

CANADA LABOUR CODE  
PART II  
OCCUPATIONAL SAFETY AND HEALTH

Review under section 146 of the Canada Labour Code, Part II  
of a direction issued by a safety officer

Applicant: Natural Resources Canada  
CANMET - Canada Centre for Mineral and Energy Technology  
Ottawa, Ontario  
Represented by: Dr. J.C. St-Pierre  
Director General  
Explosives Branch

Respondent: Mr. Richard Guilbeault  
Represented by: Mr. Rick Taylor  
Regional Representative  
Public Service Alliance of Canada

Mis en cause: Jacques Robert  
Safety Officer  
Human Resources Development Canada

Before: Doug Malanka  
Regional Safety Officer  
Human Resources Development Canada

This case proceeded by way of written submissions.

**Background**

On June 14, 1996, an explosion occurred at one of the buildings of CANMET, Explosives Branch (also known as CERLab), which resulted in serious injuries to an employee. The investigation carried out by safety officer Jacques Robert revealed that the firing procedures used at that laboratory were inadequate. Furthermore, it was established that the injured employee was not provided with sufficient information respecting the hazards associated with the substances the employee was using at the time of the accident. As a result of his investigation, the safety officer cited the employer for specific contraventions to the Canada Labour Code, Part II (hereafter the Code) and the Canada Occupational Safety and Health Regulations (hereafter the Regulations). A direction was issued to bring the employer into compliance with the legislation. This direction was not appealed by the employer.

The safety officer reported that on June 28, 1996 he visited the workplace where the accident occurred for the purpose of conducting an examination. During that visit, the safety officer was accompanied by Mr. Mike Wiwchar, another safety officer with Human Resources Development Canada. The safety officer revisited the workplace on July 10, 1996 for the same reason. He was accompanied at that time by Mr. Wayne Maddick, Consulting Specialist on N.R.C. CERLab.

According to the report submitted by the safety officer, Richard Guilbeault alleged, in a written statement to him, that on June 20, 1996, Mr. Dave Jones, then acting manager of the laboratory informed Mr. Guilbeault that Mr. Ron Vandebeek, Manager of CERLab intended to conduct an interview the following Monday and that he was to make himself available. Following a comment made by Mr. Guilbeault regarding Mr. Vandebeek's presence, Mr. Jones immediately told Mr. Guilbeault **"... You had better watch what you say around here, you had better think carefully about what you say, where and...to whom or in the presence of whom..."** Also, on July 10, 1996, Mr. Vandebeek told Mr. Guilbeault during a safety and health committee meeting, at which both the safety officer and Mr. Maddick were present, **"to be quiet"** while he was attempting to provide the committee information concerning the accident. Mr. Guilbeault left the meeting immediately.

Following those incidents, the safety officer attempted to have management look into the alleged threats and resolve the matter. Having been informed that the alleged threats had not been resolved by management, the safety officer issued a direction to Natural Resources Canada under subsection 145(1) of the Code. The direction describes the contravention as follows:

*1. Sub paragraph 147(a)(i) and (ii) of the CANADA LABOUR CODE, PART II*

*On June 28th and July 10th, 1996, R. Guilbeault having knowledge of the circumstances surrounding the explosion which occurred on June 14, 1996, was instructed by Mr. R. Vandebeek and Mr. D. Jones to remain silent and or to be careful of what he said when dealing with persons involved in the ongoing investigation into the matter of events surrounding the accident of June 14th, 1996. Such instructions have been perceived by some of the employees as constituting threats by the employer.*

This direction is appealed by the employer.

**Submission for the employer**

The written submission of Dr. St-Pierre is on record. Essentially, Dr. St-Pierre is of the view that the words used by both Mr. Jones and Mr. Vandebeek are taken out of context and are being misinterpreted.

In the first instance of the alleged threat, the response of Mr. Jones was a result of Mr. Guilbeault making an inappropriate comment about Mr. Vandebeek's presence at the laboratory. Mr. Guilbeault confirmed this in his written complaint to the safety officer. Clearly then, the response of Mr. Jones related to the allegations against Mr. Vandebeek and not about the investigation.

In the second instance of the alleged threat, Dr. St-Pierre writes:

*Finally, the other incident happened in the context of the JOSH committee meeting of July 10, 1996. At one point during the meeting, Rick Guilbeault interrupted Ron Vandebek who responded "Wait" or "Quiet" or something that was meant to mean "let me finish before you speak". Ron Vandebek denies he was telling Rick Guilbeault to remain silent about the investigation. This interruption is corroborated by Sylvie Mallette who was present when the incident occurred.*

At no time, says Dr. St-Pierre, did representatives of management try to interfere with the investigation of the safety officer.

