Occupational Health and Safety Tribunal Canada

Tribunal de santé et sécurité au travail Canada

Ottawa, Canada K1A 0J2

Case No.: 2004-17
Decision No.: OHSTC-08-025

CANADA LABOUR CODE
PART II
OCCUPATIONAL HEALTH AND SAFETY

Juan Verville
appellant

and

Correctional Service Canada
respondent

September 23, 2008

This case was decided by Appeals Officer Douglas Malanka.

For the appellant
C. Blanchette, Union Advisor, CSN-Pacific

For the respondent
R. E. Fader, Counsel, Treasury Board Legal Services Unit

[1] On September 24, 2001, J. Verville and the 15 other correctional officers (COs) working in Living Units A to H at Kent federal maximum security prison in Agassiz, British Columbia, refused to work following management's implementation of its handcuff policy. According to its handcuff policy, COs were no longer permitted to carry handcuffs on their person at their discretion. The employees alleged that a danger existed because it would take longer to subdue an inmate in the event of a struggle without having handcuffs on their person. They held that this increased the possibility of injury for them.

[2] Following his investigation, health and safety officer (HSO) Todd Campbell, Human Resources Development Canada decided that a danger did not exist for the COs and informed parties of his decision on September 27, 2001. However, he issued a direction to the employer, Correctional Service Canada (CSC), pursuant to subsection 145(1) of the *Canada Labour Code*, Part II (the Code) for contravening section 124 of the Code. He held that the health and safety of the correctional officers was not adequately protected by the employer as a result of the employer's imposed handcuff policy. Section 124 and subsection 145(1) read:

> 124. Every employer shall ensure that the health and safety at work of every person employed by the employer is protected.
>
> 145. (1) A health and safety officer who is of the opinion that a provision of this Part is being contravened or has recently been contravened may direct the employer or employee concerned, or both, to
> (a) terminate the contravention within the time that the officer may specify; and
> (b) take steps, as specified by the officer and within the time that the officer may specify, to ensure that the contravention does not continue or re-occur.

[3] HSO Campbell wrote in his direction:

> The health and safety of Correctional Officers working in Living Unites A thru H, is not protected as these employees are not permitted to carry on their person, at their discretion, a pair of Correctional Service Canada approved handcuffs while working in these Units. Having the closest such handcuffs normally available in the Living Unit Control Posts (Bubbles), prevents the Correctional Officers from being able to expediently access this equipment to restrain and secure inmates displaying violent behaviour towards the Correctional Officers or other inmates. The delay in accessing this equipment when needed, prolongs the physical altercation between the Correctional Officers and inmates, requires greater amounts of physical force by the Correctional Officers to subdue and restrain the inmates, and thereby increases the likelihood and severity of injuries received by the Correctional Officers

[4] J. Verville and the 15 other COs appealed the decision of HSO Campbell that a danger did not exist for them pursuant to subsection 129(7) of the Code. CSC appealed the direction issued to them by HSO Campbell pursuant to subsection 146(1) of the Code. Subsection 129(7) and subsection 146(1) of the Code read:

> 129(7) If a health and safety officer decides that the danger does not exist, the employee is not entitled under section 128 or this section to continue to refuse to use or operate the machine or thing, work in that place or perform that activity, but the employee, or a person designated by the employee for the purpose, may appeal the decision, in writing, to an appeals officer within ten days after receiving notice of the decision.
>
> 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.

[5] AO Serge Cadieux conducted an inquiry into both appeals pursuant to subsection 146.1(1). In his decision dated June 28, 2002, AO Cadieux confirmed the decision of HSO Campbell that a danger did not exist for J. Verville and the 15 other COs who refused to work. AO Cadieux also rescinded the direction that HSO Campbell issued to CSC pursuant to subsection 145(1) of the Code. AO Cadieux stated in his decision that he was satisfied that the employer had taken all reasonable steps to ensure employee health and safety. Subsection 146.1(1) reads:

> 146.1 (1) If an appeal is brought under subsection 129(7) or section 146, the appeals officer shall, in a summary way and without delay, inquire into the circumstances of the decision or direction, as the case may be, and the reasons for it and may
> (a) vary, rescind or confirm the decision or direction; and
> (b) issue any direction that the appeals officer considers appropriate under subsection 145(2) or (2.1).

[6] J. Verville and 15 other COs appealed the decision of AO Cadieux to the Federal Court pursuant to subsection 18.1(1) of the Federal Courts Act. On May 26, 2004, the Federal Court ordered that the decision of AO Cadieux dated June 28, 2002 is set aside and the appeal of the decision of HSO Campbell with respect to the COs refusals to work under section 128 of the Code, as well as the appeal by CSC with respect to section 124 of the Code, be re-determined by a different appeals officer.

[7] On July 30, 2008 and September 2, 2008, respectively, C. Blanchette, representing J. Verville and 15 other COs who refused to work on September 24, 2001, and Richard Fader, Counsel for the Employer, wrote to the Office to confirmed that both sides wished to withdraw their respective appeals.

[8] Considering the above and having reviewed the file, this appeal is withdrawn and this case is closed.

Douglas Malanka
Appeals Officer

SUMMARY OF APPEALS OFFICER DECISION

Decision	OHSTC-08-025
Appellant	Juan Verville
Respondent	Correctional Service Canada
Provisions	
Canada Labour Code, Part II	128, 129(4), 129(7), 145(1), 145(2), 146(1) 146.1,
Keywords	penitentiary, maximum security, correctional officers, spontaneous attack, dynamic security model, unit control post, handcuff, handcuff policy, personal protection alarm danger, contravention.

SUMMARY

Correctional officers at a maximum security prison refused to work following management's policy decision that correctional officers were no longer permitted to carry handcuffs on their person at their discretion.

A health and safety officer investigated into their refusals to work and decided that a danger did not exist. However, the health and safety officer issued a direction to the employer for failing in its handcuff policy to adequately protect the COs.

Both the employees and the employer appealed the health and safety officer's findings to an appeals officer. Following an inquiry, the appeals officer confirmed the decision of the health and safety officer that a danger did not exist and also rescinded the direction to the employer.

The subject correctional officers appealed the decision of the appeals officer to the Federal Court. Following its review, the Federal Court ordered that the decision of the appeals officer is set aside and that both the appeal by the correctional officers and the employer be re-determined by a different appeals officer.

On July 30, 2008 and September 2, 2008, parties confirmed that both sides wished to withdraw their respective appeals.

This case is closed.