

Canada Labour Code
Part II
Occupational Health and Safety

Annie Blanchet, David Ouellet
and Patrick Gervais
and
*Fédération des employées et employés
de services publics inc. (CSN)*
applicants

and

Securicor Canada Limitée
respondent

Decision No.: 06-005
March 10, 2006

This matter was decided by appeals officer Katia Néron on the basis of documents submitted by the parties and the health and safety officer.

For the Applicants

Daniel Thimineur, Counsel, International Brotherhood of Teamsters (FTQ), Joint Council 91
Pascal Jean, Union Adviser, *Fédération des employées et employés de services publics inc.*
(CSN)
Annie Blanchet, Security Transport Officer
David Ouellet, Security Transport Officer
Patrick Gervais, Security Transport Officer

For the Respondent

Dany St-Martin, Regional Director, Securicor Canada Ltd.
François Samson, Section Director, Securicor Canada Ltd. and employer co-chair of the
local health and safety committee

Health and Safety Officer

Jessica Tran, Human Resources and Skills Development Canada, Labour Program,
Montreal, Quebec

- [1] The case concerns an appeal filed on December 6, 2002, pursuant to subsection 129(7) of the *Canada Labour Code*, Part II (the *Code*), by Daniel Thimineur, counsel, on behalf of Annie Blanchet, David Ouellet and Patrick Gervais, three security transport officers employed by Securicor Canada Ltd. (Securicor).¹
- [2] The appeal was filed against the decision of no danger issued by health and safety officer Jessica Tran following her investigation of the refusal to work by A. Blanchet, D. Ouellet and P. Gervais on November 21, 2002.
- [3] According to the investigation report by health and safety officer Tran dated November 29, 2002, A. Blanchet, D. Ouellet and P. Gervais had been informed on November 21, 2002, that beginning on Sunday of the following week, their work team would be reduced to two officers, rather than three, the driver becoming the messenger's guard when the employees arrived at the various delivery points. A. Blanchet, D. Ouellet and P. Gervais had further been informed that, also on the following Sunday, they would be receiving training and coaching on this new work method.
- [4] That day, A. Blanchet, D. Ouellet and P. Gervais refused to begin their usual tasks after receiving this information, because they believed their safety would be in danger if they did their night shift on highway 708, from the following Sunday. According to the report by health and safety officer Tran, the employees cited the following reasons for their refusal:
- Highway 708, which the employees took from Montreal to St-Sauveur, Ste-Adèle, Ste-Agathe, St-Donat, St-Jovite and Mont-Tremblant, and back to Montreal, is a long road and nobody uses it at night, which makes it more dangerous by night than by day.
 - The driver performs an essential role with respect to this highway because he can:
 - secure a portion of the exterior field of vision that the guard no longer sees once inside an establishment with the messenger, and warn them of any suspicious situation;
 - serve as an intermediary in communicating quickly with the Montreal office;
 - secure the truck when the guard and the messenger return to it;
 - protect and assist the guard and the messenger in certain situations;
 - Without the driver to watch the exterior environment, the guard and the messenger will not be alerted if a robbery takes place while they are inside an establishment.
- [5] The three officers' refusal to work reads as follows:

¹ At the time of the appeal, the employees were union members belonging to Joint Council 91 of the International Brotherhood of Teamsters (FTQ). This union was replaced by the *Fédération des employées et employés de services publics inc.* (CSN), and the three employees are now represented by Pascal Jean, union adviser.

Dangerous night work. Reasons: reduced visibility, no members of the public or witnesses, greater area to cover, since the driver would no longer be there. No communication with outside. Possibility of hostage-taking in banks without outside back-up because the driver is not there, particularly at the Bank of Montreal in St-Sauveur, which has already been robbed. No outside surveillance of banks upon return to the truck to warn of possible danger. No communication in an emergency if a hostage-taking occurs. In the event of gunfire outside, the driver can move the truck so as to protect the messenger and guard. If the driver is no longer there, there is one less opportunity to protect the two employees.

The driver witnesses what happens. Communication with the Montreal office is reduced by the distance.

The truck stops at each stop in difficult weather conditions. For example: "Wait, we have to clear snow from the truck before leaving."

[6] A. Blanchet, D. Ouellet and P. Gervais did, however, agree to perform their work as a team of two during the day on highway 708, because there was more traffic and they were not left to themselves so much, which reduced the risk.

