



Occupational Health and Safety Tribunal Canada

Date: 2015-11-13
Case No.: 2013-28

Between:

Robert Thibeault, Appellant

and

Canada Post Corporation, Respondent

Indexed as: *Thibeault v. Canada Post Corporation*

Matter: Appeal under subsection 129(7) of the *Canada Labour Code* of a decision rendered by a health and safety officer.

Decision The decision of no danger is confirmed.

Decision rendered by: Jean Arteau, Appeals Officer

Language of decision: French

For the appellant: Himself

For the respondent: The respondent did not participate in the appeal

Citation: 2015 OHSTC 21

REASONS

[1] This decision concerns an appeal filed by Robert Thibeault (appellant) under subsection 129(7) of the *Canada Labour Code* ("the Code") of a decision of no danger rendered by Occupational Health and Safety Officer (OHS Officer) Javier Vicente Izquierdo on March 28, 2013.

Background

[2] On March 26, 2013, Robert Thibeault, letter carrier for Canada Post Corporation (hereafter "Canada Post" or "the employer"), exercised his right to refuse to work under section 128 of the Code, claiming that climbing stairs without banisters to deliver mail to the home located at 762 Chardonnay Street in Sherbrooke, Quebec poses a danger to his health and safety.

[3] The address in question is in a hilly neighbourhood with a number of steep slopes. In this area, the letter carriers do not carry bags on their shoulder. There is a rest platform at the top of the stairway involved in this refusal to work. The next set of steps has a banister and is right along the building where the mail is to be delivered.

[4] The same day, OHS Officer Izquierdo carried out an investigation pursuant to section 129 of the Code. The following individuals were present during the investigation by the OHS officer: Guillaume Basque Bouvier (representing the Workplace Occupational Health and Safety Committee [WOHSC]), Sylvie Ouellette (employer side, Co-chair of the WOHSC), Denis Boulanger (letter carrier; the appellant and OHS officer agreed to his presence), Claude Lepage (letter carrier, union side, Co-chair of the WOHSC) and Johanne Ringuette (letter carrier, member of the WOHSC and Vice-President of the local branch of the Canadian Union of Postal Workers).

[5] During his investigation, the OHS officer noted that the appellant had refused to work before leaving the depot to deliver the mail, that the stairs in question were not obstructed on the day of the refusal, that it was dry and sunny outside and that the temperature was around -2 degrees Celsius. He also noted that the stairs in question have no direct attachment to the main building and that the outside design of several other properties in the area includes natural rock, concrete and other materials, making it possible to cross between the sidewalk and main stairway leading to the entrance to the property.

[6] OHS Officer Izquierdo issued the following decision on April 26, 2013:

[Translation] Considering all of the available facts, I conclude that Mr. Thibeault is able to deliver mail to 762 Chardonnay Street in Sherbrooke safely and without danger. However, if the weather conditions were to compromise ideal delivery

conditions and create a temporary danger, Mr. Thibeault could follow the procedure established by the employer.

[7] Mr. Thibeault appealed the decision of no danger by the OHS officer on April 18, 2013. The employer chose not to participate in the appeal. I conducted a conference call hearing with Mr. Thibeault on October 1, 2014.

Issue

[8] The issue at hand is whether the appellant was exposed to a danger within the meaning of the Code when he exercised his right to refuse to work.

Appellant's submissions

[9] Mr. Thibeault submitted that the employer breached its own directive, which provides that building owners must install a handrail when a stairway has more than three risers above ground level. The directive¹ reads as follows:

[Translation] 4 The homeowner or building owner must ensure that:

- a handrail is installed if the stairway has more than three risers above ground level;
- the building codes of the community or municipality are adhered to;
- the steps have no obstacles or hazards, e.g. an accumulation of foam or debris, unstable or broken handrails or steps.

[10] He stated that all letter carriers are aware of this directive and that breaching such a directive aimed at protecting letter carriers is in itself a danger. Furthermore, he argued that the height of the stairway must be measured as it compares to the street level, regardless of whether the stairway was built to suit the topography.

[11] In support of his position, Mr. Thibeault cited a [translation] “Dangerous Conditions Report” produced by Canada Post in 2012 for this very address. The report indicates that the stairway did not need a banister, given that its height from the ground was less than 60 centimetres. According to Mr. Thibeault, this conclusion runs counter to the directive cited above.

[12] Mr. Thibeault added that he generally avoided taking the stairs in front of 762 Chardonay by making a slight detour.

