

Canada Labour Code
Part II
Occupational Health and Safety

Vivian Caldwell
Applicant

and

Canada Post Corporation
Respondent

Decision No.: 06-009
March 27, 2006

This case was decided by Pierre Guénette, Appeals Officer, based on the written submissions provided by the parties and the health and safety officer.

For the applicant

Vivian Caldwell, rural route carrier, Canada Post Corporation
Robert Caldwell, representative for Vivian Caldwell

For the Respondent

Chris Wartman, counsel

Health and Safety Officer

Kathy Conorton, Labour Program, Human Resources and Skills Development Canada (HRSDC),
Toronto District Office, Toronto, Ontario

- [1] This case concerns an appeal made on December 22, 2004 by Robert Caldwell, under subsection 129 (7) of the *Canada Labour Code*, Part II (*Code*), on behalf of Vivian Caldwell, a rural carrier employed by Canada Post Corporation (Canada Post)
- [2] The appeal was made as a result of the decision of absence of danger rendered on December 14, 2004 by health and safety officer (HSO) Kathy Conorton, regarding the employee's refusal to work made on November 26, 2004, in Hastings, Ontario.

- [3] The employee's statement of refusal to work, as reported in HSO Conorton's Investigation Report and Decision, is as follows:

Refusing to work under the Right to Refuse section of Part II of the *Canada Labour Code* because I am afraid of customer (Mr. C¹). He and I had a yelling match on November 2, 2004 after which I called the police because I was so afraid that I vomited. No charges were laid. He has never physically touched me, but I am afraid of his size and his body language.

- [4] I retain the following from HSO Conorton's investigation report.
- [5] On November 2, 2004, V. Caldwell went to Mr. C.'s home to deliver a signature parcel. At that time, Mr. C. accused her of stealing his mail. He became aggressive and yelled and swore at V. Caldwell. Mr. C. also threw the signature book at her, but the book did not hit her. Following the incident, V. Caldwell made a complaint to the Ontario Provincial Police (OPP), who investigated, but no charges were laid.
- [6] V. Caldwell also complained to her employer about the incident. Canada Post suspended mail delivery to Mr. C. and to the retirement community resort group mail box² until the employer held a meeting with him. V. Caldwell was advised not to deliver mail to Mr. C. and the retirement community resort until the employer had completed an internal investigation into the matter.
- [7] On November 15, 2004, Canada Post's representatives met with Mr. C. and his wife and advised Mr. C. that mail delivery would be conditional to the following guidelines:
- a) Mr. C. will not have any personal contact with Ms. Caldwell.
 - b) Mr. C. will have to clear mail from the mail receptacle on a regular basis.
 - c) Ms. Caldwell will not be required to deliver any signature items to Mr. C.'s door. The Hastings Post Office will contact Mr. C. to inform them that an item is at the Hasting Post Office.
- [8] Following that meeting, Eugene Adamo, Canada Post Area Manager, informed the Post Master to reinstate mail delivery to Mr. C. and the retirement community resort group mail box.
- [9] On the following day, V. Caldwell informed the Post Master that she was refusing to deliver mail to Mr. C. under the *Code*. As a result, the employer held a meeting with V. Caldwell on November 22, 2004. During that meeting, V. Caldwell declared that she

¹ Mr. C. is a customer of Canada Post. His name will not be referenced, for privacy purposes.

² A group mail box is located in front of Mr. C.'s house. It is used for Mr. C.'s mail and for the residents' mail of the retirement community resort. Suspending mail delivery for Mr. C. also suspends the mail delivery of those residents.

did not want to have any contact with Mr. C. Her employer replied by telling her about the guidelines given to Mr. C. to address her concerns, adding that if Mr. C. did not comply, his mail delivery would be permanently suspended.

- [10] On November 24, 2004, V. Caldwell was advised in writing by E. Adamo to resume delivery to Mr. C. on November 26, 2004.
- [11] V. Caldwell maintained her refusal to work under the *Code* and on December 7, 2004, the Toronto District Office of the Labour Program was informed by E. Adamo of her continued refusal to work.
- [12] HSO Conorton investigated the same day. She was informed by E. Adamo that V. Caldwell was refusing to work because she did not feel safe delivering mail to a customer and that this had been an ongoing issue for more than six years between V. Caldwell and Mr. C.
- [13] Although Mr. C. had never physically hit V. Caldwell, she was afraid because of his stature and his body language during her confrontations with him. The police had been called on two occasions, but no charges had been laid against Mr. C.
- [14] HSO Conorton concluded in a written decision that:

In this case I find that Mrs. Caldwell was **not in danger** at the time of her refusal. I base this on the facts established during the investigation.

