

Canada Labour Code
Part II
Occupational Health and Safety

B. Uyeda
applicant

and

Air Canada
Richmond, BC
respondent

Decision No.: 06-012
April 6th, 2006

This appeal made pursuant to subsection 129(7) of the *Canada Labour Code* was decided by Douglas Malanka, Appeals Officer.

- [1] This case concerns an appeal that B. Uyeda made on March 28, 2003 pursuant to subsection 129(7) of the *Canada Labour Code*, Part II. At the time of her appeal, B. Uyeda was a flight attendant with Air Canada at the Vancouver International Airport, Richmond, BC.
- [2] On March 20, 2003, at approximately 17:30, B. Uyeda refused to work on Air Canada Flight AC15 (Airbus 340) bound for Hong Kong scheduled to depart at 01:15h on March 21, 2003. She stated that it was unsafe for her to work on the outbound and return flights to Hong Kong and to layover in Hong Kong because that city was experiencing an outbreak of Severe Acute Respiratory Syndrome (SARS) and she could contract SARS.
- [3] Following the employer's unsuccessful effort to resolve the matter, HSO Lisa Mah investigated into B. Uyeda's continued refusal to work on March 21, 2003. HSO Mah completed her investigation and decided that a danger did not exist for B. Uyeda. She confirmed her decision in writing the same day.
- [4] On March 28, 2003, B. Uyeda appealed the decision of HSO Mah to an Appeals Officer and efforts to schedule a hearing date were made on August 3, 2004, and on February 11, 2005. A hearing was finally set for June 13, 14 and 15, 2005.

- [5] On June 8, 2005, R. Graham Williamson, Counsel for B. Uyeda and Air Component - CUPE, wrote to inform this Office that Parties had entered into Minutes of Settlement which resolved the issues underlying the appeal to the satisfaction of the Worker, the Union and the Employer. For this reason, he stated that Parties jointly requested that the Appeals Officer cancel the hearing scheduled for June 13, 14 and 15, 2005. He also indicated that the Parties further requested that the Appeals Officer terminate the Appeal, on the consent of the Parties, without making any findings of fact or liability in respect of any substantive issues which were the subject of the Appeal. Finally, R.G. Williamson indicated that the Union and the Employer have now agreed to various terms, and to a framework in which they will develop, implement and monitor a program for the prevention of contagious disease hazards in the workplace (including SARS). R.G. Williamson requested HRDC and the Appeals Officer give effect to the agreement of the Parties, and cancel the hearing and terminate this Appeal without any findings on its merits.
- [6] On June 8, 2005, N.K. Trerise, Counsel for Air Canada, wrote to this Office to confirm that the request by R.G. Williamson that the Appeals Officer cancel the hearing and terminate the appeal on the consent of the Parties was properly expressed as the request of both parties to the appeal. N.K. Trerise also indicated that they join R.G. Williamson in requesting that HRDC and the Appeals Officer give effect to the agreement of the Parties.
- [7] On June 9, 2005, a telephone conference call was held with R.G. Williamson and N.K. Trerise. N.K. Trerise reiterated both parties had agreed to jointly develop, implement and monitor a program for the prevention of contagious disease in their workplaces, including SARS. He stated that this would be done with the participation of Air Canada's policy health and safety committee and he expected that discussions would begin towards the end of September 2005.
- [8] N.K. Trerise stated that the issue of SARS has evolved since the time of B. Uyeda's refusal to work and the new prevention program that would be jointly developed, implemented and monitored would address any new contagious disease. For these reasons, N.K. Trerise believed that a decision on the appeal would be of little value and is now irrelevant.
- [9] Based on the agreement of the parties, I agreed during the telephone conference call to cancel the hearing and consider the joint request by parties to terminate the appeal.
- [10] April 3, 2006, I spoke with R.G. Williamson and N.K. Trerise to confirm the status of the matter. Both Counsels confirmed that all Parties were satisfied with the joint agreement and wished that the appeal by B. Uyeda be terminated.

[11] Given the joint agreement by the Parties to ensure that the health and safety concerns of B. Uyeda would be fully addressed at the health and safety policy committee level, the considerable passage of time since the appeal by B. Uyeda on March 20, 2003 and the reticence of the Parties to proceed with a hearing, I have decided to dismiss the appeal by B. Uyeda and consider the matter to now be closed.

Douglas Malanka
Appeals Officer

Summary of Appeals Officer's Decision

Decision No.: 06-012

Applicant: B. Uyeda

Respondent: Air Canada Inc.
Richmond, BC

Key Words: Decision, refusal to work

Provisions: *Canada Labour Code: 129(7)*

Summary:

The applicant appealed a decision of no danger issued by a health and safety officer following a refusal to work.