### **Submission for the Employees**

An oral hearing had been scheduled to be held in Ottawa on February 6, 1997. The hearing was cancelled as a result of both Mr. Guilbeault and Mr. Taylor indicating they had decided not to attend the hearing. In a letter to the Regional Safety Officer, dated January 29, 1997, Mr. Taylor wrote:

*I have now had an opportunity to meet with Mr. Guilbeault and to speak to the other parties who witnessed the instant events. It is our view that Mr. Robert was completely accurate in his assessment of the respective situations. Since the employer bears the burden of proof in this appeal we have decided that it is not necessary for us to participate in the hearing. We have every confidence that the proper decision will be rendered in this case.*

### **Issue:**

The issues to be decided in this case are:

1. Did Mr. Jones, in contravention of paragraphs 147(a)(i) and (ii)<sup>1</sup>, threaten Mr. Guilbeault on June 20, 1996, with disciplinary action if he provided information to anyone regarding the conditions of work affecting the safety or health of that employees; and,
2. Did Mr. Vandebek, in contravention of paragraphs 147(a)(i) and (ii)<sup>1</sup>, threaten Mr. Guilbeault on July 10, 1996, with disciplinary action if he provided information to the workplace health and safety committee concerning the fatal explosion at the CER Laboratories.

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<sup>1</sup> Paragraphs 147(a)(i) and (ii) read as follows:

*A147. No employer shall*

*(a) dismiss, suspend, lay off or demote an employee or impose any financial or other penalty on an employee or refuse to pay the employee remuneration in respect of any period of time that the employee would, but for the exercise of his rights under this Part, have worked or take any disciplinary action against or threaten to take any such action against an employee because that employee*

*(i) has testified or is about to testify in any proceeding taken or inquiry held under this Part,*

*(ii) has provided information to a person engaged in the performance of duties under this Part regarding the conditions of work affecting the safety or health of that employee or any of his fellow employees, or ...@*

There are several factors that made this review challenging. For example, neither Mr. Jones nor Mr. Vandebek are alleged to have voiced an explicit threat to Mr. Guilbeault. Dr. St-Pierre argues that the words of Messrs. Vandebek and Jones were taken out of context and disagrees that they threatened Mr. Guilbeault not to give information concerning the accident. Mr. Taylor declined to participate in an oral hearing thereby precluding the Regional Safety Officer from hearing the evidence and assessing the credibility of the testimony of the parties concerned. Finally, there was the untimely and tragic death of safety officer Jacques Robert before his evidence could be heard.

**Decision:**

To decide the matter, I looked separately at the evidence that surrounds the two situations involving Mr. Guilbeault and Messrs. Jones and Vandebek respectively. This is reasonable because no-one has suggested that the two events were connected beyond the fact that they both involved Mr. Guilbeault and followed, and pertained to, the same accident.

With regard to the first incident, Mr. Guilbeault alleges that on June 20, 1996, Mr. Jones told him, **“... You had better watch what you say around here, you had better think carefully about what you say, where and...to whom or in the presence of whom...”** Mr. Guilbeault submitted a written note to safety officer Robert, dated June 20, 1996, concerning the exchange. According to his note, Mr. Jones threatened him after he had commented on the lack of presence of Mr. Vandebek at the laboratory. He confirmed that he later lost emotional control when he thought the hospital was calling concerning Don Cox, the injured employee, and subsequently went to see Mr. Jones to apologize for his comment about Mr. Vandebek. Mr. Guilbeault then went to see his family doctor and, on the doctor's advice, immediately began sick leave from his work.

Taking these facts into consideration, it is my opinion that Mr. Jones was not threatening Mr. Guilbeault against providing information to anyone regarding the conditions of work affecting the safety or health of employees. Instead, I believe that Mr. Jones was cautioning Mr. Guilbeault against making inappropriate comments about Mr. Vandebek's presence at the laboratory. This interpretation is consistent with the fact that Mr. Guilbeault went to see Mr. Jones later to apologize for his remark concerning Mr. Vandebek. Therefore, my decision is that Mr. Jones did make a threat, but the threat did not relate to Mr. Guilbeault providing information to anyone regarding the conditions of work affecting the safety or health of employees. Consequently, Mr. Jones was not in contravention of paragraphs 147(a)(i) and (ii).

Regarding the second incident, Mr. Vandebek is said to have told Mr. Guilbeault “to be quiet” when he attempted to speak about the explosion at CERLab at the July 10, 1996 safety and health committee meeting . The exchange between Mr. Vandebek and Mr. Guilbeault occurred in the presence of safety officer Robert, Mr. Wayne Maddick, and Ms. Sylvie Mallette, Chief, Health and Safety. According to Mr. Vandebek and Ms. Malette, Mr. Vandebek was chiding Mr. Guilbeault for having interrupted him when he was speaking. Safety officer Robert and Mr. Maddick interpreted Mr. Vandebek's words as a threat to Mr. Guilbeault not to give information concerning the accident.

