

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

Renald Brousseau  
*applicant*

and

Canadian National Railway Company  
*employer*

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Decision No. 05-038  
September 9, 2005

This case concerning an appeal filed pursuant to subsection 129(7) of the *Canada Labour Code*, Part II, was decided by appeals officer Katia Néron.

**For the applicant**

Renald Brousseau, motor vehicle assistant

**For the employer**

Michel Huart, general counsel for “Canadian National Railway Company” (Canadian National)

**Health and safety officer**

Mario Thibault (No. QC4466)  
Human Resources and Skills Development Canada  
Labour Program  
Montreal, Quebec

- [1] This case concerns an appeal filed pursuant to subsection 129(7) of the *Canada Labour Code*, Part II, by Renald Brousseau on January 9, 2004, against a decision of no danger rendered on January 6, 2004, by health and safety officer (HSO) Mario Thibault, after his inquiry into the refusal to work by R. Brousseau.
- [3] According to the investigation report submitted by HSO Thibault, on December 23, 2003, R. Brousseau was unloading vehicles from a railcar positioned on track MC 95 in the employer’s Tashereau shunting yard located on Cavendish Blvd in Ville Saint-Laurent, Montreal, Quebec, for the purpose of driving them to a parking lot area. R. Brousseau exercised his right of refusal to work because he believed it was dangerous for himself and other employees to carry out the work in question given that trains were circulating in the immediate vicinity along track MC 93-94.

[4] The reasons presented in support of R. Brousseau's refusal to work were as follows:

- at that time of year (winter), there was a risk that drivers, after removing vehicles from the railcar and turning their front wheels to change direction, were at risk of skidding onto the adjacent track because of the presence of snow or ice, or being caught on the adjacent track with a train bearing down on them;
- in addition, after unloading a vehicle from the railcar located on track MC 95, certain employees had the habit of driving towards track MC 93-94, and then turning back in the direction of tracks MC 96 and MC 97, in order to get to the lot where the vehicles were to be parked;
- although tracks MC 95, MC 96 and MC 97 are protected by blue flags whenever vehicles are being unloaded, no audible warning is given to the employees working on these tracks by the locomotive engineers setting their trains in motion or circulating on track 93-94;
- occasionally the motorized ramp used to unload vehicles from the railcar would be pointed in the direction of track MC 93-94, where a train would be circulating at the same time;
- in order to install portable gangways between cars, or for reasons unknown to R. Brousseau, employees would sometimes walk on foot between tracks MC 93-94 and MC 95;
- even though a derailment was always possible, for reasons such as trains causing the rails to vibrate which might then create a break in the well-worn rail metal, R. Brousseau also indicated that when he acted as a railcar inspector, employees were always asked to move aside if there was a moving train on the track located right next to the track on which he was inspecting cars.

[6] The employer was not of the opinion that there was any danger to R. Brousseau or any other employee in the work place given that:

- no train circulated on tracks MC 95 or 96, so that there was more space to move about between these tracks, and a working procedure regarding the positioning of the portable gangways between cars required employees to circulate between tracks MC 95 and 96, and not between tracks MC 93-94 and track MC 95;
- although the tracks at the unloading site were still under construction when last visited by the Transport Canada officer responsible for inspecting the track infrastructure, they had been checked periodically by qualified company inspectors;
- although there were several derailments in 2003 in the shunting yard, the great majority of these took place near switching points a good distance away from the vehicle unloading areas;
- track MC 94 was switched to track MC 93, i.e., to the south of the vehicle unloading site in order to provide more working space for the ramp employees;
- the speed limit for trains circulating in the shunting yard is 15 miles an hour;

- this speed was further decreased when trains entered the curved portion of track MC 93-94 on the north side of the site and passed switching points located beyond this curve, as was the case on the south side where the locomotive engineers were obliged to slow down and change direction.
- [8] Given that the situation was not being addressed and because he believed that the danger persisted, R. Brousseau maintained his refusal to work. HSO Thibault was then assigned to conduct an investigation. The investigation was conducted on January 6, 2004, at the work site.
- [9] Following his investigation, HSO Thibault concluded that there was no danger to R. Brousseau or any other employee at the work site for the following reasons:
- nearly 97% of the derailments reported in the shunting yard in 2003 took place near switching points located far from the vehicle unloading site, i.e., to the north or the south of the site;
  - the speed limit for trains circulating in the shunting yard is 15 miles an hour;
  - the locomotive engineers were indeed obliged to slow down before moving onto the right-hand side of tracks MC 93-94, 95, 96 and 97, in order to take the north curve of these tracks and pass the switching points located to the north and south of the site;
  - a working procedure had been established for positioning the portable gangways between the railcars;
  - finally, the rails and wooden ties used to build the vehicle unloading site, while well-worn, were in good condition.
- [10] HSO Thibault confirmed his decision of no danger in writing on January 6, 2004.
- [11] On August 25, 2005, R. Brousseau withdrew his appeal in writing, indicating that, following steps taken in-house, the employer had implemented several improvements in work place safety, which resolved the situation at issue.
- [12] Given the written request to withdraw the appeal and after examining the file, I accept the request for withdrawal and declare the case closed.

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Katia Néron  
Appeals Officer

## Decision Summary

**Decision No.:** 05-038

**Applicant:** Renald Brousseau

**Employer:** Canadian National Railway Company  
Montreal, Quebec

**Keywords:** Refusal to work, decision of no danger, unloading of vehicles on a railway line while trains are circulating on an adjacent track

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

### Summary:

The applicant appealed a decision of no danger rendered by a health and safety officer following his refusal to work. The applicant finally withdrew his appeal and the appeals officer declared the case closed.