

April 25, 2005

Mr. Terrance Breen
1384 Route 845
Moss Glen,
Cliffton Royal, N.B.
E5S 2C3

Subject: Your appeal

Dear Mr. Breen:

Following your letter dated March 30, 2005, I am referring you to my letter of March 18, 2005 explaining the relevant provisions of the *Canada Labour Code* (the *Code*).

The Appeals Officer is a quasi-judicial administrative tribunal whose jurisdiction is established by sections 145.1(1) to 146.5 of the *Code*.

As I mentioned, only two provisions in the *Code* authorize the Appeals Officer to hear an appeal, that is subsections 129(7) and 146(1). These provisions address two entirely different situations.

Under subsection 129(7), an employee who refuses to work may appeal the decision of no danger rendered by the health and safety officer investigating the employee's refusal. This subsection reads as follows:

129(7) If a health and safety officer decides that the danger does not exist, the employee is not entitled under section 128 or this section to continue to refuse to use or operate the machine or thing, work in that place or perform that activity, but the employee, or a person designated by the employee for the purpose, **may appeal the decision**, in writing, to an appeals officer within ten days after receiving notice of the decision.

(my underlining)

Under subsection 146(1), the employee may appeal a direction issued by the health and safety officer when he feels aggrieved by the direction. The subsection reads as follows:

146(1) An employer, employee or trade union that feels aggrieved by a direction issued by a health and safety officer under this Part may appeal the direction in writing to an appeals officer within thirty days after the date of the direction being issued or confirmed in writing.

In your case, it appears that your employer did not advise the health and safety officer of your refusal to work. Therefore the health and safety officer did not conduct an investigation and he did not render a decision.

Consequently, as an Appeals Officer appointed under the *Code*, I have no legal authority to hear this case, since it does not result from a decision of no danger.

If you are of the opinion that the health and safety officer did not intervene in accordance with the *Code*, you should refer your complaint to his supervisor.

Yours truly,

Pierre Rousseau
Director

c.c.: John Vines, Canada Industrial Relation Board
Ian Rennie, health and safety officer
Chris Weaver, health and safety committee representative
Stanley Englehart, employer's representative