

Canada Labour Code
Part II
Occupational Health and Safety

R. A. Hayes
Applicant

and

R.C.M.P.
Employer

Decision No. 05-007
January 26, 2005

This case was decided by Pierre Rousseau, appeals officer

VIA COURIER
File: R.C.M.P. (Hayes)
Document No.: 2005-4

January 26, 2005

Mr. R.A. Hayes
Regimental Number 40374
Box 1900
Jasper, Alberta
T0E 1E0

Re. Your request for Investigation – Re-determination

Dear Mr. Hayes,

I revised your complaint and I must inform you that the Canada Appeals Office on Occupational Health and Safety (the Office) does not have the jurisdiction to intervene in this kind of request.

The Office is a quasi-judicial administrative tribunal and its jurisdiction is established by Part II of the *Canada Labour Code* (the *Code*) under sections 145.1 (1) to 146.5. Like any administrative tribunal, the Office is an independent body and has to remain outside the operations of the Labour Program.

More specifically, sections 146. (1) and 146.1 (1) of the *Code* establish exactly the two kinds of situations in which the appeals officer must inquire. They are the circumstances of the decision of no danger issued following a refusal to work, under subsection 129. (4) or a direction issued by a health and safety officer under section 145, as the case may be, and the reasons for it. The appeals officer may vary, rescind or confirm the decision or the direction, and issue any direction that he considers appropriate.

In your request, I don't see any direction issued or decision of no danger rendered following the investigation on a refusal to work by a health and safety officer, that could have triggered an appeal under subsection 129(7) of the *Code*, I therefore conclude that we don't have the authority to inquire or investigate in your request.

However, concerning your remarks about the Acting Regional Manager of Human Resources and Skills Development Canada (HRSDC), you can communicate with the Regional Director responsible for your region or with the Director General of Operations for Labour Program in Ottawa. The Office has no relation with the regions and must not interfere in their operations as mentioned above.

In reference to your work refusal and the application of section 128 of the *Code*, in the process of a refusal to work it is the employer who shall notify a health and safety officer. This is specified in subsection 128. (13). If your employer followed the process specified in section 128 of the *Code*, but omitted calling a health and safety officer when you exercised your right to refuse to work for the third time and he took some disciplinary action against you, you may file a complaint to the Labour Program in order to rectify the situation. Concerning the disciplinary action, you should refer to the Public Service Staff Relation Board (PSSRB), under sections 133 and 147 of the *Code* as mentioned in your letter.

I encourage you to pursue with PSSRB. It is the organization (administrative tribunal) that has jurisdiction in that field. They should hold a hearing and issue a decision which may include orders as indicated in section 134.

Hopefully this information will be helpful in resolving your case and will also contribute in promoting the health and safety of your work place.

Yours truly,

Pierre Rousseau
Director