- [15] I retain the following from Robert Caldwell's written submissions.
- [16] R. Caldwell alleged that HSO Conorton's investigation report was inconsistent, inaccurate and incomplete. For example, V. Caldwell never told HSO Conorton that she had a yelling match with Mr. C. on November 2, 2004 or on any other date. Furthermore, Mr. C. did hit V. Caldwell on the chest with the signature book during the November 2 incident.
- [17] V. Caldwell made the following statement about the incident:

I received an Xpost signature package for Mr. C. which I was told I had to deliver. Mr. C.'s mail was being held at P.O. (the Post Office) for 15 days and if unclaimed returned due to the fact there was 4 months of mail in his post box. This has been an ongoing problem for the last 6 yrs. Mr. C. was at his truck (passenger side) when I pulled into the space where his wife normally parks. They nor her vehicle were there. I got out of my vehicle and said "Mr. C. I have a signature package for you". He said "Oh good". He came around the back of his truck as I came around the front of mine meeting him at my passenger door. I handed him my blue clip board and asked him to sign # 6 spot and print below his signature. He look up at me and said "tell me what is going on with my mail?". I said "Mr. C. there is a 4 month build up of mail in your box". He exploded at me yelling, "you are a f*** liar. You know my f*** wife goes to that f*** mail box everyday". I said "I don't

know what you do Mr. C. because there is 4 months of mail in your box''. [each piece of mail in his box has been date stamped and document at the P.O.]. He said "Are you calling me a liar you f*** s*** liar. You are the problem. Everyone knows you are the problem''. I asked who everyone was. He replied "the Ombudsman said you were a f*** liar''. He was so mad he was spitting and I kept backing up around the front of my vehicle. I told him "if you want the package sign and print''. I was afraid he was going to hit me. He signed the form forcefully, slammed the pen into the board and threw the board at me, calling me a f*** s*** again. I back up to my door and jumped into my vehicle and he was still yelling abusive language at me. I said as I locked my doors and put up my window "Mr. C. you are a very sick man''. I immediately left the area. I was shaking so bad I didn't think I had legs and I vomited. I drove the 1½ miles to P.O. and reported to Darla (acting Post M.). I phoned the police, Gene Adamo office [out of office' til Thurs.] talked to Lee Mellow acting sup. and phoned union answering machine and left message for Dean Shewring to return my call. Talked with Gene Adamo on Friday and Dean on Tues. nite.

[18] R. Caldwell submitted the following evidence, including some incidents, that V. Caldwell had been verbally assaulted on numerous occasions over the past few years by Mr. C.:

- a) In the middle of August 1999, Mr. C. came out of his driveway driving recklessly almost hitting Mrs. Caldwell's vehicle. He slid to a stop blocking her vehicle. He jumped out. His fist was being waved in a threatening manner. He was out of control yelling "you are stealing my mail, you are ruining my credit and my business''. Mrs. Caldwell told him that there was approximately nine weeks of mail sitting in his box right then. He began to swear "You're a f** liar, I pick my mail up everyday''. Mrs. Caldwell got into her vehicle and locked the door. Mr. C. got into his truck and left spinning his tires and shooting gravel. He was still yelling out of his truck window when he left.
- b) On May 30, 2001, Mr. C. drove by Mrs. Caldwell when she was at the boxes. He was yelling, his truck reversed almost hitting her vehicle. (...) He was swearing and threatened to take the matter to the government.
- c) By May 03, 2003 there had begun an intimidation process by Mrs. C., wife of Mr. C. at the boxes. Somehow she appeared on a regular basis standing beside Mrs. Caldwell while she sorted the mail.
- d) On June 03, 2003, both myself and Mrs. Caldwell went to Mr. C's group mail box early at 9:55 am. Mr. C. came over in his truck, parked behind us, watched her sort the mail and left not picking up his mail.
- e) June 19 at 10:25 am both Vivian and I went early. Mr. C. was yelling obscenities at us from across the road. Vivian didn't finish sorting the mail. She closed the door and we left with the mail.

