

Canada Labour Code
Part II
Occupational Health and Safety

Securicor Canada Limited
Applicant

and

*Fédération des employées et employés de
services publics inc. (CSN)*
Respondent

Decision No.: 06-006
March 10, 2006

This case was decided by appeals officer Katia Néron, on the basis of written documents presented by the parties and the health and safety officer.

For the Applicants

Ingrid E. Mazzola, senior counsel, Dufresnes Hébert Comeau, legal counsel
Steven H. Meiten, managing director, Securicor Canada Limited

For the Respondent

Pascal Jean, union advisor, *Fédération des employées et employés de services publics inc. (CSN)*
Sébastien Hotte, security transport officer
Patrick Cyr, team leader, co-president employed by the local health and safety committee

Health and Safety Officer

Pierre Bouchard, Human Resources and Skills Development Canada, Labour Program,
Montreal, Quebec

- [1] This case concerns an appeal filed August 29, 2003 pursuant to subsection 146(1) of the *Canada Labour Code* (the *Code*), Part II, by Ingrid E. Mazzola, representing Securicor Canada Limited (Securicor).
- [2] I. E. Mazzola filed this appeal against the decision concerning a contravention of the *Code* issued by health and safety officer Pierre Bouchard on August 6, 2003, following his investigation on the refusal to work by security transport officer Sébastien Hotte.

- [3] According to the report by health and safety officer Bouchard, on August 6, 2003, around 9:45 a.m., S. Hotte was assigned to accompany the Méta4 company technician who had to see to the maintenance of an automatic banking machine (ATM) located in the entrance hall of a residential building in Lachine. His duties involved supervising access to the hallway where the ATM was located after having opened the ATM and the vault in order to allow the technician to carry out his work.
- [4] According to the report prepared by health and safety officer Bouchard, S. Hotte stated that when he was on the site he noticed that the ATM was front-loading. This meant that in order to open the vault situated below the machine, S. Hotte had to kneel down with his back turned to the entrance door to open the vault using the combination. Also, if during the maintenance operation, banknotes were found to be stuck, since the technician had no right to touch them, S. Hotte would again have to kneel, with his head down, in order to retrieve the notes, verify the container contents and check the statement of operations roll.
- [5] According to the report by health and safety officer Bouchard, S. Hotte refused to carry out this task because he believed that his safety, as well as the safety of the technician and the general public, was in danger for the following reasons:
- although he had been requested to ask the maintenance technician to watch out for him while he opened the vault, this technician had, to his knowledge, no competence or training as to what should be done, nor did he have any equipment that would allow him to react quickly had there been a problem. As a result, S. Hotte would be without anyone qualified to provide surveillance while he would be kneeling down to open the vault, with his hands busy, his head lowered toward the ATM, and his back to the door. Also, he would be in the same situation if he had to retrieve banknotes found stuck in the vault during the maintenance operation;
 - since the ATM cubicle was very small, approximately ten feet square only, the distance from S. Hotte to the door was no more than three or four feet, which would not have allowed him to watch the entrance door while he was kneeling;
 - the wall and the door of the cubicle was completely enclosed in glass, which allowed passers-by full view of what was going on inside – for instance, when someone was opening the vault or depositing banknotes;
 - an electronic camera detected the presence of customers in the room and kept the door unlocked to allow them to exit. Also, there was no device, such as a latch, that would allow them to lock the door from the inside;
 - S. Hotte had no idea as to the functioning of the GPS (global positioning system) alarm installed in his truck and he maintained that his employer had told him not to touch it. He also declared that he had not received any training on this system.
- [6] The text of S. Hotte's refusal to work reads as follows:

I, Sébastien Hotte, on the basis of a duly call, refused to work in a National Bank (cubicle housing an ATM in a residential building) where my duties involved opening an ATM with a front-loading vault. In my view, my safety, as well as that of the technician and the general public, were at risk due to the possibility of a hold-up because the place was not sufficiently protected when the money was exposed to view.

[7] According to the report by health and safety officer Bouchard, the employer declared that there was no risk to the safety of S. Hotte, the maintenance technician or the general public for the following reasons:

- the task was not to deposit banknotes, but only to do maintenance on the ATM;
- the employer advised S. Hotte to ask the technician to provide surveillance as he opened the ATM and the vault;
- although two officers provide surveillance when the same task is performed on front-loading ATMs that are in convenience stores or other public areas, the employer felt that the ATM in question was not dangerous because the security officer could prevent people from entering the cubicle before the technician or the officer entered;
- the maintenance had been performed on this ATM several times before without incident;
- the GPS alarm was installed on S. Hotte's truck key;
- S. Hotte had received all relevant training.

[8] However, Steven H. Meiten, Securicor executive director, told health and safety officer Bouchard that he was unaware if the maintenance company Méta4 had given any training to its technicians on how to perform surveillance.

