

Case No.: 2008-20  
Decision No.: OHSTC-09-002

**CANADA LABOUR CODE**  
**PART II**  
**Occupational Health and Safety**

Luc Querry  
*Appellant*

and

Correctional Service of Canada  
*Respondent*

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Decision No.: OHSTC-09-002  
January 30, 2009

**For the appellant**  
John Mancini

**For the respondent**  
Paul Deschênes  
Nadia Hudon

- [1] Before the Appeals Officer is the June 18, 2008 appeal filed under subsection 129(7) of Part II of the *Canada Labour Code* (“the *Code*”) by Luc Querry, an employee of the Correctional Service of Canada, of the June 17, 2008 decision by Health and Safety Officer (HSO) Régis Tremblay following his investigation into Mr. Querry’s May 19, 2008 refusal to work.
- [2] At the time of his refusal to work, Mr. Querry was working as a CX-1 Correctional Officer on security patrol on Range 1C at the Regional Mental Health Centre (RMHC) of the Archambault Institution in Sainte-Anne-des-Plaines, Quebec.
- [3] In support of his refusal to work, Mr. Querry cited section 128 of the *Code* since he believed it was dangerous for him to work on that range, for the following alleged reasons:
- the employer had not allowed him to carry a gas, MK4, for defensive purposes, while some inmates potentially at risk of becoming unruly without warning were in cells with the doors open or were outside their cells in the common room;
  - he had not been trained to work in those conditions; and
  - in case of emergency, prompt help could not be assured since the Institution (the RMHC) control post was located at some distance from Range 1C and he had not been given any direct means of communicating with the RMHC officer.
- [4] After a brief investigation, HSO Tremblay found that the circumstances surrounding Mr. Querry’s refusal to work corresponded to a normal condition of his employment within the meaning of paragraph 128(2)(b) of the *Code* and that, consequently, no investigation under section 129 was called for to decide whether a danger existed.
- [5] On August 1, 2008, Paul Deschênes, counsel for the respondent, filed an application for postponement of the hearing of the present appeal, in light of an application for judicial review filed by the Correctional Service of Canada ( File No. T-2110-07) of the interlocutory decision by Appeals Officer Serge Cadieux in *Éric V. et al. v. Correctional Service of Canada*.<sup>1</sup> In support of this application, Mr. Deschênes stated that the decision in File No. T-2110-07—if the Federal Court found that Appeals Officer Cadieux did not have jurisdiction to act in *Éric V. (supra)*—could affect the present appeal since it raises the same question he intended to raise in the present appeal and since, in his opinion, HSO Tremblay’s finding following his investigation into Mr. Querry’s refusal to work does not

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<sup>1</sup> *Éric V. et al. v. Correctional Service of Canada*, decision CAO-07-041(I), November 23, 2007.

constitute a decision that can be appealed pursuant to subsection 129(7) of the *Code*. In his application, Mr. Deschênes also notes that on July 29, 2008 he contacted John Mancini, counsel for Mr. Querry, asking whether Mr. Mancini consented to the postponement of the hearing of the present appeal. Mr. Mancini notified Mr. Deschênes that he objected to the postponement.

- [6] On September 3, 2008, the undersigned Appeals Officer held a telephone conference with Mr. Mancini and Mr. Deschênes. During that telephone conference, and after hearing the submissions by each party on this point alone, the Appeals Officer told Mr. Mancini and Mr. Deschênes that she would not allow the application for postponement of the hearing of the present appeal and would proceed to hear the appeal on its merits, while taking the objection under advisement. The Appeals Officer also indicated that only at the end of her inquiry, after allowing the parties to present their arguments with regard to the Federal Court decision in File No. T-2110-07 (expected in the near future), would she render a decision on both the objection and the merits of the appeal.
- [7] The hearing of the present appeal was scheduled for February 3, 4 and 5, 2009.
- [8] On January 22, 2009, the undersigned Appeals Officer held a second telephone conference with Mr. Mancini, Mr. Deschênes and Nadia Hudon, also counsel for the employer in the present appeal. The purpose of this telephone conference was to inform counsel for the parties of the procedure the Appeals Officer intended to follow in order to ensure a smooth hearing. At the beginning of the telephone conference, Mr. Mancini stated that, following an agreement proposed by the employer, Mr. Querry had decided that he wished to withdraw his appeal.
- [9] On January 23, 2009, on behalf of Mr. Querry, Mr. Mancini forwarded the written notice of application to withdraw the appeal.
- [10] After reading the notice, the Appeals Officer confirms that the case is therefore now closed.

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Katia Néron  
Appeals Officer