

Occupational Health  
and Safety Tribunal Canada



Tribunal de santé et  
sécurité au travail Canada

Ottawa, Canada K1A 0J2

Case No: 2008-08  
Decision No.: OHSTC-09-013

***CANADA LABOUR CODE***  
**PART II**  
**OCCUPATIONAL HEALTH AND SAFETY**

Diane St. Laurent  
*Appellant*

and

Canada Post Corporation  
*Respondent*

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April 21, 2009

This case was decided by Appeals Officer Thomas J. Farrell.

**For the appellant**  
Ms. Mary Aitken

**For the respondent**  
Mr. Don Forsythe

## **I BACKGROUND:**

[1] This case concerns an appeal made on April 3, 2008, pursuant to subsection 129(7) of the Canada Labour Code, Part II, by Ms. Diane St. Laurent, a Postal Clerk employed by Canada Post Corporation at the Canada Post Mail Handling facility at Dryden, Ontario. The appeal is against a decision of absence of danger issued by Health and Safety Officer (HSO) Ken Chmeliuk. The question to be decided in this matter is whether the employee, Ms. St. Laurent, was, at the time of the work refusal, exposed to a danger as defined at subsection 122(1) of the Canada Labour Code, Part II.

## **II SUMMARY OF THE EVIDENCE:**

[2] As per HSO Ken Chmeliuk's report of March 31, 2008, Ms. St. Laurent exercised her right to refuse on two issues, as stated on the work refusal registration form:

- (1) I was exposed to asbestos and feel that the possibility of it happening again is very likely due to the photos of more asbestos membranes in question: I would like to speak to someone professional on this topic.
- (2) Spoke with previous supervisor John Groves in regards to light fixtures falling and missing me by 2 feet. He was to install new light fixtures and remove old ones. New light fixtures have been installed but the old dangerous ones are still in place and I don't feel safe knowing that several close calls have happened before and it needs to be addressed.

[3] HSO Chmeliuk conducted an investigation into the work refusal of Ms. St. Laurent and the two issues on which it was based. His report, which is part of the record, provides the following information:

In November 2007, a light fixture fell from the ceiling, a distance of 25 ft. On inspection, it was noted that one of the pin hinges had been modified and an Assurance of Voluntary Compliance requesting that the employer have the fixtures inspected by a qualified person was received. The Assurance of Voluntary Compliance was followed and the person inspecting all fixtures found that they were not installed correctly. This problem was referred to the internal complaint process in the workplace. On the second issue related to asbestos, this arose when, on February 20, 2008, a contractor arrived unannounced to repair a heater on the loading dock. Some plaster fell off when the pipe knuckle was removed. On March 13, 2008, the Canada Post Safety Officer Jim Erickson conducted a Transmission Electron Microscopy air sample for asbestos fibres in the air. The pump and cassette used were provided, calibrated and analyzed

by Pinchin Environmental. The results of the testing indicated zero asbestos as per report from Pinchin Environmental which is also part of the record. Concern related to material in the locker room was addressed and I did not view it to be a danger as it was intact.

[4] During cross examination of HSO Ken Chmeliuk by Ms. Aitken, for the appellant, she asked if the contractor that came to replace the heater knew that the pipes were covered with asbestos.

[5] HSO Ken Chmeliuk indicated that Canada Post had advised all contractors to assume that all pipes were insulated with asbestos.

[6] The appellant asked HSO Chmeliuk when was the air quality testing conducted and whether he was of the opinion that it was adequate.

[7] HSO Chmeliuk's reply was that the tests had been conducted on March 17<sup>th</sup>, three weeks after the repairs to the heating unit had been completed and that in retrospect, they should have been conducted earlier.

[8] The appellant expressed concern that the white dust that was spread all over after the repairs area should have been cleaned up using a "Hepa" vacuum cleaner.

[9] Testimony was received from Mr. Don Forsyth who was posted to Dryden in February 2008. He noted the following:

- The light fixture in question fell on October 27, 2007, and two workers filed incident reports. He noted that Ms. St. Laurent did not bring this up until March 2008.
- On February 20, 2008, a contractor removed a heater located in the Dryden dock area and replaced it with a new unit.
- On February 21, 2008, the Health and Safety Committee conducted a workplace inspection. A concern was expressed related to the wrapping on a pipe that had been connected to the removed heater unit. There appeared to be some fraying of the insulation wrapping around the pipe and the pipe itself appeared to be dented.
- The Project Manager for the building owner, Mr. Bill McDonald, was contacted. The Union Health and Safety Committee representative was notified that a contractor would make necessary repairs to the damaged insulation and pipe.

[10] Mr. Forsythe pointed out that the contractor who had been hired to make the repairs had arrived late that evening and nonetheless had made the repairs. He should not have been there at that time and he should not have been let into the building without Canada Post personnel being notified.

[11] Mr. Forsythe noted that Ms. Paulette Porter notified Canada Post management that she and Ms. Diane St. Laurent had invoked their right to refuse as per the Collective Agreement. Their concern had to do with a white powder on the floor in the loading dock area. Mr. Forsythe was called in and, on arrival, indicated that he knew the white dust was the result of drilling holes in the drywall and dry "plaster of paris" powder. He proceeded to have the white dust and powder in the area cleaned.