[9] Following his investigation, the health and safety officer Bouchard ruled that there was no danger to S. Hotte, based on the following points:

- S. Hotte carried a .38 calibre revolver and had received the training necessary to use it;
- S. Hotte's training logs confirm that the employee had received training on surveillance techniques and on how to increase vigilance in a safe way relative to his employment, as well as on general employment-related safety procedures, and that he had successfully passed all company evaluations;
- S. Hotte was equipped with a bullet-proof vest;
- the wall and door of the cubicle were glassed in, allowing passers-by to see inside the cubicle;

- neither the employer nor the employee knew of any police information or other source that would make them think that a robbery attempt would be made. Also, there was nothing indicating any situation that might have led to putting the safety of S. Hotte at risk, or to lead one to believe a hold-up might occur or the detection of any potentially dangerous person near the area.

[10] On the other hand, given that the door to the cubicle remained unlocked, that there was no security camera, that anyone could see from the outside and that no qualified security person performed surveillance while the employee kneeled down towards the vault, health and safety officer Bouchard, on August 6, 2003, issued Securicor a direction for contravening the *Code* based on two points.

[11] In the first of his two points, health and safety officer Bouchard considered that given that no qualified person ensured continuous surveillance, Securicor did not provide for S. Hotte's security and therefore contravened its expected duty pursuant to section 124 of the *Code*.

[12] Section 124 reads as follows:

124. Every employer shall ensure that the health and safety at work of every person employed by the employer is protected.

[13] In the second point, health and safety officer Bouchard considered that the employer contravened the provisions of subsection 125(1)s) of the *Code* in not proceeding with an investigation of the risks related to the particular workplace given the tasks that had to be carried out there.

[14] Paragraph 125(1)s) reads as follows:

125. (1) Without restricting the generality of section 124, every employer shall, in respect of every workplace controlled by the employer and, in respect of every work activity carried out by an employee in a workplace that is not controlled by the employer, to the extent that the employer controls the activity,

s) ensure that each employee is made aware of every known or foreseeable health or safety hazard in the area where the employee works;

[15] The issued direction reads as follows:

**IN THE MATTER OF CANADA LABOUR CODE
PART II – OCCUPATIONAL HEALTH AND SAFETY**

DIRECTION TO THE EMPLOYER PURSUANT TO PARAGRAPH 145(1)

On August 6, 2003, the undersigned health and safety officer conducted an investigation at the workplace operated by Securicor Canada Limited, an employer subject to the provisions of *Canada Labour Code*, Part II and doing business at 1325 William Street, Montreal, Quebec, H3C 1R4, the said location SOMETIMES being known as Les Blindés Loomis Ltée – Securicor Canada Limited.

The said health and safety officer considers that the following provisions of the *Canada Labour Code*, Part II were contravened:

1. *Canada Labour Code*, Part II, section 124.

During the opening of the vault and while carrying out tasks that had to be performed by the employee inside ATM #1025 situated at 697 6th Avenue in Lachine, the employee was not protected by the continuous surveillance of a qualified person.

2. *Canada Labour Code*, Part II, paragraph 125(1)s)

With respect to the workplace at 697, 6th Avenue in Lachine, the employer did not ensure that it was brought to every employee's attention that known or foreseeable risks to health and safety were present at the said workplace.

Therefore, you are HEREBY DIRECTED, pursuant to paragraph 145(1)a) of the *Canada Labour Code*, Part II, to cease all contraventions no later than August 7, 2003.

[16] The issue to be resolved in this case is to determine whether health and safety officer Bouchard was mistaken when he issued the direction to Securicor on August 6, 2003. In order to decide this, I must take into account the relative provisions under the law, as well as the facts and circumstances of the case.

[17] Paragraph 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;

