

CANADA LABOUR CODE
PART II
OCCUPATIONAL HEALTH AND SAFETY

Correctional Service Canada

Applicant

and

Corey Nash

Employee

Decision No.: 03-012

May 1st, 2003

- [1] This case concerns an appeal under subsection 146(1) of the *Canada Labour Code*, Part II (the *Code*) of a direction (Appendix) for danger issued under paragraph 145(2)(a) of the *Code* on February 5, 2002, to Correctional Service Canada (CSC). CSC is the employer of Mr. Corey Nash, a correctional officer employed at the Stoney Mountain Institution. The direction was issued to CSC following an investigation conducted by a health and safety officer on January 23 and 24, 2002 into the refusal to work exercised by Mr. Nash on January 22, 2002.
- [2] The stated reason for Mr. Nash's refusal to work is found in the health and safety officer's Investigation Report and Decision under the heading **II. Investigation by the Health and Safety Officer**. It reads, at paragraph 2, as follows:

2. Employee's description of events:

"I was advised on 2002/01/21 @ 1615 hrs with Ernie Ritchie present that an inmate had written a letter. The contents of the letter imply that there is a contract on my life to be carried out by the Indian Posse, organized crime group. The action constitutes a danger to my health and safety. This impairs my ability to work in a place or perform an activity. The decision of HRDC (Report) dated 2002/01/17 was never shared with me until 2002/01/22 the noted report was never posted until 2002/01/23."

- [3] Health and safety officer Andrew McKechnie from Human Resource Development Canada (HRDC) carried out the investigation into Mr. Nash's refusal to work. The health and safety officer gathered and considered specific facts related to the situation of Mr. Nash. He decided, based on the facts available to him at the time of his investigation that the correctional officer was in danger as defined in the *Code*. He issued the direction under appeal.
- [4] A hearing was set to take place on October 8, 2002 in Winnipeg, Manitoba. The hearing was postponed indefinitely as a result of a letter sent to Mr. Nash's employer indicating that the applicant was not medically fit to attend the hearing.
- [5] On November 27, 2002, Correctional Service Canada requested under subsection 146(2) of the *Code* a stay of the direction. The request was denied by this appeals officer on the basis that, contrary to the employer, Mr. Nash stood to suffer irreparable harm if the evidence was not heard and a decision rendered in this case. However, in fairness to the employer, it was decided to proceed with a hearing in this case as soon as the circumstances would allow.
- [6] On April 14, 2003, a facsimile message was sent by Mr. Nash's representative, Mr. Philippe Trottier, Public Service Alliance of Canada, to the Appeals Office indicating that the employer had withdrawn its appeal of the direction. An unsigned letter dated April 2, 2003, sent to Mr. Nash, was attached confirming the withdrawal. Additional confirmation of the withdrawal was obtained by telephone from Mr. Jim Wladyka, Director, Workforce Wellbeing, CSC.
- [7] As the appeals officer responsible to hear the appeal of the direction issued to Correctional Service Canada, I am confirming that the appeal has been withdrawn. This file is closed.

Serge Cadieux
Appeals Officer

APPENDIX

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

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

On JANUARY 23 and 24, 2002, the undersigned health and safety officer conducted an investigation following a refusal to work made by Mr. Corey Nash in the work place operated by CORRECTIONAL SERVICE OF CANADA, being an employer subject to the *Canada Labour Code*, Part II, at STONY MOUNTAIN INSTITUTION, HIGHWAY 7, STONY MOUNTAIN, MB. R3C 3W8, the said work place being sometimes known as STONY MOUNTAIN PENITENTIARY.

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

1. *Canada Labour Code – Part II, s. 145.(2)(a)(ii)*

Mr. Nash's normal employment requires regular contact with inmates at a time when a known threat to his health and safety has been identified in writing.

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

Issued at Winnipeg, this 5th day of February, 2002.

ANDREW MCKECHNIE
Health and Safety Officer

To: CORRECTIONAL SERVICE OF CANADA
STONY MOUNTAIN INSTITUTION
P.O. BOX 4500
WINNIPEG, MB. R3C 3W8

SUMMARY OF APPEALS OFFICER DECISION

Decision No.: 03-012

Applicant: Correctional Service Canada

Employee: Corey Nash

Key Words: Contract on life, stay, medically fit, withdrawal.

Provisions: C.L.C. 145(2)(a), 146(1), 146(2)

Summary:

A correctional officer refused to work after finding out that an inmate had placed a contract on his life. A safety officer investigated the refusal to work and agreed with the employee that a situation of danger existed. The Health and Safety Officer issued a direction to Correctional Service Canada (CSC) to protect the employee. CSC appealed the direction but later withdrew its appeal. The file was closed.