

Canada Labour Code
Part II
Occupational Health and Safety

Pierre-Georges Pépin
applicant

Bell Canada
employer

Decision No. 03-010
April 23, 2003

This case was heard by Serge Cadieux, appeals officer, in Montreal, Quebec, on March 27, 2003.

Appearances

Pierre-Georges Pépin, employee, representing himself

Sylvain Héroux, representing the employer

Pierre Bouchard, health and safety officer, Human Resources Development Canada

[1] This appeal was brought pursuant to subsection 129.(7) of the *Canada Labour Code* Part II (hereto referred to as the *Code*) on June 14, 2002, by Mr. Pierre-Georges Pépin, a business service technician with Bell Canada. The appeal concerns the decision made by health and safety officer Pierre Bouchard on June 13, 2002, that a danger did not exist, following Mr. Pépin's refusal to work on June 11, 2002.

[2] At the time of his refusal, Mr. Pépin had been assigned to line repair work and was getting ready to carry out a work order that required him to climb a pole using an extension ladder. The reason for his refusal to work was described in a Bell Canada document identified as a "Vérification avant l'enregistrement" ["Verification prior to recording"]. According to this document, Mr. Pépin stated that he refused to carry a ladder and climb a ladder on the following grounds:

"Because of the weather conditions, it was not totally safe to transport a temporary structure ("the ladder") or to work from it. There was a danger of electric shock."

[3] The health and safety officer's investigation report states that Mr. Pépin feels that transporting and handling a ladder when it is raining outside constitutes a risk of slipping, tripping or falling. Mr. Pépin also mentions that he thinks that he would risk being electrocuted if he had to climb a ladder to work on a pole in the rain. It is important to note that Mr. Pépin considers that the danger does not relate to a specific place but rather to the temperature and he would have refused to work regardless of the location where he had to work in the rain.

[4] On November 29, 2001, Mr. Pépin refused to climb a ladder because it was raining. He added that his refusal was based on section 3.3 of the *Canada Occupational Health and Safety Regulations* (the Regulations), Part III, Temporary Structures and Excavations. Mr. Pépin notified his superior who submitted the case to the health and safety committee. After investigating the matter, the committee concluded that, under the meaning of sections 3.1. and 3.3 of the Regulations a ladder is a "tool" rather than a "temporary structure." These sections stipulate:

3.1 This Part applies to portable ladders, temporary ramps and stairs, temporary elevated work bases used by employees and temporary elevated platforms used for materials. (underlining mine)

3.3. No employee shall work on a temporary structure in rain, snow, hail or an electrical or wind storm that is likely to be hazardous to the health or safety of the employee, except if the work is required to remove a hazard or to rescue an employee.

[5] The health and safety officer obtained a description of the circumstances from Mr. Héroux, the employer's representative, and then added this entire description to the health and safety officer's file. Mr. Héroux went to the work place where Mr. Pépin had refused to work. Together, they determined that there was no wind and the rain had practically stopped. Mr. Héroux also determined that Mr. Pépin was not willing to transport the ladder some distance over flat ground that was half paved and half covered with grass and which contained no puddles.

[6] During his investigation, the health and safety officer obtained many documents pertaining to this case. He also determined that the site that Mr. Pépin had to cross was safe and did contain any anomalous features. He found that the ladder to be used met the standards for the type of work in question and that Mr. Pépin was wearing safety boots. At the time of health and safety officer's investigation, the weather was stable in the sense that the rain was steady but light and there was only a little wind but no gusts. The meteorological report obtained later confirms that there were no storm cells in the area at the time of Mr. Pépin's refusal to work.

[7] The health and safety officer decided that the situation did not represent any danger for Mr. Pépin. His decision was based on the following considerations:

- Whereas the employee had received appropriate training for work as a line repairman and had been hired in 1976;

- Whereas the employee has received training in the use, handling, maintenance, inspection and transportation of an extension ladder, including how to safely arrange, set and solidly support a ladder depending on various soil conditions;
- Whereas, during his training, the employee had shown he could handle and safely use an extension ladder;
- Whereas the ladder in question was in good condition and met the required standards for ladders and that its bars were designed with anti-skid grooves;
- Whereas, at the time of his refusal to work, the employee was wearing safety boots in good condition that met the standards set for protective footwear and appeared to have non-skid soles;
- Whereas the route that the employee had to take to bring the ladder near the pole was flat and without any puddles, holes or differences in ground level;
- Whereas the paved and grassy surfaces on the employee's route were not slippery when we crossed over them;
- Whereas the pole that the employee had to climb was solid, properly grounded and in good condition;
- Whereas the employee had on hand additional safety equipment that he should use in certain circumstances, such as an anti-fall device or a safety harness;
- Whereas the employee has worked as line repairman for many years and was thus very experienced in this field;
- Whereas the weather conditions at the time of my investigation (slight, steady rain; slight, steady wind; and absence of cold, lightning or storm cells) did not constitute any risk for the employee;
- Whereas the employee's task was to work on a junction box that did not contain any high-tension lines and was positioned at the same height as the telephone and cable lines (10 feet);
- Whereas the high-tension wires were located right at the top of the pole and that the distance between them and the employee meet the regulatory requirements stipulated in schedule II, section 8, subsection 8.5.(6), of the *Canada Occupational Health and Safety Regulations*;

I consider that the employee was not in any danger.

