

Canada Appeals Office
on Occupational Health
and Safety



Bureau canadien d'appel
en santé et sécurité
au travail

Case No.: 2007-19
Decision No.: CAO-07-045

**CANADA LABOUR CODE
PART II
OCCUPATIONAL HEALTH AND SAFETY**

*Len Van Roon
appellant*

and

*Kinonjeoshtegon First Nation
respondent*

December 27, 2007

This case was decided by Appeals Officer Richard Lafrance.

For the appellant
Mr. Len Van Roon

For the respondent
Mr. Grant Stephanson, Counsel

- [1] This case concerns an appeal under subsection 129.(7) of the Canada Labour Code (the Code) made on June 21, 2007 by Len Van Roon against a decision of absence of danger rendered by health and safety officer Ken Chmeliuk on May 22, 2007.

Preliminary issue

- [2] As the appeal was submitted later than the prescribed time to make an appeal under the Code, written submissions were received from the parties to decide on this issue. Having taken into consideration the arguments of the parties, I agreed to extend the date with reasons to follow in this final decision.
- [3] Mr. Van Roon argued that although he knew that there was a time limit to appeal, he did not know the procedure to make an appeal. He believed that to appeal a decision he had to present all his argumentation and relevant documents at the time of the application.
- [4] Since his union refused to assist with the appeal and the fact that he could not afford a lawyer to represent him, he was not made aware of the process until much later in the process.
- [5] He submitted that he contacted HSO Chmeliuk on June 4 requesting information on how to request an extension to make an appeal; this was only four days after the prescribed time limit to appeal a decision. He did not get any information from HSO Chmeliuk.
- [6] He further contended that the delay was not excessive under the circumstance and that it would not prejudice the employer in any way.
- [7] The legal counsel for the respondent argued that the time limit was exceeded, that there was no reason for Mr. Van Roon not to have filed an appeal even though he did not have all the relevant documentation at the time. The documentation could have been provided after the appeal was filed.

Analysis

- [8] In this case, Mr. Van Roon did admit that he had submitted his appeal later than the ten day prescribed limit. However, he did also request that I take into consideration that this was not done out of negligence.
- [9] At the time, without any assistance from his union or legal counsel, he truly tried, as indicated in the submitted number of communications that he had with various interrelated parties to this issue, to obtain all the

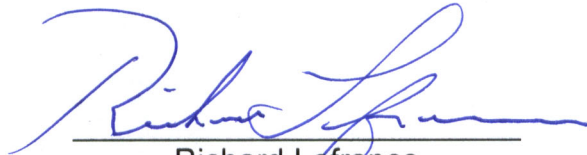
relevant information and documents he believed was necessary to appeal such a decision.

- [10] The employer did not even submit that if I did receive the appeal outside of the prescribed time limit it would be prejudicial to them. The employer contended that Mr. Van Roon was outside the time limit and as such, I should not receive the request for appeal.
- [11] As an Appeals Officer, I recognise that I should give some latitude to a self represented party, who through lack of knowledge and inexperience in the procedures; takes some time to properly understand the process and focus his concerns and file an appeal.
- [12] I believe that the prescribed time limit is not a strict limit; otherwise, Parliament would not have provided Appeals Officer with the powers to abridge or extend those limits.
- [13] I am of the opinion that the delay was minimal, it was not intentional and the appellant was of good will in believing that he had to present a complete documented case in order to file an appeal. I also believe that the delay in filing the appeal would not cause prejudice to the employer. Consequently, as empowered under subsection 146.2(f) of the Canada Labour Code, I grant the request to extend the time to file the appeal to the date that it was officially recorded, being June 21, 2007.

Appeal

- [14] On May 16, 2007, HSO Chmeliuk visited the Kinonjeoshtegon First Nation for the purpose of conducting an investigation of a continued work refusal made by Len Van Roon.
- [15] Mr. Van Roon was employed as a teacher by the Kinonjeoshtegon First Nation.
- [16] Mr. Van Roon refused to work on the basis that he felt that he had been threatened during a meeting with the Band Council and consequently he feared for his safety and refused to work at the school.
- [17] On May 22, 2007, HSO Chmeliuk rendered his decision that based on his investigation; he considered that danger did not exist.
- [18] On December 10, 2007 a hearing was initiated to hear the appeal of Mr. Van Roon. Early in the process, the parties agreed to discuss in private the possibility that mediation might bring them to reconcile their differences.

- [19] On December 11, 2007, the parties proceeded to mediation with the assistance of a neutral mediator from the Canada Appeals Office and came to an agreement.
- [20] On the same day, Mr. Van Roon signified in writing that he was withdrawing his appeal.
- [21] Considering the above and having reviewed the file, I consider this appeal withdrawn and this case is therefore closed.



Richard Lafrance
Appeals Officer