

Canada Labour Code
Part II
Occupational Health and Safety

Mike Coene
applicant

and

Canada Border Services Agency
employer

Decision No.: 05-033
August 10th, 2005

This case was decided by Pierre Guénette, appeals officer.

- [1] This case concerns an appeal made on July 5, 2005 by Mike Coene, Customs Inspector for the Canada Border Services Agency (CBSA), 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 June 27, 2005 by health and safety officer Paul G. Danton (HSO Danton), in the refusal to work made by Mike Coene on June 22, 2005 at the Sarnia Municipal Airport, in Sarnia, Ontario.
- [3] The statement of the refusal to work as reported in the Investigation Report and Decision of HSO Danton is the following:

Refused to work due to unsafe working conditions – expected by employer to clear inbound aircraft without proper officer presence.
- [4] The facts established by HSO Danton are the following:
 - 1. M. Coene felt that the employer is not protecting customs inspectors in an appropriate manner, and their protection must be considered when they are required to clear an inbound aircraft;
 - 2. During the day time, only one customs inspector is assigned;
 - 3. When police presence is required the response time may be longer;
 - 4. There is no established policy or procedure on who initiates a call for police presence where a customs inspector is confronted with a situation where he is not in a position to make the call.

5. Since ‘‘911’’ there is an ongoing review of procedures at Canada Customs and Revenue Agency (CCRA), including the need for a job hazard analysis;
6. Prior to the customs inspector being assigned to clear an aircraft, a number of checks are done before coming into contact with passengers;
7. Regarding this case at the Sarnia Municipal Airport, a Griffin Air Piper private plane landed with three passengers and the pilot. All four persons had been cleared by the checks and were recorded very low risk;
8. M. Coene was aware of this information. However upon his arrival at the airport, he informed his supervisor of his refusal to work. He felt the work was unsafe;
9. The superintendent arrived at the Sarnia Municipal Airport to perform the checks accompanied by Mr. Coene. The checks were carried out without incident. In light of the presence of the second inspector, Mr. Coene then withdrew his refusal to work.

[5] Following his investigation, HSO Danton concluded in his decision that:

- 1– There was evidence that Mr. Coene was informed in advance that passengers were low risk;
- 2– Mr. Coene is a 14 year experienced customs inspector who has all the necessary training and skills needed to perform the duties;
- 3– M. Coene had on numerous occasions checked planes by himself; and
- 4– According to CCRA, there has never been an assault on a customs inspector during the clearing of a plane.

[6] In his investigation report’s conclusion HSO Danton wrote the following:

I was unable in this circumstance to establish that there was a reasonable expectation that any danger would be present or that any injury may occur to Mr. Coene during the performance of checking the Griffin Air Navajo aircraft that had on board three passengers and a pilot.

[7] A written notification of No Danger was issued on June 27, 2005, to the CBSA – Bluewater Bridge-Sarnia, Ontario.

[8] On August 1, 2005, Mr. Mike Coene sent a Fax to the hearing coordinator of the Canada Appeals Office indicating his intention to drop the case and not carry on any further with the appeal of the decision.

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

Pierre Guénette
Appeals Officer

Summary of Decision

Decision No.: 05- 033

Applicant: Mike Coene

Employer: Canada Border Services Agency

Key Words: Customs Inspector, checking the plane, refusal to work, decision, no danger

Provisions: *Code* 128, 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.