

# Was Suspension Proper for Continuing Refusal to Work?



## SITUATION

A supervisor asks a worker to wash a conveyor. He refuses, claiming it's unsafe because doing so will generate airborne dust. The employer investigates the refusal and concludes that the task isn't unsafe if the worker uses a respirator and follows designated procedures. But the worker continues to refuse to do the job. So the Ministry investigates and agrees with the employer that it's safe to undertake this task under the circumstances. The worker still refuses to wash the conveyor, saying he doesn't have his personal respirator or his fit card, which indicates his appropriate model and size respirator. It's company practice for workers to always have their fit cards available. The worker also claims he can't remember the size respirator he wears. So he can't do the work. Upon investigation, the employer finds an old fit card of the worker's in his locker. It suspends the worker for continuing to refuse to do the work after it was deemed safe. The worker has no prior disciplinary record.

## QUESTION

**Is the suspension appropriate for refusing to work'**

- A. No, because you can never discipline a worker who exercises his right to refuse unsafe work.
- B. No, because the worker can continue to refuse to work until the danger is resolved to his satisfaction.
- C. Yes, because the allegedly dangerous job was investigated and found to be safe.
- D. Yes, because the worker was lying about not having his fit card.

## ANSWER

**C. Because the employer and Ministry investigated the work refusal and found the working conditions weren't unsafe, it was appropriate to suspend the worker for continuing to refuse to do the assigned job.**

## EXPLANATION

This hypothetical is based on a decision by the Ontario Labour Relations Board. A worker had claimed dust stirred up during cleaning of equipment presented an unsafe condition and refused to do the cleaning. An investigation revealed use of a respirator made the work safe but the worker claimed not to have the necessary respirator specially fit for him or his fit card indicating what mask he should wear. After the worker was suspended, he argued that the suspension was an illegal reprisal for a work refusal based on unsafe conditions. But the Labour Relations Board ruled that the worker could be disciplined for continuing to refuse to work even though work conditions were investigated and found not to pose a danger to him.

## WHY THE WRONG ANSWERS ARE WRONG

**A is wrong** because although you can't discipline a worker for exercising his right under the OHS laws to refuse to do unsafe work, which is considered an illegal reprisal, the worker's protection from discipline isn't limitless. Employers are required to investigate work refusals. If an investigation finds that the work conditions are safe and the worker still refuses to return to work, the worker is usually entitled to have the government agency in charge of enforcing the OHS laws investigate the refusal. If that investigation also concludes the work isn't unsafe and the worker still refuses to do it, the employer may discipline him for that failure to fulfill work responsibilities. In this case, that's just what happened. The employer's and Ministry's investigations both concluded that it was safe to wash the conveyor using the appropriate PPE and work procedures. So the worker's continual refusal to do this job was insubordination and warranted his suspension.

**Insider Says:** For more tips on what to do or not do when a worker refuses unsafe work, see 'Work Refusals: Answers to 10 Frequently Asked Questions,' Dec. 2012, p. 1, and the Work Refusal Compliance Centre.

**B is wrong** because the worker's satisfaction isn't the ultimate goal. The point of the right to refuse dangerous work is to protect all workers from unsafe conditions. If conditions alleged to be dangerous are found to be safe by both the employer and OHS officials or can be made safe through reasonable protective measures, the worker must return to work, even if he doesn't get his desired resolution. Here, the employer and OHS officials investigated and were satisfied that cleaning the conveyor was safe with use of proper PPE and procedures. The worker's belief that the job was still unsafe doesn't trump the conclusions of these investigations.

**D is wrong** because the employer suspended him for failing to do the assigned job once it was ruled safe, not because he lied about the fit card. On its own, the issue with the fit card probably wouldn't justify the worker's suspension. First, it's unclear whether he intentionally lied to mislead his employer or simply forgot about the old fit card. Second, he had no prior disciplinary record. So even if the worker had knowingly lied about the fit card, a suspension based on that conduct alone would likely be excessive and a verbal or written warning deemed more appropriate. But his continued work refusal despite investigations that found the job safe combined with the fit card ambiguity does justify his suspension.

## SHOW YOUR LAWYER

Dagenais v. Glencore Canada Corp. Kidd Operations, [2014] CanLII 18533 (ON LRB),  
April 8, 2014