- f) On August 22, 2003 Mrs. C. came out to the area behind the box. Mr. C. came out from the house on his ATV, drove a circle around us and was looking directly at Vivian saying “you will be going bye, bye”. We left to return to the Post Office.
- [19] R. Caldwell submitted several written statements from persons who had been intimidated or assaulted by Mr. C. They declared that:
- he could lose complete control of himself;
 - during an incident with a person, he shook his fist in that person’s face;
 - on one occasion, he frightened a person because of his virtually hysterical behaviour;
 - according to a former resident, a majority of single women in the park were not just afraid of Mr. C., but they were “petrified” by him;
 - according to another former resident, one day, during a discussion with Mr. C., Mr. C. reached and grabbed that resident by the throat. He added that Mr. C. had a violent temper and was quite dangerous when he was losing control.
- [20] R. Caldwell alleged that V. Caldwell had reported on numerous occasions to the Post Master that she was being intimidated by Mr. C. when delivering mail to the group mail box.
- [21] With respect to the incident of November 2, 2004, R. Caldwell made reference to the meeting held on November 15, 2004, between Canada Post representatives and Mr. C. and to the guidelines that he was then given. R. Caldwell alleged that Mr. C. had violated the guidelines but that no further actions had been taken by Canada Post.
- [22] R. Caldwell alleged that during the meeting on November 22, 2004, the employer did not address the resolution “as agreed upon, wherein the Canada Post Corporation recognized the problem, and agreed to supply new group boxes to be placed at a different location other than that in front of Mr. C.’s residence. In other words, “out of sight of Mr. C.”.
- [23] Since the imposed guidelines by Canada Post on November 15, 2004, there had been several further incidents between Mr. C. and V. Caldwell. The employee reported all incidents to the Post Master but no actions were taken by Canada Post.
- [24] R. Caldwell alleged that Mr. C. was a serious potential danger to V. Caldwell for the following reasons:
- a) Mrs. Caldwell has been harassed while delivering mail to Mr. C.’s group mail box situated in full view of Mr. C.

- b) Mrs. Caldwell has been physically assaulted on one occasion and was verbally assaulted on other numerous recorded occasions.
- c) The assault on November 2, 2004, was consequently reinvestigated by the O.P.P. and found to have merit to Mrs. Caldwell's original complaint. There was unfortunately insufficient evidence to support a charge. There was one witness to the incident who would have supported Mrs. Caldwell's claim but because this person resides at the retirement community resort owned by Mr. C. he is afraid of reprisal from him and will not get "involved".
- d) Mr. C. has been given verbal trespass notice by the O.P.P. for his violent conduct in the Hastings Post Office.
- e) The Post Master and other employees at the Hastings Post Office have voiced their fear of dealing with Mr. C. They are all female.
- f) The letters from residents (at the retirement community resort) and other individuals who have experienced similar behaviour from Mr. C. support the fact that he has been violent, threatening, invokes fear and can blow up in anger with little or no provocation.
- g) Mr. C. has demonstrated a premeditated harassment of Mrs. Caldwell at the mail box with his actions of driving by yelling, sitting behind his vehicle and ordering his wife and child out to intimidate. This done by radio and witnessed by the Hastings Post Master.

[25] R. Caldwell alleged that HSO Conorton did not receive accurate information from the OPP regarding the fact that Mr. C. has no past record or history with police. From additional information received by R. Caldwell, he alleged that Mr. C. had been convicted of assault in 1989 and 1992. He was also convicted of breaking and entering in 1992.

[26] In May 8, 2005, R. Caldwell proposed a solution to Canada Post to resolve the matter by setting up the group mail boxes in a different location, other than in front of Mr. C.'s residence. The applicant never received a reply from Canada Post and no action was taken about that proposed solution.

[27] Chris Wartman, counsel for the respondent, submitted some jurisprudence to support HSO Conorton's decision.

[28] Counsel Wartman referenced *Brunet (Re) v. St. Lawrence & Hudson Railway Company Limited*³, where the Canada Labour Relations Board (CLRB) declared in paragraph 16:

The assessment of the nature of the hazard in this context has an objective aspect that goes beyond the reasonable apprehensions of an employee who refuses to work.

³ *Brunet (Re) v. St. Lawrence & Hudson Railway Company Limited*, CLRB Decision No. 1239, December 22, 1998

[29] Counsel Wartman also stated that a danger has to be perceived to be immediate and real. To support this position, he made reference to the CLRB decision in *Scott C. Montani v. Canadian National Railway Company*⁴, where the Board declared:

The Board has stated that Parliament did not intend to deal with danger in the broadest sense of the word. (...) Danger within the meaning of the *Code* must be perceived to be immediate and real. The risk to employees must be serious to the point where the machine or thing or the condition created may not be used until the situation is corrected.

