

Canada Labour Code
Part II
Occupational Health and Safety

Pierre Marineau

and

Public Service Alliance of Canada
applicants

Decision No.: 05-042
September 26, 2005

This case was decided by appeals officer Katia Néron on the basis of documents supplied by the health and safety officer and the union.

Health and Safety Officer

Mario Thibault

Human Resources and Skills Development Canada
Labour Program, Montreal, Quebec Region

- [1] This case concerns an appeal filed on July 26, 2005, pursuant to the *Canada Labour Code*, Part II, by Jean-Michel Fortin, Regional Representative of the Public Service Alliance of Canada, on behalf of Pierre Marineau, President, Directly Chartered Local (DCL) #10155 of the Public Service Alliance of Canada, and employed at *Les Aéroports de Montréal* (ADM) in Montreal.
- [2] The appeal arises from a letter that health and safety officer Mario Thibault sent to P. Marineau on July 21, 2005, concerning a complaint filed by the latter on October 30, 2003.
- [3] The complaint was to the effect that the employer had not taken into account the comments from the employee representatives on the local health and safety committee following their review of the risk analysis prepared by ADM with respect to the various types of action responses involving firefighters. After reviewing the risk analysis, the employee representatives on the local health and safety committee felt that the number of firefighters envisaged to conduct search and rescue operations inside an aircraft was insufficient in light of NFPA standards.

- [4] Health and safety officer Thibault responded to Mr. Marineau's complaint by meeting all the parties concerned. After conducting an in-depth investigation, he concluded that ADM was not in contravention of the *Canada Labour Code*, Part II.
- [5] On July 21, 2005, health and safety officer Thibault wrote to P. Marineau informing him of the results of his investigation.
- [6] It was as a result of this letter sent by health and safety officer Thibault that J.-M. Fortin filed the appeal on behalf of P. Marineau.
- [7] Only two provisions of the *Canada Labour Code*, Part II, legally empower an appeals officer to hear an appeal: subsections 129(7) and 146(1). These provisions relate respectively to two completely different situations.
- [8] Under subsection 129(7), an appeal can be submitted by an employee who has refused to work to challenge the decision of no danger rendered by the health and safety officer who had investigated the employee's refusal to work. This subsection reads as follows:
- 129(7)** If a health and safety officer decides that the danger does not exist, the employee is not entitled under section 128 of this section to continue to refuse..., but the employee, or a person designated by the employee for that purpose, may appeal the decision in writing to an appeals officer within ten days after receiving notice of the decision.
- [9] According to subsection 146(1), the purpose of the appeal is to challenge one or more directions issued by a health and safety officer and the appeal itself may be filed by an employer, employee or union that feels aggrieved by the direction or directions in question. Subsection 146(1) reads as follows:
- 146(1)** An employer, employee or trade union that feels aggrieved by a direction issued by a health and safety officer under this Part may appeal the direction in writing to an appeals officer within thirty days after the date of the direction being issued or confirmed in writing.
- [10] In the case at hand, the appeal filed by J.-M. Fortin on P. Marineau's behalf does not result from a decision of no danger made by health and safety officer Thibault following an investigation into a refusal to work, since P. Marineau had not refused to work.
- [11] Nor does the appeal arise from any directions issued by health and safety officer Thibault after investigating P. Marineau's complaint in which the employer, employee or union would have felt aggrieved, since the health and safety officer did not issue any direction to the employer.

[12] As a consequence, in my capacity as an appeals officer, I have no legal authority under the *Canada Labour Code*, Part II, to hear this case, since it arises neither from a decision of no danger nor from any direction issued by a health and safety officer.

[13] The case is therefore dismissed.

Katia Néron
Appeals Officer

Summary of Appeals Officer's Decision

Decision No.: 05-042

Applicants: Pierre Marineau and Public Service Alliance of Canada

Key Words: Complaint, appeal

Provisions: *Code* 129(7), 146(1)
Regulation

Summary:

The appeal results from a letter sent by a health and safety officer after an investigation he had conducted into a complaint from the employee to the effect that the employer had not take into account the comments from the local health and safety committee concerning a risk analysis prepared by the employer concerning various types of action responses involving firefighters.

The appeals officer is not legally empowered by the *Canada Labour Code*, Part II, to hear the appeal submitted. The appeal arises neither from a decision of no danger rendered by the health and safety officer, since the employee had not refused to work, nor from a direction by which the employer, employee or union would have felt aggrieved, since the health and safety officer did not issue any direction to the employer after investigating the employee's complaint.