

Canada Labour Code
Part II
Occupational Health and Safety

Richard Girouard
and
*Fédération des employées et employés
de services publics inc. (CSN)*
Applicants

and

Securicor Canada Ltd.
Respondent

Decision No.: 06-008
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 appellants

Pascal Jean, union counsel, *Fédération des employées et employés de services publics inc. (CSN)*
Richard Girouard, agent des valeurs
Éric Laroche, employee co-chair, local health and safety committee

For the Respondent

Dany St-Martin, regional director, Securicor Canada Ltd

Health and Safety Officer

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

- [1] This case concerns an appeal filed on July 6, 2004 pursuant to subsection 129(7) of the *Canada Labour Code* Part II, (the *Code*), by Richard Girouard, security transport officer at Securicor Canada Ltd (Securicor).
- [2] R. Girouard filed this appeal following a decision of no danger rendered by health and safety officer Pierre Morin after his inquiry into the refusal to work conducted on July 5, 2004.

- [3] According to the inquiry report prepared by health and safety officer Pierre Morin, R. Girouard had been instructed at around 1:50 a.m. on July 5, 2004, to replenish the supply of bank notes in a front-loading ATM located on the first basement level of the Honoré Beaugrand subway station, located in Montreal's east end. On his arrival at the station, his task was to contact the Montreal subway control centre to request access to the station. Once inside, he was expected to lock the door behind him and make his way to the ATM. Before beginning to replenish the notes, he was to ensure that nothing in the vicinity posed any risk. Then, given that the ATM and the vault were accessed from in front of the machine, he was to open them by leaning towards the ATM and turning around, then proceed with the replenishment by entering a series of digital numbers to turn on the machine and disable the alarm system. He would then sort and replenish the bank notes, keeping his head tilted towards the inside of the ATM, with his back turned. Finally, he was to reverse the procedure and close the ATM as the last step in his assignment.
- [4] According to the report prepared by health and safety officer Morin, R. Girouard refused to carry out his task because he believed his safety was at risk, for the following reasons:
- He was expected to carry out the job of replenishing the bank notes without any provision being made for ensuring his safety. That meant that for a period of about 20 minutes, while the vault inside was open, his head tilted in the direction of the ATM and his back turned, there was no one else to secure the surroundings;
 - He had not been given any training on how to carry out this procedure on his own, nor on how to operate the keyring-type GPS alarm system provided by the employer;
 - The employer had not provided him with the semi-automatic weapon which he had been promised in order to carry out the task on his own, as opposed to the .38 calibre revolver which would have been used in normal circumstances;
 - Given that the assigned task was to be carried out in a large open space where passers-by, especially homeless people, could have hidden during the night, the space in question could readily have become the setting for a robbery.
- [5] The text of R. Girouard's refusal to work reads as follows:

The training I received was supposed to be for working in two-man teams, but now I work without any partner. To get me through the transition to working on my own (without any training), the employer claims to have provided me with tools needed for solo work, e.g., a GPS hold-up alarm and a new semi-automatic weapon. Unfortunately, I haven't been given any training for using the alarm I was supposedly given, and I still don't have a semi-automatic weapon. Given all the strangers walking through a subway station, a situation could come up all of a sudden, and I'm not comfortable about doing a replenishment with my head in the ATM for 20 minutes. I'd feel much better with a guard to keep an eye on the surroundings, where something can happen in a split second.

[6] According to the report prepared by health and safety officer Morin, the employer maintained R. Girouard was in no danger for the following reasons:

- At night, only persons authorized by the Metro Communications Centre (CCM) can gain access to the work area;
- The employee was expected to use a key to enter the station and lock it behind him;
- To enhance the safety of STM (*Société de transport de Montréal*) riders and employees, a recorded announcement is played at two-minute intervals each time an armoured car employee enters a subway station, in order to warn anyone in the vicinity that a replenishment is about to take place and request that they stay clear of the ATMs.

[7] Following his inquiry, health and safety officer Morin decided that R. Girouard was in no danger, citing the following reasons:

- R. Girouard was expected to carry out the task of replenishing ATMs, one of his key duties as a security transport officer;
- R. Girouard had been trained in the safety procedures implemented by Securicor, which were directly related to his job description as a security transport officer;
- A security procedure had been put in place in order to allow the employee access to the subway station;
- At the time of the employee's refusal, he was allowed to access and exit the station in a secure manner, via communication with the Metro Communications Centre (CCM), as is the practice with all such persons;
- According to a STM constable, anyone found in an underground location at a subway station at the time of the refusal to work would be there either because they had the authorization of the STM or they were in possession of a key providing access to the facilities;
- According to the same constable, before any armoured car personnel are authorized to access a station at night, and in order to ensure that the premises are kept secure, STM duty constables will ask any person not authorized by the STM to leave the station;
- Before proceeding with the ATM replenishment, the employee is required to take a look around the premises. If he believes that the area is not secure, the employee must report this observation to his supervisor;

- Measures can be implemented at any time to provide assistance to an employee who makes an urgent support request, whether by cell phone or a station telephone. Securicor's dispatcher office, which is responsible for all armoured car personnel, is never left unattended;
- R. Girouard carried a .38-calibre revolver in his holster. Although this weapon is not semi-automatic, the sheer fact that he could be seen carrying a weapon would deter potential attackers;
- R. Girouard had, moreover, received training on how to handle his revolver and how to react in a safe manner, including ways to be more vigilant;
- The danger alleged by R. Girouard was purely hypothetical, given that there was no threat, sign or indication to suggest that any assault or robbery was likely to take place at the time of his refusal.

