Occupational Health and Safety Tribunal Canada
Tribunal de santé et sécurité au travail Canada

275 rue Slater Street, Ottawa, Ontario, K1P 5H9 – Fax :(613) 953-3326

Case No.: 2007-15
Decision No.: OHSTC-08-011

Canada Labour Code
Part II
Occupational Health and Safety

Sylvain Sincennes
appellant

and

G4S Cash Services Limited
respondent

May 22, 2008

This matter is decided by Appeals Officer Douglas Malanka.

For the appellant
Mr. Steve Mathews, Health and Safety Representative, Group-4 Securicor

For the respondent
Mr. Ben Ratelband, Counsel, McCarthy-Tétrault

[1] This case concerns an appeal on June 4, 2007 by Armoured Guard Sylvain Sincennes made pursuant to subsection 129(7) of the *Canada Labour Code* (*Code*).Sylvain Sincennes appealed the decision of health and safety officer (HSO) Serge Marion made on May 18, 2007 regarding his refusal to work on April 17, 2007.Subsection 129(7) reads:

> 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.

[2] On April 17, 2007, at approximately 10:45 p.m., Armoured Guard Sylvain Sincennes, acting as custodian, refused to work pursuant to section 128(9) of the *Code*. He stated he and fellow Armoured Guard David Stacy noticed a car parked outside as they were about to exit the bank they had just serviced. They further noticed that no one was in the bank using the automated teller machine to account for the presence of the parked car. Sylvain Sincennes stated that a danger existed because there was no driver in the

armoured vehicle to warn them of a potential robbery or to call for help in the event of robbery. He added that it is necessary for safety to have a driver remain in the armoured vehicle during stops to drive the armoured vehicle away from the scene should they be taken hostage for the purpose of gaining access to the vehicle and its contents. Subsection 128(9) reads:

> 128(9) If the matter is not resolved under subsection (8), the employee may, if otherwise entitled to under this section, continue the refusal and the employee shall without delay report the circumstances of the matter to the employer and to the work place committee or the health and safety representative.

[3] On May 18, 2007, HSO Marion wrote to Sylvain Sincennes and informed him that based on his preliminary inquiry made pursuant to the National Labour Operations Directorate 905-1/Operation Program Directives (OPD) / Interpretation, Policies and Guidelines (IPG), the danger referred to in his refusal to work constituted a normal condition of work. As a consequence, HSO Marion stated that he would not be investigating the refusal to work pursuant to subsection 129(1) of the *Code*. Subsection 129(1) reads:

> 129(1) On being notified that an employee continues to refuse to use or operate a machine or thing, work in a place or perform an activity under subsection 128(13), the health and safety officer shall without delay investigate or cause another officer to investigate the matter in the presence of the employer, the employee and one other person who is
>
> (a) an employee member of the work place committee;
>
> (b) the health and safety representative; or
>
> (c) if a person mentioned in paragraph (a) or (b) is not available, another employee from the work place who is designated by the employee.

[4] On September 27, 2007 Mr. Mike Armstrong, National Representative, Canadian Auto Workers Canada Union wrote to Mr. Michel Parent, Case Management Officer at the Occupational Health and Safety Tribunal Canada (formerly the Canada Appeals Office on Occupational Health and Safety) to inform him that parties had agreed to request a stay of appeal proceedings in the appeal. Mr. Armstrong explained that the parties were in collective bargaining and they would try to resolve the matter at the bargaining table.

[5] On October 5, 2007 Michel Parent wrote to parties and confirmed that a stay of proceedings was granted until such time that parties informed him whether or not the appeal was resolved to the satisfaction of the appellant.

[6] On February 5, 2008, Mr. Armstrong informed Michel Parent, in writing that the matter that was the subject of Sylvain Sincennes' appeal had been mutually resolved by parties and that Sylvain Sincennes would likely withdraw his appeal

[7] On April 15, 2008, Mr. Mathews wrote to Michel Parent and copied him with Sylvain Sincennes signed notice that he was withdrawing his appeal in the matter.

[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-08-011

Appellant : Sylvain Sincennes

Respondent: G4S Cash Services Ltd.

Provisions: *Canada Labour Code*, 128(8), 129(1), 129(7),

Keywords: Armoured Vehicle, driver, potential danger, hostage taking, normal condition of work, withdrawal.

Summary:

On June 4, 2007 Armoured Guard Sylvain Sincennes appealed the decision of health and safety officer (HSO) Serge Marion made on May 18, 2007 regarding his refusal to work on April 17, 2007.

On February 5, 2008, Mr. Armstrong, CAW national representative informed Michel Parent, Case Management Officer that the matter that was the subject of Sylvain Sincennes' appeal had been mutually resolved by parties and that he would likely withdraw his appeal

On April 15, 2008, Mr. Mathews wrote to Michel Parent, Case Management Officer and copied him with Sylvain Sincennes' signed notice that he was withdrawing his appeal in the matter.

The appeal is withdrawn and this case is closed.