

Case No.: 2006-24

Canada Labour Code
Part II
Occupational Health and Safety

Canada Border Services Agency
appellant

and

CEUDA
respondent

Decision No.: CAO-06-049
December 14, 2006

This case was decided by Appeals Officer Pierre Guénette.

For the Appellant

Richard Fader, Counsel, Treasury Board Legal Services
Gerry Dundas, Assistant to the District Director

For the Respondent

Terry Rollo, Customs Inspector
Mike Fummerton, Customs Inspector, Local Union Shop Steward

Health and Safety Officer

Lindsay Harrower, Human Resources and Skills Development Canada

[1] This case concerns an appeal made on March 16, 2006 under the *Canada Labour Code*, Part II, subsection 146(1), by Richard Fader on behalf of Canada Border Services Agency, against a direction issued by Health and Safety Officer (HSO) Lindsay Harrower.

[2] According to HSO Harrower's report, on March 1, 2006, Mr. T. Rollo refused to work because he believed that:

“Due to a technical error at the national level and no confirmation that this would never happen again, an armed & dangerous lookout was requested to be referred to secondary, which is against our policy. Secondly, since our previous work refusal in November of 2005, we still have not received any training on how to deal with an armed and dangerous individual.”

- [3] Further to her investigation, HSO Harrower issued a direction to the employer under paragraphs 145(1) of the *Canada Labour Code* as follows:

On March 1, 2006, the undersigned health and safety officer conducted an investigation in the work place operated by Canada Border Services Agency, being an employer subject to the *Canada Labour Code*, Part II, at the Detroit Canada Tunnel, 35 Park Street East, Windsor, Ontario, N9A 3A8 the said work place being sometimes known as Canada Customs Border Services. – Detroit Windsor Tunnel.

The said health and safety officer is of the opinion that the following provisions of the *Canada Labour Code*, Part II, have been contravened:

- 1) Paragraph 125.(1)(s) of Part II of the *Canada Labour Code*.

Ensure that each employee is made aware of every known or foreseeable health and safety hazard in the area where the employee works;

The employer shall ensure that all means of communications regarding Armed and Dangerous Lookouts shall be comprehensive in nature and disseminated in a timely and efficient manner thereby allowing the employees the opportunity to develop an appropriate response when or if confronted.

- 2) Paragraph 125.(1)(q) of Part II of the *Canada Labour Code* and paragraph 17.6(1)(a) of the *Canada Occupational Health and Safety Regulations*.

Regulation 17.6(1)

Every employee shall be instructed and trained in

(a) the procedures to be followed by him in the event of an emergency;

Ensure all Customs Inspectors are provided instruction and training on changes or additions to the Handling of Armed and Dangerous Lookouts policy including safe process for the withdrawal of services.

- 3) Paragraph 125.(1)(z.06)

Consult the work place committee or the health and safety representative in the implementation of changes that may affect occupational health and safety, including work processes and procedures;

In consultation with the local workplace health and safety committee(s) the employer shall develop an emergency communications plan which shall be implemented in the event of any conditions that may adversely affect the transmission of information regarding the safety and health of employees.

Therefore, you are HEREBY DIRECTED, pursuant to subsection 145(1)(a) of the *Canada Labour Code*, Part II, to terminate the contraventions no later than April 03, 2006.

Further, you are HEREBY DIRECTED, pursuant to paragraph 145(1)(b) of the *Canada Labour Code*, Part II, within the time specified by the health and safety officer, to take steps to ensure that the contravention does not continue or reoccur.

- [4] On December 5, 2006, Richard Fader sent a letter to the Canada Appeals Office on Occupational Health and Safety on behalf of Canada Border Services Agency, indicating that they were withdrawing their appeal of the direction.
- [5] Considering the written request to withdraw the appeal and having reviewed the file, I accept and declare this case closed.

Pierre Guénette
Appeals Officer

Summary of Appeals Officer's Decision

Decision No.: CAO-06-049

Appellant: Canada Border Services Agency

Respondent: CEUDA

Key Words: Customs inspectors, armed and dangerous lookouts, training, emergency communication plan, withdrawal

Provisions: *Canada Labour Code:* 146(1) 125.(1)(s)(q)(z.06)
Canada Occupational Health and Safety Regulations: 17.6(1)

Summary:

On March 16, 2006, Canada Border Services Agency appealed a direction following the work refusal of Mr. T. Rollo. Further to her investigation, HSO Harrower issued a direction to the employer on March 3, 2006, in regards to Armed and Dangerous Lookouts. On December 5, 2006, Canada Border Services Agency withdrew its appeal of the direction. The case is therefore close.