

*CANADA LABOUR CODE*  
PART II  
OCCUPATIONAL SAFETY AND HEALTH

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

Applicant: Serca Foodservice Inc.  
Moncton, N.B.  
Represented by: Mr. Russ Mallard

Respondent: United Food & Commercial Workers  
Local 1288-P  
Moncton, N.B.  
Represented by: Mr. George Vair

Mis-en-cause: Ronald Thibault  
Safety Officer  
Human Resources Development Canada

Before: Douglas Malanka  
Regional Safety Officer  
Human Resources Development Canada

On March 2<sup>nd</sup>, 2000, a truck driver with Serca Foodservice Inc., (Serca) exercised his right to refuse work. He complained that the cab of his truck was too small for his body and his legs hit the steering wheel when he operated the brake and the clutch of the vehicle. Safety officer Ronald Thibault went to the workplace and investigated the refusal to work. Following his inquiry he decided that a danger existed for the employee and issued a direction (annex) to the employer pursuant to subsection 145(2)(a) of the Canada Labour Code, Part II (hereafter the Code) on March 2<sup>nd</sup>, 2000.

On March 16, 2000 Serca requested that this direction be reviewed stating that the company was not an employer subject to the Code and because there was no danger as defined by the Code. They explained that Serca was in the business of selling wholesale foods and that their delivery service was only a part of their distribution system. Serca conceded that its trucking operations crossed provincial lines, but clarified that it did not transport goods for any other company.

On May 26, 2000 the Regional Safety Officer held a telephone conference to discuss the issue of jurisdiction with the parties and the safety officer. Safety officer Ronald Thibault explained that he had investigated the refusal to work because provincial inspectors had held that the matter was not subject to provincial jurisdiction. He said that he was certain that Serca was not subject to the Code but felt it more prudent to investigate the danger and settle the matter of jurisdiction later.

The representative of employees said he was initially uncertain about jurisdiction, but understood now that Serca was not subject to the Code because its drivers did not deliver goods for any other company.

Since the parties and the safety officer agree that Serca is not subject to the Code, and I am satisfied that there is no evidence to the contrary, I HEREBY RESCIND the direction that safety officer Thibault issued to Serca Foodservice Inc., pursuant to subsection 145.(2) on March 2, 2000.

Decision rendered on June 15, 2000

Douglas Malanka  
Regional Safety Officer

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

DIRECTION TO THE EMPLOYER UNDER SUBSECTION 145(2)(a)

On March 2<sup>nd</sup>, 2000, the undersigned safety officer conducted an inquiry following the refusal to work made by Mr. Maurice Babineau in the work place operated by SERCA FOODSERVICE INC., being an employer subject to the Canada Labour Code, Part II, at ATLANTIC DIVISION, 430 MACNAUGHTON AVENUE, MONCTON, N.B., the said work place being sometimes known as SERCA Food Service.

The said safety officer considers that a condition in any place constitutes a danger to an employee while at work:

*Vehicle # PRS-900 AND PRK 212 are ergonomically unsafe for Mr. Maurice Babineau due to his size. The vehicle range (seat adjustment) are not sufficient to allow clearance for safe operation.*

Therefore, you are HEREBY DIRECTED, pursuant to paragraph 145(2)(a) of the Canada Labour Code, Part II, to protect any person from danger immediately.

Issued at Moncton, N.B., this 2<sup>nd</sup> day of March 2000.

Ron Thibault  
Safety Officer 2061

To: SERCA FOODSERVICE INC.  
ATLANTIC DIVISION  
430 MACNAUGHTON AVENUE  
MONCTON, N.B.  
E1H 2K1

SUMMARY OF REGIONAL SAFETY OFFICER DECISION

Applicant: Serca Foodservice Inc.  
Moncton, N.B.  
Represented by: Mr. Russ Mallard

Respondent: United Food & Commercial Workers  
Local 1288-P  
Moncton, N.B.  
Represented by: Mr. George Vair

**KEYWORDS**

Ergonomically unsafe, vehicle range, seat adjustment.

**PROVISIONS**

*Code:* 145(2)(a)

*Regulations:*

**SUMMARY**

On March 2<sup>nd</sup>, 2000, a truck driver with Serca Foodservice Inc., (Serca) exercised his right to refuse work. He complained that the cab of his truck was too small for his body and his legs hit the steering wheel when he operated the brake and the clutch of the vehicle. A safety officer from Human Resources Development Canada investigated the refusal to work even though he did not believe that Serca was subject to the Canada Labour Code, Part II (hereafter the Code). He felt it was better to address the danger and to resolve the matter of jurisdiction later. The safety officer decided that a danger existed for the driver and issued a direction to the employer pursuant to subsection 145(2)(a) of the Code.

On May 26, 2000, the Regional Safety Officer (RSO) held a telephone hearing to resolve the issue of jurisdiction. Since the parties and the safety officer agreed that Serca is not subject to the Code, and the RSO was satisfied that there was no evidence to the contrary, the RSO rescinded the direction.