K. Chadwick mentioned that the roll-up doors were closed during wintertime. A sensor detected when tractors were approaching and opened the door. This meant that drivers had to stop before entering the baggage room area.
- [27] K. Chadwick confirmed that W. Williams did not receive any instruction on how to protect himself from contact with moving vehicles. However, the employer had given him a high-visibility vest. The employer had also provided him personal safety equipment and clothing, *i.e.* safety boots, hard hat and gloves.
- [28] K. Chadwick argued that she never asked W. Williams to stay in front of the conveyor when moving vehicles were passing behind him. In her mind, W. Williams could move whenever he needed to.

- [29] In addition, K. Chadwick stated that there was an audible warning device to warn employees when the roll-up doors opened. Consequently, she believed that W. Williams was aware that moving vehicles were coming and had time to move out of the way.
- [30] K. Chadwick finally stated that she was not aware of any incident where a tractor had collided with an employee.

- [31] The issue to be addressed in this case is whether or not HSO Garron erred when he decided that a danger did not exist for W. Williams at the time of his investigation. For this, I must consider the definition of danger found in the *Code* as well as the facts and the circumstances in the case.
- [32] Subsection 122 (1) of the *Code* defines danger as follows:
- “danger” means any existing or potential hazard or condition or any current or future activity that could reasonably be expected to cause injury or illness to a person exposed to it before the hazard or condition can be corrected, or the activity altered, whether or not the injury or illness occurs immediately after the exposure to the hazard, condition or activity, and includes any exposure to a hazardous substance that is likely to result in a chronic illness, in disease or in damage to the reproductive system.
- [33] In accordance with the definition of danger in the *Code*, I must determine that there was a danger for W. Williams if the existing or the potential hazard could reasonably have been expected, in the circumstances, to cause him injury before the hazard or condition could have been corrected, or the activity altered.
- [34] In the present case, the potential hazard for W. Williams was to be hit by moving vehicles in front of L21.
- [35] In her testimony, K. Chadwick opined that the tractors were not moving too fast because of their speed control system and because the drivers had to stop before entering the baggage room area to let the door open. She also believed that with the shot-blasted floor and the presence of drains to control the accumulation of water inside, the chance of moving vehicles skidding was reduced. However, I could clearly deduct from HSO Garron’s photos that the presence of skid marks was consistent with skidding.
- [36] In his investigation report, HSO Garron also mentioned that, because of the damages he saw to the steel I-beam bollards and to the roll-up door, he believed that there were risks associated with working at close proximity to moving motorized materials handling equipment. In this case, I would agree with HSO Garron.

- [37] Both parties agreed that W. Williams had not received specific instruction on the modified job that was created for him. The only instruction given to him was to wear a high-visibility vest and personal safety equipment and clothing provided by the employer. I am convinced that without any other specific instruction on how to do his work, W. Williams could believe that he would not be able to move out of the way of moving vehicles.
- [38] Based on the facts and the circumstances presented above, I find that the potential hazard of being hit by moving vehicles did exist and could reasonably have been expected to cause injury to W. Williams before the hazard or condition could have been corrected or the activity altered.
- [39] As a consequence, I disagree with the conclusion of health and safety officer Garron and I find that a danger existed for W. Williams at the time of the health and safety officer's investigation.
- [40] However, because W. Williams is not working any longer, I will not issue a direction pursuant to subsection 145 (2) of the *Code*. Nonetheless, I will point out to the employer, Airport Group Canada Inc., that the *Code* requires him to ensure the health and safety of his employees at all times. Therefore, the employer must always conduct a risk assessment when, as he did when he re-integrated W. Williams to work after his injury, he is altering an existing task or implementing a new task, in order to determine the appropriate measures to ensure the protection of his employees.

Katia Néron
Appeals Officer

Summary of Appeals Officer's Decision

Decision No.: 05-031

Applicant: Waldin Williams

Respondent: Airport Group Canada Inc.

Key Words: Refusal to work, contact with moving vehicles, danger

Provisions: *Canada Labour Code* 129(7)
Regulation

Summary:

An employee refused to work because of the possibility of being hit by moving vehicles passing close to him while he was working.

The health and safety officer decided that there was no danger at the time of his investigation.

The Appeals Officer found that a danger existed and rescinded the health and safety officer's decision. Because the job had been modified from existing duties in order to re-integrate the employee back to work and because the employee is not working any longer, the Appeals Officer did not issue a direction.