

SUMMARY OF THE APPEALS OFFICER'S DECISION

Applicant: Canadian Union of Public Employees  
Airline Division, Canadian Component  
Represented by: Xavier Janssens and France Pelletier

Employer: Canadian Airlines International Ltd.  
Represented by: Christine Holiday

Health and safety officer: Norm Tunke  
Transport Canada Aviation

Before: Michèle Beauchamp  
Appeals Officer  
Human Resources Development Canada

KEYWORDS:

Appeals

PROVISIONS:

*Code:* 129(7), 146

SUMMARY:

After investigating a complaint from Xavier Janssens, Canadian Union of Public Employees, Airline Division, Canadian Component, alleging that Canadian Airlines International Ltd. had contravened subsection 125(c) of the *Canada Labour Code* by failing to investigate accidents as required by the Code and Part XV of the *Aviation Occupational Safety and Health Regulations*, the health and safety officer wrote to the applicant to advise him that his investigation did not support Mr. Janssens' allegation. The applicant appealed the health and safety officer's decision to the appeals officer.

The case is dismissed, the appeals officer having no authority under the Code to hear appeals of decisions that are not made pursuant to subsection 129(7) of the Code nor result in directions under the Code.

*CANADA LABOUR CODE*  
PART II  
OCCUPATIONAL HEALTH AND SAFETY

Canadian Union of Public Employees  
Airline Division, Canadian Component  
*applicant*

and

Canadian Airlines International Ltd.  
*employer*

and

Norm Tunke  
*health and safety officer*

---

This case was heard by Michèle Beauchamp, appeals officer, by way of a teleconference held on February 5, 2001.

Appearances:

Mr. Xavier Janssens, for the Canadian Union of Public Employees, Airline Division, Canadian Component

Mrs. France Pelletier, for the Canadian Union of Public Employees, Airline Division

Mrs. Christine Holliday, for Canadian Airlines International Ltd.

[1] This case concerns an appeal made by Mr. Xavier Janssens for the Canadian Union of Public Employees, Airline Division, Canadian Component, under the *Canada Labour Code*, Part II, of a decision of health and safety officer Norm Tunke, from Transport Canada Aviation.

[2] As a result of an investigation into a complaint made by Xavier Janssens, CUPE, Airline Division, Canadian Component, alleging that Canadian Airlines International Ltd. had contravened subsection 125(c) of the *Canada Labour Code*, Part II (the Code), by failing to investigate accidents as required by the Code and by Part XV of the *Aviation Occupational Safety and Health Regulations*, health and safety officer Tunke wrote to the complainant on October 3, 2000, to advise him that his investigation did not support Mr. Janssens' allegation.

[3] On November 2, 2000, Mr. Janssens wrote to health and safety officer Tunke to inform him that he disagreed with his decision and request that he refer it to the appeals officer.

[4] As the appeals officer in charge of the file, I held a teleconference on February 5, 2001 with the parties, another CUPE representative, Ms. France Pelletier, and health and safety officer Tunke, to ascertain, as related in Mr. Tunke's report sent to my office on November 10, 2000, that:

- health and safety officer Tunke's letter of October 3, 2000 to the applicant was to inform him that his investigation had not led him to conclude that Canadian Airlines had contravened the Code and the Regulations; and
- consequently, health and safety officer Tunke did not issue any direction to Canadian Airlines International Ltd.

[4] I explained to the parties that, under the Code, the appeals officer is only empowered to act either pursuant to subsection 129(7), in the case of an appeal of a decision of no danger made by a health and safety officer following a refusal to work, or section 146, in the case of appeals of directions issued by a health and safety officer.

[5] Since, in the present case, the appeal made by Mr. Janssens to the appeals officer did not result from a decision of no danger made by health and safety officer Tunke nor from a direction issued by Mr. Tunke, I informed the parties that I was not empowered by the Code to hear the case.

[6] For these reasons, the case is dismissed.

---

Michèle Beauchamp  
Appeals Officer