

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

Teamsters Canada Rail Conference  
*applicant*

and

Canadian National Railway  
*employer*

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Decision No.: 05-032  
July 25, 2005

This case was decided by Pierre Guénette, appeals officer.

- [1] This case concerns an appeal made on October 7, 2004 by Michael Wheten, Chairman, Teamsters Canada Rail Conference (The Union) on behalf of Michael Campbell, employee of Canadian National Railway (CNR), under subsection 129 (7) of the *Canada Labour Code* (the *Code*), Part II.
- [2] The appeal was made as a result of the decision of no danger rendered on September 5, 2004 by health and safety officer Brian Abbott (HSO Abbott), following M. Campbell's refusal to work made on September 5, 2004 in Hamilton, Ontario.
- [3] The statement of the refusal to work as reported in the Investigation Report and Decision of HSO Abbott was the following:
1. As I am unfamiliar with the portion of track requested to operate over, with the fog and uncertainty I feel I am being asked to work in an unsafe environment to others and myself.
- [4] The investigation was done on September 5, 2004 by HSO Abbott.
- [5] The facts established by HSO Abbott are the following:
1. On June 5, 2004, Transport Canada has been notified by CNR that a refusal to work was in progress at the CN Rail Yard in Hamilton, Ontario. HSO Abbott was assigned to investigate the refusal to work of Michael Campbell, Engineman for CNR. The employer had informed HSO Abbott that all steps in Section 128 of the *Code* had been completed.

2. In the course of his investigation, HSO Abbott has been informed by M. Campbell that he had not operated in over a year in the territory that he was assigned to work. He added that he did not feel safe operating over an unfamiliar territory and at the time he exercised his refusal to work, it was very foggy. At the time of M. Campbell's interview the fog had cleared. M. Campbell told HSO Abbott that even though there was no more fog he would not operate the train.
3. M. Campbell said to HSO Abbott that he had in his possession all the required information and job aids to operate the train in the territory where he was asked to go. It has been established by HSO Abbott that the employer had offered track diagrams to M. Campbell illustrating the signal locations in the area where he was supposed to go.
4. However, Randy Barlow, a health and safety representative expressed the same opinion as M. Campbell to HSO Abbott that a locomotive engineer should not operate over unfamiliar territory without a locomotive engineer pilot.

[6] Then HSO Abbott concluded in his decision that:

It was my conclusion that there was "no danger" within the purview of section 128(1) of the *Canada Labour Code*, Part II to support Engineman Campbell's right to refuse dangerous work, because the potential hazard was based on his perception of the conductor's inability to perform his duties in a piloting position.

[7] On September 5, 2004, the employee as well as employer representatives were notified of HSO Abbott's decision.

[8] On July 19, 2005, HSO Abbott informed the appeals officer that on May 6, 2005, Mike Wheten from the Teamsters Canada Rail Conference had withdrawn their appeal in the refusal to work of M. Campbell.

[9] I hereby accept the union's withdrawal, and confirm that the file is closed.

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Pierre Guénette  
Appeals Officer

## Summary of Decision

**Decision No.:** 05-032

**Applicant:** Teamsters Canada Rail Conference on behalf of Michael Campbell

**Employer:** Canadian National Railway

**Key Words:** Decision, refusal to work, locomotive unsafe environment, no danger

**Provisions:** *Code* 128(1), 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 his appeal and the appeals officer closed the file.