- [18] In order to establish whether a danger exists, the health and safety officer must first identify the situation, the task, or the risk that might cause personal injury. He must also determine whether this situation, task or risk existed at the time of his investigation or if it could reasonably be expected to occur in the future. Finally, he must determine whether, according to the circumstances, the situation can be corrected, the task modified or the risk eliminated so as not to cause injury or disease. If that cannot be done, the situation, task or risk constitutes a danger.
- [19] In the present case, the potential risk adduced by S. Hotte was that he could be the target of a hold-up when he kneeled to carry out the task at the ATM vault. He also maintained that the absence of a trained guard to provide surveillance behind him increased the risk that he and the technician faced injury in the case of a hold-up.
- [20] At the time of the investigation by health and safety officer Bouchard, a hold-up was not imminent. I consider, nevertheless, that the decision of health and safety officer Bouchard regarding the refusal to work by S. Hotte did not take into account the possibility that this situation could take place in the future, a possibility which, as I see it, is reasonable to expect given the nature of the task that S. Hotte was to carry out.
- [21] I also consider that given the fact that S. Hotte had to kneel down with his back turned, his head leaning towards the ATM, his hands busy working and in the absence of adequate supervision, he was not in a position to ensure adequate surveillance himself or to react rapidly to fend off an attack as he had been trained to do. S. Hotte would also not have been able to set off the GPS alarm to call for assistance. Also, the technician, who had no training or means at his disposal, could not react rapidly to protect himself or S. Hotte if he suddenly had to do so.
- [22] According to the documents filed in the case, Securicor established general safety procedures to ensure the protection of its employees. The employer has also identified the devices that it has put at its employees's disposal, such as firearms, bullet-proof vests, and GPS alarm systems. However, according to the information in the file, the employer had not undertaken any evaluation of the risks involved at the workplace in question before sending S. Hotte there in the presence of only the maintenance technician.
- [23] Also, even if S. Hotte had a revolver in his possession and had received training to use it, he would not have been able to use it quickly at the critical moment in his work, that is while opening the ATM and the vault or retrieving banknotes at the time when he was kneeling with his head down towards the ATM to carry out the task and would have his back turned.
- [24] Moreover I have no confirmation in the file indicating to me that the Méta4 company maintenance technician was qualified to provide surveillance in place of S. Hotte. On the contrary, S. Hotte maintained that the technician had not taken any training qualifying him to do so and the employer did not contradict this assertion.

- [25] Given the circumstances, I consider that, at the time of the investigation by the health and safety officer, the conditions existing for the task required of S. Hotte were beyond this employee's normal working conditions and put his safety at risk during the time before such conditions could be modified.
- [26] I consider that health and safety officer Bouchard erred concerning the first point by issuing his direction pursuant to subsection 145(1) of the *Code*, rather than pursuant to paragraphs 145(2)*a*) and *b*).
- [27] Consequently, as authorized under paragraph 146.1(1)*a*) of the *Code*, I rescind the first point of the direction concerning contravention of section 124 of the *Code* and replace it with the direction concerning danger in terms of paragraphs 145(2)*a*) and *b*) of the *Code* that appears in Appendix I. In this new direction, I order Securicor to protect the safety of all its employees by ensuring that the person providing onsite surveillance be qualified to perform this task.
- [28] Concerning the second point of the direction, in response to a contravention, given by health and safety officer Bouchard, I consider that there was indeed a contravention pursuant to paragraph 125(1)*s*) of the *Code*, but not for the same reason that officer Bouchard gave. I consider that Securicor contravened under paragraph 125(1)*s*) of the *Code* because S. Hotte did not know before his arrival at the work site where the maintenance was to take place that the ATM was a front-loading model. In failing in its duty to inform S. Hotte before his arrival at the work site, Securicor did not do what was required to bring to the employee's attention the known risk that the site where he was asked to work presented. I therefore vary, as indicated in Appendix II, the direction of health and safety officer Bouchard.
- [29] Also, since the employer had not undertaken any evaluation of the risks specific to the site where the ATM was located, I consider that it committed a contravention under section 124 of the *Code*. Therefore, I am also including this contravention in the direction appearing in Appendix II.
- [30] At the time of health and safety officer Bouchard's inquiry, S. Hotte also maintained that he had no training on the GPS alarm that was accessible on his truck key.
- [31] Therefore, I note in the varied direction appearing in Appendix II, a third contravention under paragraph 125(1)*q*) of the *Code* to order Securicor to ensure that S. Hotte receives training on the GPS alarm system.
- [32] Paragraph 125(1)*q*) reads as follows:
125. (1) Without restricting the generality of section 124, every employer shall, in respect of every workplace controlled by the employer and, in respect of every work activity carried out by an employee in a workplace that is not controlled by the employer, to the extent that the employer controls the activity,

q) provide, in the prescribed manner, each employee with the information, instruction, training and supervision necessary to ensure their health and safety at work;

[33] I hereby request health and safety officer Bouchard or any other health and safety officer to ensure that Securicor complies with these two directions, the first relative to danger and the second concerning these three contraventions of the *Code*.

[34] Finally, I hereby remind Securicor that, as stipulated in subsection 145(5) of the *Code*, the employer is obliged to post copies of these two directions in the work place, in full view of the employees, as well as give a copy of the two directions to both the policy committee and the local health and safety committee.

Katia Néron
Appeals Officer

APPENDIX I

**IN THE MATTER OF THE CANADA LABOUR CODE, PART II,
OCCUPATIONAL HEALTH AND SAFETY**

DIRECTION TO THE EMPLOYER PURSUANT TO PARAGRAPHS 145(2)(a) and (b)

On August 6, 2003, health and safety officer Pierre Bouchard conducted an investigation into the refusal to work by security officer Sébastien Hotte who, on behalf of Securicor Canada Limited, an employer subject to the *Canada Labour Code*, Part II, doing business at 1325 William Street, Montreal, Quebec, H3C 1R4, the said business known under the name of Securicor Canada Limited, had to perform his duties in the cubicle of a residential building situated at 697 6th Avenue in Lachine that housed a front-loading National Bank ATM.