[8] Health and safety officer Morin confirmed in writing on July 5, 2004 his decision of no danger.

[9] I have considered the procedures put in place by the employer and placed on file, especially those related to duties carried out by an armoured car driver working alone at an ATM, access to which requires that the vault be opened. According to these documents, on August 14, 2003, the employer revised the procedure covering this kind of work in collaboration with the local health and safety committee. The new procedure stipulates that, in order to ensure an employee's safety, a second guard must accompany that employee in cases where he is responding to a service call involving a front-loading ATM, which requires that the vault be opened, unless the call simply involves meeting with a technician.

[10] The issue to be addressed in this case is to determine whether health and safety officer Morin erred when he found that there was no danger to R. Girouard at the time of his investigation. To do so, I am obliged to take into account the definition of "danger" that corresponds to its meaning in the *Code*, as well as the facts and circumstances related to this case.

[11] Section 122(1) of the *Code* defines the term "danger" as follows:

122(1) "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.

- [12] To determine whether there was in fact any danger, I am first obliged to identify the situation, task or risk that might be likely to cause injury to the person in question. I must also determine whether such situation, task or risk was present when the health and safety officer was conducting his investigation, or whether this condition could reasonably be expected to arise at some later point. Finally, I must determine whether, in the circumstances, the situation could have been rectified, the task modified or the risk mitigated prior to the occurrence of any injury or illness. If such was not the case, then the situation, task or risk constituted a danger.
- [13] In the case at hand, the potential risk cited by R. Girouard was that he might be the target of a robbery just when he would have been looking at the ATM, with his back turned, leaning over to open the ATM and the vault to replenish the cash. R. Girouard also maintained that not having a guard to keep watch over the area behind him increased the risk that he might suffer injuries if a robbery or assault took place.
- [14] When health and safety officer Morin conducted his investigation, no robbery or assault was imminent. Nevertheless, it is my opinion that the decision taken by health and safety officer Morin did not take into account the possibility that just such a situation could arise in the future, a possibility that, to my way of thinking, was reasonably likely, given the nature of the task to be carried out by R. Girouard.
- [15] I am also of the opinion that, given the position R. Girouard had to assume, i.e., with his head tilted toward the ATM and his back turned, and given the lack of resources for securing the surrounding area, the employee himself was incapable of assuming responsibility for proper surveillance, or of reacting quickly to counter any assault to which he might have been subject. Moreover, R. Girouard would not have been any more capable of quickly triggering the GPS alarm system to call for help. I am furthermore of the opinion that while he was walking towards the ATM in the subway station, carrying the cash bag by hand, he would not have been able to react quickly in the event of an attack.
- [16] According to the documents on file, Securicor has established general security procedures for the protection of its employees. The employer also identified technical tools it has put at the disposal of its employees, such as firearms, bullet-proof vests and the GPS alarm system. However, R. Girouard stated that he had received no training related to going out on calls alone to accomplish the kind of task requested of him.
- [17] The documents on file also indicate that in August 2004, the security procedure concerning duties performed by an armoured car driver working alone had been modified. The new procedure stipulates that a second agent is to be sent out to secure the environs whenever an agent is instructed to open the vault in connection with a service call involving a front-loading ATM, with the exception of a request for a meeting with a technician.
- [18] I therefore conclude that the changes made to the procedure for solo work were not applied.

- [19] R. Girouard did have a revolver in his possession and he had been trained to use it. He would not, however, have been able to access it quickly at the most critical point in his visit, i.e., just when he was placing the bank notes in the ATM, while the vault was open, his head tilted toward the machine, with his back turned.
- [20] On the other hand, at the point when R. Girouard refused to work, access to the subway station was restricted and under surveillance. Before R. Girouard could be authorized to enter the subway station, a subway police patrol was charged with the task of getting anyone without the STM's authorization to leave the premises. Finally, before carrying out the replenishment, R. Girouard was expected to undertake a visual inspection of the premises. Although these precautions were an essential part of securing the environs, they could not in and of themselves eliminate the possibility that an assault or robbery might take place.
- [21] What is more, the message played back over the PA system warning anyone present to stand clear of the ATMs whenever an armoured car driver is about to enter the subway is intended to help protect subway riders and STM employees in the event of an incident, not armoured car employees.
- [22] Consequently, I cannot support the conclusion arrived at by health and safety officer Morin, and I hereby void his decision on the absence of danger. It is my assessment that at the time of his inquiry, the conditions surrounding the task required of R. Girouard were not in accord with what would normally be expected of this employee in carrying out his duties, and thus put his safety at risk, without any attempt to apply the appropriate changes.
- [23] It is for this reason, given the employee was in fact in danger, that pursuant to the authority vested in me under paragraph 146.1(1)(b) of the *Code*, I direct Securicor, pursuant to paragraphs 145(2)(a) and (b) as noted in Appendix I, and hereby order the said employer to protect the safety of all employees required to replenish front-loading ATMs with bank notes, by taking the necessary measures to ensure that the surrounding area is under constant surveillance.
- [24] Furthermore, at the time of the inquiry undertaken by health and safety officer Morin, R. Girouard maintained that he had not received any instruction on how to operate the keyring-type GPS alarm provided by the employer.
- [25] As the employer has provided me with no evidence to the contrary, and in consideration of the fact that the employer has contravened paragraph 125(1)(q) of the *Code*, I also direct the employer pursuant to paragraph 145(1)(a) of the *Code* as noted in Appendix II and order the said employer to ensure that R. Girouard receives training on how to operate the GPS alarm system.
- [26] Paragraph 125(1)(q) reads as follows:

