

**Canada Labour Code**  
**Part II**  
**Occupational Health and Safety**

Linda-Mary Harvey  
Linda B. Myrka  
Margaret Man  
Laurel Shaw  
Daniela Ricci  
*applicants*

and

Air Canada  
*employer*

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Decision No. 05-006  
January 27, 2005

This case was decided by Pierre Rousseau, appeals officer.

- [1] This case concerns an appeal made on March 19, 2002 by Ian Bennie, National Health and Safety Coordinator for CAW, Local 1990 (The Union) on behalf of Ms. Linda-Mary Harvey, Ms. Linda B. Myrka, Ms. Margaret Man, Ms. Laurel Shaw and Ms. Daniela Ricci (The employees), employees of Air Canada, under subsections 129. (7) of the *Canada Labour Code* (the *Code*), Part II.
- [2] The appeal was made as a result of the decision of no danger rendered on March 13, 2002 by health and safety officer Robert L. Gass, in the five employees' refusals to work made between the 15<sup>th</sup> and 28<sup>th</sup> of January 2002 at various times.
- [3] The statements of the refusals to work as reported in the report of health and safety officer Gass, were for:
1. Linda-Mary Harvey: Due to the reaction that occurred on January 28, 2002 from the smell. I feel I cannot work on the 10<sup>th</sup> fl. until it is made clear what it is and how it will be cleared (sic).
  2. Linda B. Myrka (sic): I feel the odour on the 10<sup>th</sup> floor is still unsafe to my health.

3. Margaret Man: I refuse to work on 10<sup>th</sup> floor in view the environment and air condition is not fit for my health, it caused irritation at my lungs, breathing, eyes and have headaches.
  4. Laurel Shaw: Irritating odour on 10<sup>th</sup> floor causing eye and throat soreness, fatigue. Still no identification of cause of recurring odour.
  5. Daniela Ricci: Feel it unsafe for my health to work on 10<sup>th</sup> floor with unknown gaseous substance.
- [4] The investigation of health and safety officer Gass who was accompanied by health and safety officer Barbara Golding, lasted from February 7<sup>th</sup> to March 12, 2002.
- [5] The facts established by health and safety officer Gass were:
1. In May 2001 Officers Gass and Golding were contacted by Ms. Boyd regarding complaints about odours on the 10<sup>th</sup> floor of the Air Canada Centre. A meeting was conducted with the parties involved at which time it was agreed the company would continue with investigations to locate the source of the odours.
  2. Between May 2001 and January 2002 we did not receive any reports of the presence of odours.
  3. In January 2002 numerous reports and complaints regarding the odours were received. At that time several employees invoked their right to refuse to work on the 10<sup>th</sup> floor.
  4. Officer Gass was contacted by telephone by Ms. Boyd at which time officer Gass told her to conduct an investigation as required by the *Canada Labour Code*, Part II and suggested that Ms. Boyd contact the services of an environment consultant.
  5. The consultants contracted by Ms. Boyd were T. Harris Environment Management Inc. After they conducted an extensive investigation their report was formally presented on February 20, 2002 in the presence of all of the parties involved. Part of the conclusion reached by the consultant stated "...there does not appear to be any significant health hazard associated with the odour occurrences on the tenth floor."
- [6] Then health and safety officer Gass concluded in his decision that:
- I find there to be **no danger** as defined in the *Canada Labour Code*, Part II.
- Having said that, I would encourage the employer to continue to seek the source of the odour, if it should reoccur.
- He signed it on March 13, 2002 and he hand delivered it to each employee who had refused to work and the employer represented by Lori Boyd, manager Customer Service, on the same date.

- [7] On April 3, 2003, appeals officer Douglas Malanka conducted a teleconference with the parties to inform them that he agreed to reschedule the hearing planed for April 9, 2003 to mid July 2003. During that teleconference Rachelle Henderson, Counsel for the employer, advised the appeals officer that the company was under a Bankruptcy Protection Order, court file No. 03-CL4932, issued on Tuesday, the 1<sup>st</sup> day of April, 2003, by Justice Farley of the Ontario Superior Court, stating that all proceeding involving Air Canada were stayed. Paragraph 4 of the said decision addressed specifically the *Canada Labour Code* in those terms:
4. THIS COURT ORDERS that **all persons**, including, without limitation, all employees and union officials or representatives, are hereby restrained from implementing, enforcing or imposing any form of job action, decision, ruling or award resulting from any process, grievance or arbitration pursuant to the provisions of any collective agreement with an Applicant or pursuant to the *Canada Labour Code* or other similar legislation. [My underline]
- [8] The appeal had then been postponed until August 19, 2004. The hearing coordinator of the Canada Appeals Office on Occupational Health and Safety, wrote to both parties to schedule a hearing of the case.
- [9] On September 9, 2004, Mr. Bennie responded to that letter by asking time to prepare for the appeal and asked for the appeal to be heard either in early December 2004, or in January 2005.
- [10] On January 17, 2005 Mr. Bennie sent an E-mail to the hearing coordinator mentioning that he had spoken with the five employees and they have all decided not to pursue the appeal of the Toronto Call Centre case with Air Canada.
- [11] I hereby accept the employees' withdrawal without prejudice, and confirm that the file is closed.

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Pierre Rousseau  
Appeals Officer

## Summary of Decision

**Decision No.:** 05- 006

**Applicant:** Linda-Mary Harvey, Linda B. Myrka, Margaret Man, Laurel Shaw, Daniela Ricci

**Employer:** Air Canada

**Key Words:** Decision, refusal to work, odour, gaseous substance, air quality

**Provisions:** *Code 129(7)*  
**Regulations:**

### Summary:

The applicants appealed a decision of no danger issued by a health and safety officer, following a refusal to work. The applicants further withdrew their appeals and the appeals officer closed the file.