

Case No.: 2005-35

Canada Labour Code
Part II
Occupational Health and Safety

Steve Gunter et al.

appellants

and

Correctional Services Canada

respondent

Decision No.: CAO-07-005

March 12, 2007

This case was decided by Appeals Officer Serge Cadieux.

For the Appellants

Michel Bouchard, CSN Ontario Union Advisor

Steve Gunter and six co-workers, Correctional Officers II

For the Respondent

Karen Clifford, Counsel, Treasury Board, Legal Services

Bruce Somers, A/Deputy Warden, Warkworth Institution

Health and Safety Officer

Chris R. Matson, Human Resources and Skills Development Canada

[1] This case concerns an appeal made on September 7, 2005 under the *Canada Labour Code*, Part II (the *Code*), subsection 129(7)¹, by several employees of Correctional Services Canada at the Warkworth Institution. The employees in question had exercised their right under the Code to refuse to work if danger exists. The appeal was made against the decision rendered by Health and Safety Officer (HSO) Chris R. Matson to the effect that the danger referred to by the individual employees does not exist.

¹ 129(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] The appeal was made by Mr. Steve Gunter and six co-workers, all of whom are correctional officers level II (CO II) at the Warkworth Institution. This Institution is a federal medium security penitentiary. Mr. Gunter and his co-workers had refused to work at 14:00 hrs on September 2, 2005. HSO Chris R. Matson investigated Mr. Gunter and co-workers' refusals to work and issued the decision under appeal. He reported Mr. Gunter's Statement of the refusal to work in his Investigation Report and Decision as follows:

I believe that working with only two officers in the Unit/s constitutes a danger as per section 122.(1) of the *Canada Labour Code* Part II. I believe that the Employer is not exercising due diligence as per section 124. CLC Part II.

- [3] The parties agreed that this appeal should be heard concurrently with the appeal case number 2005-36² by the appeals officer given their similarity. Furthermore, they also agreed that these cases should proceed with a full oral hearing.
- [4] Prior to the four-day hearing that had been scheduled to commence on March 6, 2007, this appeals officer convened the parties to a pre-hearing telephone conference to be held on February 27, 2007. Both, Mr. Michel Bouchard for the employees and Ms. Karen L. Clifford for the employer took an active part in the telephone conference which ended on a positive note and an agreement on the amount of time needed by each party for the hearing.
- [5] On March 2, 2007, Mr. Michel Bouchard sent a fax to the Canada Appeals Office in which he notified the Appeals Office "...that we are withdrawing the appeals in the subject files, scheduled for hearing on Tuesday March 6th, 7th, 8th and 9th in Kingston, with apologies for the eleventh hour notification."
- [6] Considering the written notification of withdrawal of the appeal file in this case, I accept Mr. Bouchard's withdrawal of appeal on behalf of Mr. Gunter and his co-workers. I declare this case closed.

Serge Cadieux
Appeals Officer

² Appeal of an identical decision on a similar set of circumstances rendered by a different HSO at the same Institution a few hours earlier.

Summary of Appeals Officer's Decision

Decision No.: CAO-07-005

Appellant: Steve Gunter et al.

Respondent: Correctional Services Canada

Key Words: Withdrawal, CO II, two officers in the unit/s

Provisions: *Canada Labour Code: 129(7)*

Summary:

On September 7, 2005, Steve Gunter appealed a decision of no danger following a work refusal. On March 2, 2007, Michel Bouchard, union representative of Mr. Gunter, withdrew the appeal. The case is therefore close.