[7] Also according to health and safety officer Tran's report, the employer maintained that there was no threat to the safety of A. Blanchet, D. Ouellet and P. Gervais, for the following reasons:

- Before their shift began, the officers would be receiving a one-hour briefing, depending on what questions they had, plus direct coaching on the job with an instructor, and the training could be extended on request.
- The truck used by the officers was equipped with an alarm system. It had also been fitted with a global positioning system (GPS) and an alarm system that made it possible to track the truck at all times and activate a signal that would be received by the Montreal office dispatch service, which could then dial 911 to request police assistance.
- With the addition of the two alarm systems, the driver, whose job it was to watch the truck and its contents, became superfluous because the job had now been taken over by these two technical aids, which protected both the securities and the truck itself;
- Once the truck had been parked, the driver could alight and leave it unattended in order to act as the messenger's guard.

[8] Following her investigation, health and safety officer Tran decided there was no danger to employees A. Blanchet, D. Ouellet and P. Gervais, for the following reasons:

- The police had issued no information to the effect that a robbery might occur on the route followed by the employees;

- When they reached the delivery points, two officers, the first acting as guard and the second as messenger, would leave the truck together to do their work;
- A. Blanchet, D. Ouellet and P. Gervais received training to act as guard and messenger. They will also be receiving further training from a qualified person in performing their duties as a team of two, rather than three;
- A. Blanchet, D. Ouellet and P. Gervais also received training in how to deal with robberies. They were also instructed to cooperate with the assailants.
- In the event of a robbery or a suspicious situation, the officers had a technical device, the GPS alarm system, that could trigger a signal that was forwarded automatically to the Montreal office dispatch service to request police assistance;
- A robbery could occur whether there were two or three officers on duty. It was impossible to say when a robbery would take place, or when officers would be injured. Moreover, even if a robbery did take place, it was impossible to predict whether one or more injuries would occur.

[9] Furthermore, health and safety officer Tran indicated that A. Blanchet, D. Ouellet and P. Gervais could not refuse to work under the *Code* since the danger cited, namely the possibility of a robbery, was inherent in their work. Since the *Code* does not define “inherent danger”, she referred to guideline 905-1-IPG-028, published by the Labour Program. In her investigation report, health and safety officer Tran quoted the following excerpt from the guideline:

The term “inherent danger” means a danger that is inherent to a person’s job. A danger might be considered inherent in the following cases:

- it is a permanent attribute or quality of a job;
- it is an essential character or element of a job;
- it is likely or probable to cause injury unless special precautions are taken;
- it exists regardless of the method used to perform the work.

Nevertheless, the fact that a danger may be inherent, does not absolve the employer of its responsibility to insure that all of its employees are properly trained and are provided with the necessary protective equipment.

[10] Health and safety officer Tran found that the factors cited did not intensify the existing conditions.

[11] I understand from this that she found that the conditions cited by A. Blanchet, D. Ouellet and P. Gervais to justify their refusal to work were not beyond the bounds of their normal working conditions.

[12] The issue I am to resolve in this case is whether health and safety officer Tran erred when she decided after investigating that there was no danger to A. Blanchet, D. Ouellet and P. Gervais.

[13] To do so, I must be guided by the definition of danger within the meaning of the *Code*, and with respect to the facts and circumstances of the case.

[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] To determine whether there was a danger, health and safety officer Tran was thus required to identify the condition that could reasonably be expected to cause injury. She also had to determine whether this hazard, condition or activity existed when she investigated, or could reasonably be expected to occur in the future. Lastly, she had to determine whether, in the circumstances, the condition could be corrected or the activity altered before injury or illness was caused. If not, the hazard, condition or activity then constituted a danger.

[16] In the instant case, the potential risk cited by A. Blanchet, D. Ouellet and P. Gervais was that they might be the target of a nighttime robbery at one of the delivery points on highway 708 between Montreal and St-Sauveur, Ste-Adèle, Ste-Agathe, St-Donat, St-Jovite and Mont-Tremblant. A. Blanchet, D. Ouellet and P. Gervais further maintained that as highway 708 carried little traffic at night and there was no one about at the various delivery points, the lack of a third officer in the truck to keep watch outside increased the risk that in the event of a robbery, the messenger and the guard might not be able to request assistance quickly, or might suffer injuries.

[17] To justify her decision of no danger, health and safety officer Tran pointed out that no robbery was imminent at the time of her investigation, as the police had forwarded no information to the effect that such an event might occur on the highway the employees were to take. I am of the view, however, that given the nature of the work to be performed by A. Blanchet, D. Ouellet and P. Gervais, there is always a reasonable possibility that these employees will be exposed to a robbery one day, and that this may cause them to be injured.