[30] Counsel Wartman alleged that the danger cannot be a hypothetical one. To support this, he quoted the Federal Court of Canada decision in a matter between Federal Marine Terminals Ltd. and the Longshoremen's Union⁵ that states, in paragraph 47:

(...) the regional officer did not err in law, in my opinion. He correctly assessed the notion of "danger" as set out in Part II of the C.L.C., considering in particular that there must be an immediate, substantial and present danger and not a hypothetical danger.

[31] Counsel Wartman argued that the danger must be present at the time of the health and safety officer's investigation, as declared in the Brunet decision⁶, *supra*.

[32] Counsel Wartman argued that the risk of confronting individuals who may be intimidating was inherent to the job because of the nature of mail delivery and the personal contact it involves.

[33] Counsel Wartman held that HSO Conorton determined that the employer had established measures to mitigate such risks, as listed in paragraph 7.

[34] Finally, counsel Wartman asked that the Appeals Officer confirm HSO Conorton's decision and that the appeal be dismissed.

[35] The issue in this case is whether or not HSO Conorton erred when she decided in the circumstances that a danger did not exist for V. Caldwell when she was delivering mail to Mr. C.'s group mail box.

[36] For deciding the matter, it is necessary to interpret and apply the relevant provisions in the *Code*, the facts in the case and the referenced jurisprudence.

⁴ *Scott C. Montani v. Canadian National Railway Company (CN North America)*, CLRB Decision No. 1089, November 1, 1994.

⁵ *Federal Marine Terminals Ltd., Division of Fednav Ltd. v. Longshoremen's Union, Local 375*, Federal Court of Appeal, FCJ No. 592, April 26, 2000

⁶ *Brunet (Re) v. St. Lawrence & Hudson Railway Company Limited*, *supra*.

[37] Danger is defined in subsection 122(1) of the *Code* 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.

[38] I then have to decide if there was an existing or potential hazard or condition or future activity that could reasonably have been expected to cause injury or illness to V. Caldwell before the condition could have been corrected, whether or not the injury or illness would have occurred immediately after the exposure to the condition.

[39] I am satisfied in this matter that the condition described was when employee V. Caldwell had to deliver mail to a mail group box in front of Mr. C.'s house. According to R. Caldwell, Mr. C. would yell at V. Caldwell on a regular basis and in one incident he threw a clip board at her. Also Mr. C. seemed to have a past history of displaying an intimidating verbal behaviour and this was not contradicted by the respondent. Therefore, because of the aggressive attitude of Mr. C., V. Caldwell was afraid of him when she delivered mail to his group mail box.

[40] Regarding counsel Wartman's reference to the jurisprudence, I give no weight to the respondent's arguments and quotations that the danger has to be present at the time of the health and safety officer's investigation.

[41] It is important to specify that the interpretation of the notion of danger presented by counsel Wartman is related to the jurisprudence developed before the definition of danger was modified by the coming into force of a new Part II of the *Canada Labour Code*, on September 30, 2000, where the danger had to be immediate and present at the time of the health and safety officer's investigation. The current definition of danger is less restrictive and now includes potential hazards or conditions or future activities. This definition also better reflects the purpose of the *Code*, which is to prevent accidents and injury arising out of or linked with employment.

[42] There is no doubt in my mind that the unpredictable behaviour of Mr. C. constituted a potential condition that could reasonably have been expected to cause injury or illness to V. Caldwell when exposed to it, before the condition could have been corrected.

[43] It appears from the submissions received from counsel Wartman that Canada Post recognized the situation and took some corrective actions in the last few years.

