

**Case No.: 2005-61**

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

Canadian National Railway Company  
*appellant*

and

Canadian Auto Workers (CAW)  
National Council 4000 and Local 100  
*respondents*

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Decision No.: CAO-07-002  
February 5, 2007

This case was decided by Appeals Officer Pierre Guénette.

**For the Appellant**

Brian Hachey (Risk Manager – Canadian National Railway Company)  
Joaquin Flores (Manager – Canadian National Railway Company)  
David Gilmar (Associate Manager – Canadian National Railway Company)

**For the Respondents**

Sandra Prudames (Regional Representative – CAW Canada – National Council 4000)  
John L. Gouveia (Vice President – CAW Canada, Local 100)

- [1] This case concerns an appeal made by Brian Hachey, Risk Manager Worker's Compensation & General Claims for Canadian National Railway Company (CNR) on November 18, 2005 pursuant to subsection 146(1) of the *Canada Labour Code*, Part II.
- [2] On October 16, 2005, Steve Burns, a Hostler<sup>1</sup> working for CNR refused to work, pursuant to section 128 of the *Canada Labour Code*, Part II. The employee felt that when asked to conduct a locomotive move with a Trades employee (Mechanics or electricians), it posed a danger due to the fact that Trades employees did not receive the same training as Hostlers.

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<sup>1</sup> Hostler: Employee who moves trains throughout the yard.

- [3] An investigation was conducted by Health and Safety Officer Karen Malcolm (HSO Malcolm) on October 17, 2005. HSO Malcolm completed her investigation and decided on October 21, 2005, that a danger did not exist for S. Burns.
- [4] However, the same day, she issued the following direction to CNR, because she believed that the Trades employees should receive the same degree or depth of practical training as the Hostlers if they are required to perform the same tasks:

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

**DIRECTION TO THE EMPLOYER UNDER SUBSECTION 145(1)**

On October 17, 2005, the undersigned health and safety officer conducted an investigation in the work place operated by Canadian National Railway Company, being an employer subject to the *Canada Labour Code*, Part II, at 75 Diesel Drive, Concord, Ontario, L4K 1B9, the said work place being sometimes known as Canadian National Railway Company – Diesel Shop.

The said health and safety officer is of the opinion that the following provisions of the *Canada Labour Code*, Part II has been contravened:

1. The *Canada Labour Code*, Part II Section 124

Skilled Trades people are being required to make locomotive moves without the same degree of practical training provided to Hostlers.

Therefore, you are HEREBY DIRECTED, pursuant to paragraph 145(1)(b) of the *Canada Labour Code*, Part II, to terminate the contravention no later than The *Canada Labour Code*, Part II Section 124.

Further, you are HEREBY DIRECTED, pursuant to paragraph 145(1)(b) of the *Canada Labour Code*, Part II, within the time specified by the health and safety officer, to take steps to ensure that the contravention does not continue or reoccur.

Issued at North York, this 21<sup>st</sup> day of October, 2005.

- [5] Following the appeal, a hearing was scheduled from January 9 to 11, 2007.
- [6] On December 20, 2006, Brian Hachey wrote to inform the Canada Appeals Office on Occupational Health and Safety (the Office) that parties had reached an agreement into this matter, which resolved the issues underlying the appeal to the satisfaction of the employer and both unions. In addition, he informed the Office that CNR was withdrawing its appeal.

- [7] On the same day, John L. Gouveia informed the Office in writing that an equitable training and work jurisdiction arrangement had been concluded with the employer. Therefore, he specified that a hearing into this matter was not required anymore.
- [8] Based on the agreement between parties, I agreed to cancel the hearing and consider the joint request by parties to terminate the appeal.
- [9] Given the joint agreement by the Parties, I have decided to dismiss the appeal made by Brian Hachey and consider the matter to now be closed.

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Pierre Guénette  
Appeals Officer

## **Summary of Appeals Officer's Decision**

**Decision No.:** CAO-07-002

**Appellant:** Canadian National Railway Company

**Respondents:** John L. Gouveia (CAW – Canada Local 100)  
Sandra Prudames (CAW – TCA National Council 400)

**Key Words:** Refusal to work, Hostler, Trades employee, locomotive, danger, training, direction, appeal, decision

**Provisions:** *Canada Labour Code*: 124, 125(1)(c), 128, 129(7), 145(1), 146

### **Summary:**

The appellant appealed a direction issued by a health and safety officer following a refusal to work. Following an agreement between the employer and both unions, the employer withdrew its appeal and the case has been dismissed and closed by the Appeals Officer.