

Occupational Health  
and Safety Tribunal Canada



Tribunal de santé et  
sécurité au travail Canada

Ottawa, Canada K1A 0J2

Case No.: 2005-33  
Decision No.: OHSTC-08-028

**CANADA LABOUR CODE  
PART II  
OCCUPATIONAL HEALTH AND SAFETY**

Tony Ferrusi  
*appellant*

and

Canada Border Services Agency  
*respondent*

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October 30, 2008

This case was decided by Appeals Officer Katia Néron.

**For the appellant**

Jeff Bennie, National Health and Safety Officer, Programs Section, Membership Programs Branch, Public Service Alliance of Canada

**For the respondent**

Richard E. Fader, Counsel, Treasury Board, Legal Services

- [1] This case concerns an appeal made, under subsection 129(7) of the *Canada Labour Code*, Part II (the *Code*), on September 7, 2005 by Tony Ferrusi, border services officer and customs inspector with Canada Border Services Agency (CBSA) in Fort Erie, Ontario.
- [2] The appeal was made as a result of the decision of absence of danger rendered on September 1, 2005 by the health and safety officer (HSO) Rod Noel following his investigation conducted with regards to the refusal to work made by T. Ferrusi and 110 other customs inspectors on August 31, 2005.
- [3] According to HSO Noel's investigation report, T. Ferrusi and all the other customs inspectors invoked their right to refuse to work during the 24-hour period from August 31 to September 1, 2005. Their refusal to work was based on a written warning from their employer informing them that two armed and dangerous individuals, with a record of bank robberies, had escaped police custody in the U.S. and were likely attempting to enter Canada at a Niagara area border crossing which was the employees' work place. Because they believed that they were not sufficiently trained and equipped to protect themselves from the danger of two armed individuals who might intend them harm during the course of their work, they alleged that there was a danger for them at the time to perform their duties.
- [4] The employees' statement of their refusal to work was as follows:
- We are refusing to perform our duties as CBSA Customs inspectors because of danger, after having received a "lookout" notification of two armed and dangerous individuals who may be attempting to enter Canada at a Niagara area border crossing point, because:
1. we have not been trained, equipped and given sufficient procedures to protect us from the danger of injury or death upon encountering the armed and dangerous individuals described in the "LOOKOUT" notice of August 31, 2005, and
  2. we feel that the armed police presence at the border entry points is evidence of a dangerous situation, and
  3. the withdrawal of the police presence placed us in a situation of danger.
- [5] HSO Noel decided that there was no danger for the employees to perform their duties based on the following reasons:
- the danger of encountering armed and dangerous individuals during the course of the work performed by CBSA Customs Inspectors was a normal condition of their employment;
  - the employer had written procedure and provided training on those procedures as well as equipment and training on that equipment;

- protective measures were in place to deal with the inherent danger that was a normal condition of employment.

- [6] On October 1, 2008, Jeff Bennie, on behalf of T. Ferrusi, advised the Occupational Health and Safety Tribunal Canada that the appellant wished to withdraw his appeal in view of present work circumstances since his work refusal in 2005.
- [7] Based on this letter, I hereby accept T. Ferrusi's withdrawal and confirm that this file is closed.

  
Katia Néron  
Appeals Officer

## SUMMARY OF APPEALS OFFICER DECISION

<u>Decision</u>	OHSTC-08-028
<u>Appellant</u>	Tony Ferrusi
<u>Respondent</u>	Canada Border Services Agency
<u>Provisions</u>	
<i>Canada Labour Code, Part II</i>	129(7)
<u>Keywords</u>	Refusal to work, customs inspectors, armed and dangerous individuals, tainting, lookout, absence of danger, withdrawal.

### SUMMARY

On September 7, 2005, Tony Ferrusi appealed a decision of absence of danger rendered by Health and Safety Officer Rod Noel on September 1, 2005. On October 1, 2008, Jeff Bennie, on behalf of T. Ferrusi, informed the Occupational Health and Safety Tribunal Canada that T. Ferrusi no longer wished to pursue his appeal. The case is therefore close.