[12] A workplace inspection took place on the evening of February 21. It involved Mr. John Groves – Acting Superintendent, Mr. Don Forsythe – Superintendent in Training, Ms. Mary Aitken – CUPW Shop Stewart, and Ms. Marilyn Rossiter – Health and Safety Committee member. They advised the two employees that a workplace concern had been identified and addressed earlier in the day. The events which had taken place were explained and it was agreed that it was safe to continue to work.

[13] On March 17, 2008, Don Forsyth was informed that Ms. St. Laurent was invoking her right to refuse under the Canada Labour Code. Her concerns were related to possible asbestos exposure and possibility of injury by a light fixture cover falling from the ceiling. The Health and Safety Committee was called in and an inspection was conducted. Ms. St. Laurent did not accept the Health and Safety Committee opinion and Canada Post notified Labour Canada of Ms. St. Laurent's refusal under the Canada Labour Code.

[14] HSO Ken Chmeliuk arrived at the workplace on March 27, 2008, for the purpose of conducting an investigation related to the refusal to work made by Ms. St. Laurent. He was accompanied by Mr. Don Forsythe – Superintendent, Ms. Allison Forsythe – Local Area Manager, Ms. Marilyn Rossiter – Employee Health and Safety Committee member, and Ms. Pat Livingston – Employee Health and Safety Committee Co-Chair.

[15] Following the inspection, HSO Ken Chmeliuk issued his decision "*that a danger does not exist*".

### **III APPELLANT'S SUBMISSION:**

[16] In her opening statement, the appellant stated that she was concerned for her well-being and the denial of her rights by Canada Post management. Building maintenance is an issue. Asbestos labelling is also an issue that has not been addressed.

[17] In presenting her information, the appellant suggested that she had to go back in time to 2004. She described a series of issues and many that were not related to the incident that led to Ms. St. Laurent exercising her "right to refuse" on March 17, 2008.

[18] The appellant outlined her concern that Canada Post Corporation representatives have caused her to be exposed to asbestos on several occasions due to their inattention to the need to ensure that proper handling procedures for asbestos in the workplace are followed.

[19] The appellant reviewed some issues related to her relationship with local Canada Post Corporation management, some of her co-workers, the joint Health and Safety Committee, and the Union President. She believes they are not doing their jobs where maintaining a safe workplace is concerned.

#### **IV RESPONDENT'S SUBMISSION:**

[20] Canada Post's commitment to providing a safe and healthy workplace was reaffirmed. As a result of Ms. St. Laurent's complaint of February 21, 2008, Canada Post Corporation hired an independent electrical firm to inspect all light fixtures on the worksite and have a plan in place to resolve this issue. The complaint that concerned asbestos exposure resulted in Canada Post hiring an independent consultant to conduct air quality tests to determine if asbestos fibre was present in the workplace and prepare a plan of action to resolve workers' concerns related to notification of staff when repairs are planned in the workplace.

#### **V REASONS:**

[21] The employee exercised her right to refuse to work in accordance with Section 128 of the Canada Labour Code, Part II, which culminated with HSO Ken Chmeliuk's conclusion that a danger did not exist. Subsection 128(1) is as follows:

"Subject to this section, an employee may refuse to use or operate a machine or thing, to work in a place or perform an activity, if the employee while at work has reasonable cause to believe that

(a) the use or operation of the machine or thing constitutes a danger to the employee or to another employee; or

(b) a condition exists in the place that constitutes a danger to the employee; or

(c) the performance of the activity by the employee constitutes a danger to the employee or to another employee."

[22] The two main issues that resulted in Ms. St. Laurent exercising her “right to refuse” are the possible exposure to asbestos fibre that resulted from repairs to the heating unit and a ceiling tile, and the second issue related to defective lighting fixtures.

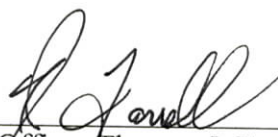
[23] The action taken by the employer to bring in Pinchin Environmental Ltd. to assess the quality of the pipe insulation repairs and direct the air sampling protocol conducted by Canada Post Corporation Safety Officer Jim Erickson that gave a “none detected” result, meant that no asbestos fiber was detected in the air at the workplace, as indicated in the Pinchin Environmental report.

[24] In November 2007, a lighting fixture lens fell to the floor. This failure was investigated by Canada Post management and HSO Ken Chmeliuk. The cause was not readily apparent and an Assurance of Voluntary Compliance was received on March 28, 2008, requesting the employer to consult a qualified person to assess the present light fixtures and the installation of the light fixture lenses.

[25] As the Appeals Officer in this case, I must take into consideration the circumstances that existed at the time of the refusal, the elements on which the HSO rested his decision, as well as the relevant statutory provisions. Consequently, on the basis of the evidence obtained at the hearing and given the above, I find that Ms. St. Laurent was not, at the time of the work refusal, exposed to a danger as defined in the Canada Labour Code.

## **VI DECISION:**

[26] I am upholding the decision of the HSO Ken Chmeliuk that a danger did not exist in the workplace at the time of Ms. St. Laurent’s refusal.

  
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Appeals Officer Thomas J. Farrell