¹ [CMS [Corporate Manual System] - 1202.00 - Delivery methods and transfer points - 2014-09-22 - 3.2.1 Requirements regarding mail receptacles for home delivery and CMS - 1202.03 - Allocation of delivery methods for new points of call - 2011-11-24 - 2.1.4 Requirements regarding mail receptacles for home delivery.

Analysis

[13] Before beginning my analysis, I would first like to clarify a few points. The OSH officer used the term “banister” in his investigation report and notes that Mr. Thibeault used that same term both in his documents and during his testimony. However, technically speaking, a banister is a railing with a handrail on top. So the term banister includes the railing and the handrail.

[14] Subsection 122(1) of the Code defines “danger” as follows:

“danger” means any existing or potential hazard or condition or any current or future activity that could reasonably be expected to cause injury or illness to a person exposed to it before the hazard or condition can be corrected, or the activity altered, whether or not the injury or illness occurs immediately after the exposure to the hazard, condition or activity, and includes any exposure to a hazardous substance that is likely to result in a chronic illness, in disease or in damage to the reproductive system.

[15] The Federal Court, in *Verville v. Canada (Correctional Service)*, 2004 FC 767, determined that in order to conclude that there is a danger:

- There must be a hazard, condition or activity that could reasonably be expected to cause injury or illness to an employee, whether or not the effects are immediate, before the hazard or condition can be corrected or the activity altered.
- The definition does not require that the “danger” cause an injury every time the hazard, condition or activity occurs. The expression “susceptible de causer” in the French version [“reasonably expected to” in the English version] indicates that the condition, activity or hazard could cause injury at any time, but not necessarily every time.
- It is not necessary to establish precisely the time when the hazard, condition or activity will occur, but rather that one ascertains in what circumstances the hazard, condition or activity could be expected to cause injury, and that it be established that such circumstances will occur in the future, not as a mere possibility, but as a reasonable one.

[16] In this case, the issue is whether it could be reasonably expected that climbing the six steps outside 762 Chardonnay Street in Sherbrooke could cause Mr. Thibeault to suffer injury.

[17] After a careful review of Mr. Thibeault’s submissions and OHS Officer Izquierdo’s investigation report, I find that the first step in the analysis of danger was not met. For the following reasons, I do not believe that there was a hazard

or condition that day, or that the performance of Mr. Thibeault's duties could have caused him injury.

[18] First of all, Mr. Thibeault's regular work consists of delivering mail, which implies that he must be able to walk long distances and go up and down stairs to get to the mailboxes. At the time he exercised his right of refusal, there was nothing to indicate that Mr. Thibeault had a personal condition preventing him from performing his work and requiring accommodation. Mr. Thibeault had been delivering mail to this address for a few months prior to March 26, 2013.

[19] Moreover, I am not satisfied that, in the circumstances, the lack of a handrail alone can constitute a condition or hazard that could reasonably be expected to cause injury to an employee. A handrail installed in a stairway helps to avoid falls and there is no indication that there was a reasonable possibility that Mr. Thibeault could fall that day due to obstacles, snow or ice on the stairway at the address in question.

[20] Indeed, the evidence shows that the day of the refusal was dry and sunny outside, with the temperature around -2 degrees Celsius, and that there were no impediments on the stairs that might have obstructed the path to the mailbox. If that were the case, Mr. Thibeault could have followed the employer's policy, entitled [translation] "Hazards and Obstructions to Delivery," which allows all employees not to deliver the mail under such circumstances.

[21] In light of the foregoing, I find that there was no danger to Mr. Thibeault in delivering mail to the address in question. I agree and find it important to reiterate the comments made by OHS Officer Izquierdo to the effect that, if changes in the weather or any other changes were affecting the delivery conditions by creating a risk of falling, Mr. Thibeault could exercise his right not to deliver the mail to that address, as provided for in the employer's procedures.

[22] Having found there was no danger, I would nonetheless like to add a comment in regard to OHS Officer Izquierdo's position that the stairway in question is part of the exterior design and as such is not covered by the *National Building Code*. This matter is separate from the matter that I needed to consider in order to resolve this case, yet I still feel it is important to provide my point of view. My reading of the Code and the application guides² and my work experience as an occupational health and safety engineer lead me to believe that the same standards of protection should apply to a stairway, whether it be indoor or outdoor, enclosed by walls or with open sides, because it is used by the same people with the same abilities.

² Example: Canada Mortgage and Housing Corporation, "Canadian Wood-Frame House Construction." CMHC 61199 NH17-3/2005

Decision

[23] For all the above reasons, I confirm the decision of no danger rendered by OHS Officer Izquierdo on March 28, 2013.

Jean Arteau
Appeals Officer