- [44] However, Mr. C. did not comply with the conditions imposed by Canada Post. According to R. Caldwell, after his meeting with the employer, Mr. C. continued to display an intimidating behaviour towards V. Caldwell by yelling at her when she was delivering mail to his group mail box.
- [45] V. Caldwell complained to the employer, but no further actions were taken, a fact that has not been contradicted by the respondent.
- [46] The respondent stated that the risk of confronting individuals displaying an intimidating behaviour was inherent to the job of mail delivery because of its nature and the personal contact it involves. The applicant demonstrated that V. Caldwell had been the subject of frequent intimidation over the last six years by Mr. C. when she was delivering his mail.
- [47] I do not consider that being confronted by a client showing an intimidating behaviour is a normal condition of work for an employee of Canada Post responsible for delivering mail to a number of rural customers. It is not a normal situation for a rural route carrier to have to deal with such behaviour on a permanent basis.
- [48] As to the last statement from R. Caldwell, it has been demonstrated that Canada Post mitigated the risk by establishing measures, but it seems that those measures were inadequate, because Mr. C. has not changed his intimidating behaviour towards V. Caldwell.
- [49] Based on the facts gathered by HSO Conorton and the written submissions received from both parties, I have come to the conclusion that there was an existing or potential condition, Mr. C.'s behaviour, that could reasonably have been expected to cause injury or illness to V. Caldwell before it could have been corrected, whether or not the injury or illness had occurred immediately after the exposure to the condition.
- [50] Therefore, I consider that there was a situation of danger for V. Caldwell when she was delivering mail in Mr. C.'s presence at his group mail box.
- [51] Despite this position, I consider that HSO Conorton did not err in her decision of absence of danger at the time of her investigation. She took into consideration the facts submitted by both parties during the investigation.
- [52] However, as the nature of the review conducted by an Appeals Officer is *de novo* and given the reasons alleged by the applicant in paragraph 24 after HSO Conorton's investigation, I am satisfied that Canada Post's inaction to enforce the guidelines established towards Mr. C. created a potential hazard for V. Caldwell.
- [53] Given the evidence submitted during my inquiry, I have to rescind the decision of absence of danger rendered by HSO Conorton.

[54] Therefore, I am issuing the attached direction to Canada Post to protect the health and safety of the employee against the potential hazard or condition that can reasonably be expected to be caused by the behaviour of Mr. C.

[55] I rely on the health and safety officer to ensure that Canada Post comply with the attached direction.

[56] Furthermore, pursuant to subsection 145(5) of the *Canada Labour Code*, Part II, the employer shall without delay cause a copy of this direction to be posted and give a copy of it to the policy committee and to the work place committee or the health and safety representative.

Pierre Guénette
Appeals Officer

**IN THE MATTER OF THE CANADA LABOUR CODE, PART II,
OCCUPATIONAL HEALTH AND SAFETY**

DIRECTION TO THE EMPLOYER UNDER PARAGRAPHS 145(2)(a) AND (b)

The undersigned Appeals Officer conducted an inquiry pursuant to section 146.1 of the *Canada Labour Code*, Part II, into the circumstances of the decision of absence of danger rendered by health and safety officer Kathy Conorton following her investigation of a refusal to work by Vivian Caldwell, an employee of Canada Post Corporation, being an employer subject to the *Canada Labour Code*, Part II, while she was working in Hastings, Ontario, the work place being sometimes known as Hastings Post Office.

The undersigned Appeals Officer is of the opinion that the following situation constitutes a danger to an employee:

Vivian Caldwell is required to deliver mail to a group mail box located in an area where she is exposed to the intimidating behaviour of a client, which can reasonably be expected to cause her injury or illness before the condition is corrected or the activity altered.

Therefore, you are HEREBY DIRECTED, pursuant to paragraph 145(2)(a) of the *Canada Labour Code*, Part II, to immediately protect any person from the danger.

Furthermore, you are HEREBY DIRECTED, pursuant to paragraph 145(2)(b) of the *Canada Labour Code*, Part II, to immediately cease to have the employee delivering mail to that particular group mail box until an alternative is put in place to protect the employee. The employer is to report to a health and safety officer when he is in compliance with this direction.

Issued in Ottawa, on March 27, 2006.

Pierre Guénette
Appeals Officer
Certificate #. ON 4982

To: Canada Post Corporation
Hastings, Ontario
K0L 1Y0

Summary of Appeals Officer's Decision

Decision No.: 06-009

Applicant: Vivian Caldwell

Respondent: Canada Post Corporation

Key Words: Absence of danger, refusal to work, rural route carrier, mail delivery, group mail box, intimidating behaviour

Provisions: *Canada Labour Code*: 122(1), 128, 129(7), 145(2)(a) and (b), 145(5), 146

Summary:

A rural route carrier refused to work because she was afraid of the intimidating behaviour displayed by a client when she was delivering his mail. After investigating, the health and safety officer rendered a decision of absence of danger.

The Appeals Officer rescinded the decision of absence of danger and issued a direction to the employer under paragraphs 145(2)(a) and (b) of the *Canada Labour Code*, Part II.