After investigating the facts and circumstances surrounding S. Hotte's refusal to work on the basis of the documents presented, the appeal officer considered that whenever S. Hotte had to open the front-loading ATM, and the vault, for the purpose of technical maintenance, and the performance of various tasks inside the vault, the employee would be exposed to a situation constituting a danger, namely:

The person providing surveillance of the site while the employee is kneeling with his head down towards the teller with his back turned and unable to ensure adequate surveillance and react rapidly in case of an attack or a hold-up is not qualified to carry out surveillance of this kind.

Therefore, you are HEREBY DIRECTED, pursuant to paragraph 145(2)a) of the *Canada Labour Code*, Part II, to take appropriate and immediate action to correct the situation.

Further, you are HEREBY DIRECTED, pursuant to paragraph 145(2)b) of Part II of the *Canada Labour Code*, not to cause the task in question to be carried out until such time as you have complied with the present direction, which is in no way intended to prevent you from taking all measures necessary for the implementation of the direction.

Ottawa, March 10, 2006.

Katia Néron
Appeals Officer
Certificate #. QC 7879

To: Securicor Canada Limited
1325 William St.
Montreal, Quebec
H3C 1R4

APPENDIX II

**IN THE MATTER OF THE CANADA LABOUR CODE, PART II,
OCCUPATIONAL HEALTH AND SAFETY**

DIRECTION TO THE EMPLOYER PURSUANT TO PARAGRAPH 145(1)

On August 6, 2003, health and safety officer Pierre Bouchard conducted an investigation into the refusal to work by security officer Sébastien Hotte who, on behalf of Securicor Canada Limited, an employer subject to the *Canada Labour Code*, Part II, doing business at 1325 William Street, Montreal, Quebec, H3C 1R4, the said business known under the name of Securicor Canada Limited, had to perform his duties in the cubicle of a residential building situated at 697 6th Avenue in Lachine that housed a front-loading National Bank ATM.

After an investigation into the facts and circumstances related to the direction issued on August 6, 2003 by health and safety officer Bouchard following his investigation, the undersigned appeals officer varies the wording of the said direction as follows:

1. Paragraph 125(1)s)

The employee was not advised prior to his arrival at the workplace where he met the maintenance technician that it was a front-loading ATM; therefore, the employee was not informed of the possible risk to his safety in the place where he was to work.

2. Paragraph 124

The employer had not undertaken, with the policy committee or, failing them, the local health and safety committee, any evaluation of the risks inherent to the work place where the employee was assigned alone to assist in the maintenance of the front-loading ATM; as a result, it had not established safety procedures or specific risk prevention appropriate to the work place, not covered by general pre-established safety procedures, before assigning the employee to the duties.

3. Paragraph 125(1)q)

The employee has not received training on the use of the GPS (global positioning system) alarm.

Therefore, you are HEREBY DIRECTED, pursuant to paragraph 145(1)a) of the *Canada Labour Code*, Part II, to terminate all contraventions no later than March 27, 2006.

Ottawa, March 10, 2006.

Katia Néron
Appeals Officer
Certificate #. QC 7879

To: Securicor Canada Limited
1325 William St.
Montreal, Quebec
H3C 1R4

Summary of Appeals Officer's Decision

Decision No.: 06-006

Applicant: Securicor Canada Limited

Respondent: *Fédération des employées et employés de services publics Inc. (CSN)*

Key Words: Danger, front-loading ATM, unqualified lookout person, known or foreseeable risk

Provisions: *Canada Labour Code:* 124, 125(1)(q), 125(1)(s), 145(1), 145(2)(a) and (b), 146(1)

Summary:

Assigned to assist a technician who was required to perform maintenance on an ATM, an employee refused to execute his duties, maintaining that there was a danger to his safety, as well as to safety of the technician and the general public because there was no one qualified to perform surveillance at the workplace, while he worked on his knees with his head down toward the ATM and his back turned. The employee also declared that only when he arrived at the workplace did he realize that the ATM was front-loading.

The health and safety officer rendered a decision of no danger following his investigation. He did however issue a direction pertaining to two contraventions, requiring the presence of a qualified surveillance person and an evaluation of the risks inherent in the work place.

The appeals officer rescinded the decision of no danger and issued a direction pertaining to the presence of danger pursuant to paragraph 145(2)a) and b) of the *Canada Labour Code*. She also varied the direction for the contravention issued by the health and safety officer in accordance with the provisions of subsection 145(1) of the *Canada Labour Code*.