[18] To further justify her decision of no danger, health and safety officer Tran indicated that the employees could not refuse to work because the danger cited—the possibility of a robbery—was inherent in their work. She applied the definition of “inherent danger” in Labour Program guideline 905-I-IPG-028. In my view, however, her reasons cannot stand, given the fundamental change made in September 2000 to subsection 128(2) of the *Code*. Since that date, subsection 128(2) of the *Code* no longer refers to a danger inherent in a job, but instead requires an assessment as to whether the danger cited by the employees constitutes a “normal condition of employment”.

[19] Subsection 128(2) states:

(2) An employee may not, under this section, refuse to use or operate a machine or thing, to work in a place or to perform an activity if

- (a) the refusal puts the life, health or safety of another person directly in danger; or
- (b) the danger referred to in subsection (1) **is a normal condition of employment**

[emphasis mine]

[20] This, moreover, is in my view the central issue in this case. I find that having noted that a robbery was not an imminent possibility and that the danger was inherent in the work of A. Blanchet, D. Ouellet and P. Gervais, health and safety officer Tran should then have determined whether or not when the guard and messenger were working at night on highway 708, the absence of the driver of the truck intensified the risk of not being able to request assistance quickly in the event of robbery or injury to such a degree that for that very reason, the danger no longer constituted a normal condition of employment.

[21] To answer this question, I believe we must consider the training and coaching provided by Securicor to its employees, and the work methods and protective equipment made available to them, in light of the proposal to reduce the work team to two officers.

[22] According to the information on file, A. Blanchet, D. Ouellet and P. Gervais had received training and coaching to act as both guard and messenger, including complete training to be vigilant and to react quickly, including the use if necessary of the defensive techniques and resources placed at their disposal. However, the training given to the employees was for a team of three: one officer driving the truck and, upon arrival at the various delivery points, watching over the truck itself and the exterior environment, and a second acting as the guard for the third, who acted as messenger.

[23] On the other hand, in view of the proposed change, Securicor had made sure that A. Blanchet, D. Ouellet and P. Gervais received training and coaching in working as a team of two, rather than three. Furthermore, Securicor had equipped its employees' truck with two new technical devices which, according to the employer, provided adequate surveillance and the possibility of requesting assistance quickly, if needed.

- [24] Nevertheless, despite the installation of an alarm system in the vehicle and the GPS alarm system placed at their disposal, A. Blanchet, D. Ouellet and P. Gervais believed there was still a need for a third officer to be present to watch outside while the messenger and the guard made night deliveries at the various points on their route along lightly travelled highway 708, and thus provide protection for them.
- [25] Lastly, the two-officer team was not to go into operation until the following Sunday, after training had been provided to A. Blanchet, D. Ouellet and P. Gervais in the new work method, including coaching by a qualified instructor.
- [26] In view of this fact, I am of the opinion that Securicor was able to resolve in an appropriate manner the objections raised by A. Blanchet, D. Ouellet and P. Gervais, so that they could do their work safely. If, however, after receiving their training and coaching and beginning their shift, A. Blanchet, D. Ouellet and P. Gervais had still believed that the circumstances in which they did their work had resulted in the potential danger of a robbery and no longer constituted a normal condition of employment, they could then have exercised their right to refuse to work.
- [27] For these reasons, I am of the view that there was no danger to A. Blanchet, D. Ouellet and P. Gervais when health and safety officer Tran investigated. I accordingly uphold the decision of no danger she made after investigating.

Katia Néron
Appeals Officer

Summary of Appeals Officer's Decision

Decision No.: 06-005

Applicant: Annie Blanchet
David Ouellet
Patrick Gervais

Respondent: SECURICOR CANADA LIMITED

Key Words: Decision, refusal to work, security transport, smaller team

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

Summary:

Three security transport officers employed by Securicor Canada Limited (Securicor) refused to work pursuant to Part II of the *Canada Labour Code* because their safety would be endangered by the fact that from the following Sunday, they would have to work their night shift with a team reduced from three officers to two. As a result of her investigation, the health and safety officer found there was no danger.

Since training and coaching were planned before the work requested was performed by a team of two, the appeals officer found that Securicor was able to resolve the objections raised by the three officers so that they could perform their work safely. She accordingly upheld the decision of no danger made by the health and safety officer.