

Canada Labour Code
Part II
Occupational Health and Safety

Francois Desilet et al. and the Canadian
Union of Public Employees Air Canada
Component. (CUPE Luk Young)
Applicants

and

Air Canada
Respondent

Decision No.: CAO-06-046
December 12th, 2006

This case was decided by Appeals Officer Michael McDermott.

For the appellant

James Robbins, Counsel, Cavalluzzo Hayes Shilton McIntyre & Cornish LLP

For the respondent

Rosalind Cooper, Counsel, Fasken Martineau

Health and Safety Officer

Lisa Witten, Health and Safety Officer, Transport Canada

- [1] This case concerns an appeal pursuant to section 129(7) of the *Canada Labour Code*, Part II, (the *Code*) made by Francois Desilet et al. and the Canadian Union of Public Employees Air Canada Component (the Appellants) against a decision of no danger, issued on March 31, 2006, by Health and Safety Officer (HSO) Lisa Witton, pursuant to section 129(4) of the *Code*.
- [2] The circumstances giving rise to the HSO's decision and to the subsequent appeal, relate to events following receipt of a telephone bomb threat by Air Canada (the Respondent) during the afternoon of Saturday, December 17, 2005. After some initial uncertainty, it was determined that an Air Canada flight scheduled to depart later that day, from Toronto Pearson International Airport for London Heathrow, was the subject of the threat.

- [3] For reasons that will become evident below, I do not intend to go into great detail with respect to the comprehensive and helpful written submissions and responses provided by Counsel for the parties. Suffice to say that, in addition to issues they raised concerning the application of the law and related jurisprudence, certain factual matters were disputed.
- [4] A telephone conference call was held with Counsel on Friday, November 3, 2006. On the basis of information obtained during the conference call, as well as from subsequent brief written exchanges from Counsel, I determined that an oral hearing would be needed at the very least to clarify the facts in dispute. These facts were of significance and included questions as to the timing and nature of the refusals. Other factual matters disputed were also germane to the determination of the appeal. They included such issues as the motives for the precautionary measures taken by the Respondent and the security authorities, as well the reasons for delays in the HSO's investigation that did not formally take place until Monday, February 27, 2006.
- [5] An oral hearing was held in Toronto on Thursday, November 30, 2006. At the outset of the morning session Counsel for both parties sought time to discuss the prospects for settlement of the case. I granted them the time they required following which they presented me with Minutes of Settlement, signed by representatives of both parties, and requested that the terms of the Minutes should be incorporated into a consent decision and order issued by me as Appeals Officer.
- [6] In brief, the Minutes of Settlement acknowledge that the crew of flight AC856 exercised their right to refuse work pursuant to section 128 of the Code and that they were released no later than 23:59 hours on December 17, 2005. The Minutes further state that no investigation had commenced by 23:59 hours on December 17, 2005 and that Health and Safety Officer, Lisa Witton issued a "no danger" decision on March 31, 2006.
- [7] In the light of the preambular statements in their Minutes of Settlement, the parties agree that the HSO's decision of March 31, 2006, shall be rescinded and that there shall be no finding with respect to the presence or absence of "danger" within the meaning of Part II of the Code pertaining to the December 17, 2005, work refusal.
- [8] I find that the parties' agreement as detailed in the Minutes of Settlement of Thursday, November 30, 2006, constitutes an appropriate conclusion to this specific case. I note that, in the preambular paragraphs of the Minutes, they have agreed to certain relevant facts and, by implication, have jointly decided not to pursue other factual matters that had been the subject of differences between them. I agree that no useful purpose will be served by my making a finding with respect to the presence or absence of "danger" within the meaning of Part II of the Code pertaining to the December 17, 2005, work refusals.

- [9] I therefore agree to the parties' joint request that the Minutes of Settlement be incorporated into a consent decision and I have attached the agreed to text of those Minutes which are to be included as an integral part of my decision and order. My decision pursuant to section 146.1(a) of the Code is to rescind the decision issued by the Health and Safety Officer on Friday, March 31, 2006.

Michael McDermott
Appeals Officer

Summary of Appeals Officer's Decision

Decision No.: CAO-06-046

Appellant: Francois Desilet et al. and the Canadian
Union of Public Employees Air Canada Component.
(CUPE Luk Young)

Respondent: Air Canada

Provisions: *Canada Labour Code*, Part II 129(7)

Keywords: Bomb threat, delayed investigation, rescinded

Summary:

On December 17th, 2007 Air Canada received a bomb threat which posed a threat to the crew of flight AC586. The crew of flight AC586 refused to work and an investigation was conducted on February 27, 2006. The health and safety officer rendered a decision of no danger. At the early onset of the hearing both parties mutually submitted settlement minutes and both parties expressed their mutual agreement that the decision of the health and safety officer should be rescinded and that there will be no finding of presence or absence of danger. The Appeals Officer considered the settlement and decided that the parties were in reason; therefore the Appeals Officer rescinded the decision of the health and safety officer.