To constitute a threat, it is not necessary that the words or the threatened outcome be explicit. A threat can be communicated by such things as the timing, tone or circumstances of the message. Therefore, having regard to the facts and circumstances surrounding the matter, the question I have to ask myself is whether it was reasonable for safety officer Robert or Mr. Guilbeault to have interpreted Mr. Vandebek's words as a threat not to give information regarding the accident. This view that the context of the words is important is essentially supported by Dr. St-Pierre. In his letter of December 17, 1996, he wrote:

*“Angry words, even when spoken in times of great emotional stress, are improper and the necessary steps must be taken to avoid reoccurrence. However, these same words should not be taken out of context nor should they be interpreted more broadly than they were intended.”*

For determining the context of the exchange, I looked at the industrial relations climate that existed at the workplace prior to and following the explosion on June 14, 1996, and then considered Mr. Guilbeault's state of mind at the time of the incidents.

With regard to the climate of industrial relations Dr. St-Pierre wrote in his letters to this office dated December 17, 1996 and, February 27, 1997, respectively that:

*“I firmly believe that a climate of trust among all CERL personnel must be reestablished.”*; and,

*“There is no denying that there was a labour relation issue at CERL which was exacerbated by the June 14, 1996 accident.”*

This would appear to support Mr. Maddick's observation that the two incidents involving Mr. Guilbeault reflected a deteriorated state of industrial relations at CERLab.

Concerning the state of mind of Mr. Guilbeault, the evidence shows that he took sick leave from June 20, 1996, the day of the exchange between Mr. Jones and himself, to and including the day of the joint safety and health committee meeting on July 10, 1996. It is not clear when he returned to work but safety officer Robert noted in his report that, after Mr. Vandebek told Mr. Guilbeault to be quiet, Mr Guilbeault did not speak further at the health and safety meeting. He also noted that Mr. Guilbeault left the meeting immediately at its close and continued on his sick leave.

I can accept Mr. Vandebek's claim that he did not mean for Mr. Guilbeault to take his ambiguous comment as a threat not to give evidence concerning the accident. However, in the context of the climate of distrust, the labour relations at CERLab and Mr. Guilbeault's state of well being at the time of the exchange, it is reasonable for Mr. Guilbeault and the safety officer to have interpreted the words as a threat. To a degree, both Mr. Vandebek and Dr. St-Pierre acknowledged this when they wrote respectively that (ref: Dr. St- Pierre's letter to this office dated February 27, 1997, and December 17, 1996):

*“The choice of words may not have been the most appropriate, but were the first words that came to mind.”*

*“Angry words, even when spoken in times of great emotional stress, are improper and the necessary steps must be taken to avoid reoccurrence.”*

The safety officer was present at the meeting and had direct and first hand knowledge of the matter that transpired. By his direction he was of the opinion that Mr. Vandebek had threatened Mr. Guilbeault in contravention of paragraphs 147.(a)(i) and (ii). From the facts presented, I cannot disagree with safety officer Robert’s conclusion with respect to the second incident.

However, the direction cannot stand as written because it refers to the first incident between Mr. Jones and Mr. Guilbeault. Therefore, I HEREBY VARY the direction as follows:

*On July 10th, 1996, R. Guilbeault having knowledge of the circumstances surrounding the explosion which occurred on June 14, 1996, was instructed by Mr. R. Vandebek to remain silent surrounding the accident of June 14th, 1996. Such instructions constitute a threat which is prohibited by paragraphs 147.(a)(i) and (ii).*

*You are HEREBY DIRECTED, pursuant to subsection 145.(1) of the Canada Labour Code, Part II to terminate the contravention no later than May 27, 1997.*

Issued on June 2, 1997.

Doug Malanka  
Regional Safety Officer

SUMMARY OF REGIONAL SAFETY OFFICER DECISION

Applicant: Natural Resources Canada  
CANMET - Canada Centre for Mineral and Energy Technology  
Represented by Dr. J.C. St-Pierre

Respondent: Mr. Richard Guilbeault  
Represented by Mr. Rick Taylor  
Public Service Alliance of Canada

**KEYWORDS**

Prohibition, employer, ambiguous threats, industrial relations climate, predisposition of employee, written submissions

**PROVISIONS**

Code: 145.(1), 147.(a)(i) and (ii)

**SUMMARY**

On September 18, 1996, a safety officer concluded that on June 20, 1996, and July 10, 1996, respectively Messrs. D. Jones and R. Vandebek instructed Mr. R. Guilbeault to be careful of what he said, and to remain silent, when dealing with persons involved in the ongoing investigation of an accident that had occurred on June 14, 1996. The safety officer stated that such instructions had been perceived by some of the employees as constituting threats by the employer. He issued a direction to the employer to cease contravention of sub-paragraph 147.(a)(i) and (ii) of the Canada Labour Code.

Upon review, the Regional Safety Officer concluded that on June 20, 1996, Mr. D. Jones did make a threat, but the threat did not relate to Mr. R. Guilbeault providing information to anyone regarding the accident. Instead, he was cautioning Mr. Guilbeault against making inappropriate comments about Mr. Vandebek's presence at the laboratory. In the case of Mr. R. Vandebek, the Regional Safety Officer agreed with the safety officer that, on July 10, 1996, Mr. R. Vandebek's comment to Mr. Guilbeault constituted an ambiguous threat not to give information concerning the accident. The direction of the safety officer was **VARIED** to reflect the conclusions of the Regional Safety Officer.