

Case No.: 2006-27  
Decision No.: CAO-07-027

**Canada Labour Code**  
**Part II**  
**Occupational Health and Safety**

Rick Buckley  
*appellant*

and

Canadian National Railway Company  
*respondent*

---

August 16, 2007

This case was decided by Appeals Officer Jean-Pierre Aubre.

**For the appellant**

Mr. Glenn Wheeler, Counsel, Shell Lawyers

**For the respondent**

Mr. Michael G. McFadden, Counsel, Ogilvy Renault

- [1] This case concerns an appeal made on March 22, 2006, pursuant to subsection 129(7) of the *Canada Labour Code (Code)*, by Mr. Rick Buckley, a conductor employed by the Canadian National Railway Company at the CN Rail Belleville yard, against a decision of absence of danger issued by Health and Safety Officer (HSO) Michelle J. Cartmill.
- [2] According to HSO Cartmill's report dated March 28, 2006, Mr. Buckley refused to work on March 16, 2006, stating :

“I am concerned that not having been a conductor on the Kingston Subdivision west of Belleville since 1982 in freight service poses a threat to my health and safety because by not knowing the location of fixed signals the potential for the locomotive engineer to pass a red signal and have a head on collision exists. In the event that I need to leave the cab of the locomotive for mechanical reasons I would be separated from the pilot and would be unfamiliar with the roadbed and restricted clearances also posing a threat to my health and safety. I would be a distraction from (sic) the locomotive engineer in the performance of his duties.”

- [3] On completion of the investigation into the work refusal, HSO Cartmill determined, pursuant to subsection 129(4) of the Code, that a danger did not exist.
- [4] During preparation for proceeding with the hearing of this appeal, the undersigned Appeals Officer, while conducting a telephone conference with the parties, was informed that since filing his appeal, Mr. Buckley, the Appellant, had retired from his employment at CN Rail. This was confirmed by letter of April 9, 2007, from counsel for the Appellant. At that time, the undersigned Appeals Officer indicated to both counsel that in light of this fact, he would expect the parties to address, at the outset of the hearing, the issue of whether this matter should be considered moot.
- [5] By letter of July 26, 2007, from counsel for the Appellant, the undersigned Appeals Officer was informed that since Mr. Buckley is no longer employed by Canadian National Railway Company, counsel had been authorized and instructed to withdraw the appeal.
- [6] Considering the above and having reviewed the file, this appeal is withdrawn and this case is closed.

---

Jean-Pierre Aubre  
Appeals Officer

## Summary of Appeals Officer's Decision

**Decision:** CAO -07-027

**Appellant:** R. Buckely & United Transportation Union

**Respondent:** Candian National Railway Company

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

**Keywords:** No danger, conductor, signals, head on collision, withdrawn

### Summary

This case concerns an appeal made on March 22, 2006, pursuant to subsection 129 (7) of the *Canada Labour Code*, Part II. Mr. Rick Buckley was a locomotive engineer employed by Canadian National Railway Company and believed the health and safety officer erred in finding a decision of no danger with his concerns to signals when locomotives where in transit. Mr. Buckley feared amongst other things, a head on collision\, this potential accident posed a threat to his health and safety.

Before the case could be heard in hearing, the appeals officer was notified that since the time of the refusal, the appellant had retired and instructed his counsel to withdraw his appeal. Given the formal withdrawal and revision of the facts, the appeals officer accepted the withdrawal and the case is closed.