

Case No.: 891-2-1  
Decision No.: CAO-07-031

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

Randy Fingland and Jurgen Deagle  
*appellants*

and

Parks Canada Agency  
*respondent*

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September 11, 2007

This matter is decided by Appeals Officer Douglas Malanka.

**For the appellant**

Mr. Andrew Raven, Counsel, Raven, Cameron, Ballantyne & Yazbeck

**For the respondent**

Mr. Kirk Lambrecht Counsel, Department of Justice

- [1] This case concerns appeals made to an Appeals Officer pursuant to subsection 129(7) of the *Canada Labour Code*, Part II (the *Code*) by Park Warden Randy Fingland and Park Warden Jurgen Deagle on June 19, 2001 and June 21, 2001 respectively. The two Park Wardens employed by Parks Canada Agency at Jasper National Park appealed the decision of Health and Safety Officer (HSO) Jack Almond made on June 12, 2001 following his investigation of their refusals to work. HSO Almond decided that, while an element of danger existed for the employees, the danger was a normal condition of employment.
- [2] According to his statement on the Human Resources Development Canada Refusal To Work Registration Form, form LAB/TRAV 795, Park Warden Randy Fingland refused to work on June 6, 2001 for the following reason:

Parks Canada has suspended my duty as a peace officer. They still require me to wear a peace officer uniform and drive a peace officer vehicle. The uniform and vehicle put me at risk because the public still thinks I am a peace officer.

- [3] According to his statement on the Human Resources Development Canada Refusal To Work Registration Form, form LAB/TRAV 795, Park Warden Deagle refused to work on June 6, 2001 for the following reason:

Refuse to wear park warden uniform and drive vehicles with warden markings due to risk associated with public perception of peace officer.

- [4] Following his investigation of their refusals to work, HSO Almond advised Park Wardens Fingland and Deagle on June 18, 2001 that they were not entitled to continue to refuse to work under section 128(1) of Part II. HSO Almond wrote in his written decision:

PLEASE BE ADVISED THAT PURSUANT TO SUBSECTION 128(2) OF THE *CANADA LABOUR CODE* PART II. (sic) THE DANGER REFERRED TO IN SUBSECTION 128(1) IS A NORMAL CONDITION OF EMPLOYMENT. THEREFORE THE UNDERSIGNED CANADA HEALTH AND SAFETY OFFICER CONSIDERS THAT THE RIGHT TO REFUSE DANGEROUS WORK IS NOT PERMITTED.

- [5] Andrew Raven, on behalf of the appellant, requested that the hearing of these appeals scheduled for July 8, 2002, be deferred pending the final outcome of the judicial review application in respect of the decision of Appeals Officer Serge Cadieux in the case of Parks Canada Agency versus Douglas Martin and Public Service Alliance of Canada, Decision No. 02-009, dated May 23, 2002.
- [6] On September 5, 2002, Appeals Officer Douglas Malanka confirmed for parties that the hearing was so deferred.
- [7] On July 16, 2007, following the decision rendered on the appeal of Parks Canada Agency versus Douglas Martin and Public Service Alliance of Canada, Decision No. CAO-07-015, dated May 8, 2007, Michel Parent, A/Case Management Officer, Canada Appeals Office on Occupational Health and Safety wrote to parties on July 16, 2007 to schedule a hearing to hear the appeals by Parks Warden Fingland and Deagle.
- [8] On August 17, 2007, Andrew Raven wrote to confirm that Appellants Fingland and Deagle wished to withdraw their appeals before an Appeals Officer.
- [9] Considering the above and having reviewed the file, these appeals are withdrawn and this case is closed.

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Douglas Malanka  
Appeals Officer

## **Summary of Appeals Officer Decision**

**Decision:** CAO-07-031

**Appellant:** Randy Fingland and Jurgen Deagle

**Respondent:** Parks Canada Agency

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

**Keywords:** Danger, normal danger, peace officer uniform, peace officer marked vehicles, withdrawal.

### **Summary:**

On June 19, 2001 and June 21, 2001 respectively Park Wardens Randy Fingland and Jurgen Deagle appealed the health and safety officer's finding in respect of their refusals to work. However, on August 17, 2007, Andrew Raven, Counsel, wrote on behalf of Appellants Fingland and Deagle to confirm that they wished to withdraw their appeals before an Appeals Officer. The case is therefore closed.