125. (1) Without restricting the generality of section 124, every employer shall, in respect of every work place controlled by the employer and, in respect of every

work activity carried out by an employee in a work place that is not controlled by the employer, to the extent that the employer controls the activity,

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

[27] I hereby request health and safety officer Morin, as well as all other health and safety officers, to ensure that Securicor complies with these two directions.

[28] Finally, I hereby remind Securicor that, as stipulated in section 145(5) of the *Code*, the employer shall post a copy or copies of these two directions in the workplace, in full view of the employees, as well as give a copy 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 EMPLOYER PURSUANT TO PARAGRAPHS 145(2)(a) and (b)

On July 5, 2004, health and safety officer Pierre Morin undertook an inquiry into a refusal to work involving Richard Girouard, a security transport officer, who was instructed to carry out a task at the Honoré Beaugrand subway station, in East Montreal, on behalf of Securicor Canada Limitée, an employer subject to the provisions of Part II of the *Canada Labour Code* and doing business at 1325, William Street, Montreal, Quebec (H3C 1R4), the said location being known under the name Securicor Canada Limitée.

After examining the facts and circumstances related to Richard Girouard's refusal to work on the basis of the documents on file, the under-signed appeals officer is of the opinion that, during a visit to replenish a front-loading ATM with cash, the following situation constitutes a danger for the employee in the workplace:

No measures were taken to ensure that the employee's working environment was under constant surveillance, while the employee in question had to carry the money all the way to the ATM. Then, with his head tilted toward the machine and his back turned, he was obliged to replenish the machine, even though being in this position prevented him from securing the surroundings adequately and reacting quickly to an assault or robbery.

Therefore, you are HEREBY DIRECTED, pursuant to paragraph 145(2)(a) of Part II of the *Canada Labour Code*, to take immediate action to rectify this danger.

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 Limitée
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 EMPLOYER PURSUANT TO PARAGRAPH 145(1)(a)

On July 5, 2004, health and safety officer Pierre Morin undertook an inquiry into a refusal to work involving Richard Girouard, a security transport officer, who was instructed to carry out a task at the Honoré Beaugrand subway station, in East Montreal, on behalf of Securicor Canada Limitée, an employer subject to the provisions of Part II of the *Canada Labour Code* and doing business at 1325, William Street, Montreal, Quebec (H3C 1R4), the said location being known under the name Securicor Canada Limitée.

After examining the facts and circumstances related to Richard Girouard's refusal to work on the basis of the filed documents, the under-signed appeals officer is of the opinion that, during a visit to replenish a front-loading ATM with cash, the following provision of Part II of the *Canada Labour Code* has been violated:

Paragraph 125(1)(q) of Part II of the *Canada Labour Code*

The employee has not received any training on how to operate the GPS (global positioning system) alarm system

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

Ottawa, March 10, 2006.

Katia Néron
Appeals Officer
Certificate #. QC 7879

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

Summary of Appeals Officer's Decision

Decision No.: 06-008

Applicants: Richard Girouard
and
Fédération des employées et employés de services publics inc. (CSN)

Respondent: Securicor Canada Ltd.

Key Words: Refusal to work, solitary night-time work, replenishment of ATMs, no danger

Provisions: *Canada Labour Code*: 129(7), 145(1) and (2)

Summary:

An employee was asked to carry out a task, alone and at night, involving the replenishment of bank notes in an ATM located in a Montreal subway station. The employee refused to carry out the work, claiming that he had not been adequately trained to work alone or to use the protective equipment provided by his employer, given that the work in question required him to have his back turned for about 20 minutes. He maintained that his safety was at risk in the absence of a second agent to act as a guard and protect him.

After conducting his inquiry, the health and safety officer reached a decision of no danger.

The appeals officer overturned the no danger decision rendered by the health and safety officer. Given her finding that the employee was in danger, she issued a direction pursuant to paragraphs 145(2)(a) and (b) of the *Canada Labour Code*. The appeals officer also issued a direction for contravention of paragraph 145(1)(a) of the *Canada Labour Code*.