

OHS Case Alert: Worker Abused Refusal Rights to Advance His Political Agenda



While the worker's OHS right to refuse dangerous work is an important safety measure, it's also subject to abuse.

Case In Point

Exhibit A: The 2019 federal case involving a longshore worker that initiated a work refusal claiming that shore-to-ship gangways "didn't meet Code." His key concern was the company's practice of resting gangways on the handrails of the ship being loaded via use of a shepherd's hook attached to the gangway underside to secure it from slipping off. The Captain, an official MOL delegate, investigated and found no danger. But the worker kept up the refusal and the case went to a federal OHS tribunal which upheld the no danger ruling.

The Worker's Ulterior Motive

The worker actually had a hidden agenda, the tribunal concluded. He was a union rep and member of the workplace JHSC fed up with what he perceived to be the company's lack of progress in implementing committee recommendations related to the safety of the gangway. His use of the phrase "not up to Code" indicated that his purpose in bringing the refusal was to advance his agenda and not protect his immediate safety, according to the tribunal [*Jordan v. Neptune Bulk Terminals (Canada) Ltd.*, 2019 OHSTC 19 (CanLII), September 25, 2019].

The Bottom Line

Work refusals are legitimate only when workers believe there's an immediate danger to health and safety. Although the worker in this case legitimately considered the condition to be unsafe and was worried that it would ultimately result in a gangway collapse, he wasn't in fear that it was going to happen at that moment. As a result, the refusal was unjustified.