[8] In my opinion, the health and safety officer's investigation was objective and complete. As a result, I have very little to add concerning the facts gathered by the health and safety officer. I feel that the health and safety officer made the right decision in this case and I uphold his decision. The reasons for my decision are as follows:

[9] Subsection 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 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.

[10] I explained this concept at length in the *Parks Canada v. Doug Martin and the Public Service Alliance of Canada* decision (Decision No. 02-009), in which I explained that this concept implies that the existing or potential condition, activity or hazard must be capable of causing injury to a person when he or she is exposed to the hazard or condition or when he or she is performing the activity. Only objective factors, i.e., facts gathered during the investigation, are taken into account in this analysis, and, consequently, hypothetical situations are excluded from the concept of danger because they are not based on any facts.

[11] It is clear that Mr. Pépin’s situation did not meet any of these criteria. Mr. Pépin testified at the hearing that, when he refused to work, he did not expect to be injured because he was required to carry a ladder. He was more concerned by the fact that he would run the risk of electric shock by working on electrical lines and junction boxes while it was raining. At the hearing, Mr. Pépin also presented some documents dealing with concepts of electricity and safety practices. In terms of these concepts, water and electricity represent a hazardous combination and it is generally advisable to avoid working in such conditions.

[12] In my opinion, there would be a heightened risk if an employee was required to work with electrical wires in a junction box during rain when the employee in question was not trained and experienced and did not have personal safety equipment and appropriate guidelines. This is clearly not the situation in Mr. Pépin’s case, who, it must be said in passing, appears to me to be a highly qualified person who is well aware of the risks inherent in his work, expresses himself easily, and displays considerable knowledge of his trade.

[13] I must conclude, like the health and safety officer before me, that Mr. Pépin was not in danger in the sense intended by the *Code*. This does not mean that Mr. Pépin was not in any danger at all while he was working in the conditions that seemed “...to be hazardous for the employee’s safety or health ...”. However, there is an offsetting balance between conditions that could cause injury to an employee and the training, experience, personal protective equipment and guidelines that the employee in question was equipped with. Under such circumstances, the hazard drops to an acceptable level for a skilled employee. It is then no longer possible to state that the hazard to which the employee is exposed is dangerous for his safety and health since he has all the tools on hand needed to control the risk. Obviously, the situation would not be same for an unskilled employee, but this does not apply in Mr. Pépin’s case.

[14] It is also clear that refusing to work in non-specific working conditions, such as refusing to work every time it rains, is not a reason justifying a danger as intended by the *Code*. Employees are only entitled to refuse to work when the specific conditions of the work they are required to perform could injure them or make them ill. That is why the right of refusal to work is an individual right. It applies when the particular circumstances of the work that individual employees are required to perform jeopardize their life, health or safety in the sense intended by the *Code*.

[15] For all the reasons listed above, I confirm the decision of no danger that health and safety officer Pierre Bouchard gave on June 13, 2002.

Serge Cadieux
Appeals Officer

Summary of Appeals Officer Decision

Decision No.: 03-010

Applicant: Pierre-Georges Pépin

Employer: Bell Canada

Key Words: Line repairman, ladder, pole, weather conditions, rain, temporary structure, safety boots, training, experience, offsetting balance, hazard, danger.

Provisions:

Code: 122(1), 129(7)

COHSR: 3.1, 3.3

Summary:

A Bell Canada employee refused to do a certain job because he felt that the weather conditions in which he was required to do the job jeopardized his health and safety. The employee's task was to transport a ladder and work on a junction box while it was drizzling. After his investigation, the health and safety officer decided that the particular situation did not constitute any danger for the employee. The health and safety officer made his decision on the basis of certain facts that he verified, including the employee's training, experience and personal protective equipment, as well as the safety precautions the employer had instituted. On appeal, the appeals officer confirmed the health and safety officer's initial decision. The appeals officer determined that, in view of the employee's training, equipment and experience as well as the procedures in place, the employee was in a position to perform the work requested without any danger. The appeals officer concluded that there is an offsetting balance between the risk to which individual employees are exposed and the training, experience, equipment and safety precautions they are provided with.