# Winners & Losers: Are Ergonomic Hazards Grounds for a Work Refusal?



OHS laws give workers the right to refuse ‘dangerous’ work. The question: Can work be considered dangerous if the potential harm would occur gradually over time rather than in a single definable moment’ Musculoskeletal injuries (MSIs) resulting from continued exposure to awkward postures, unnatural bending, repetitive motion, vibration and other ergonomic risk factors over a prolonged period are a perfect case in point. Here’s a look at 2 cases addressing the question of whether ergonomic hazards justify a work refusal.

## Ergonomic Work Refusal NOT Justified

### What Happened

A railroad engineer boards his locomotive. The footrest is defective and he can’t adjust the seat to a comfortable height. As a result, he has to sit in an unnatural way so that his left leg blocks access to the throttle and his left hip blocks access to the brake handle. The engineer completes the first leg of the trip but complains at the next station that the scrunching is straining his back. The supervisor tells him that the footrest can’t be repaired immediately and asks the

engineer to tough it out for the rest of the trip. The engineer refuses. The safety officer investigates and finds that the footrest is a danger. The railroad appeals.

### Decision

The federal labour board says the refusal was unjustified.

### Reason

The *Canada Labour Code* defines ‘danger’ justifying a work refusal as a condition ‘that could reasonably be expected to cause injury or illness . . . before the hazard or condition can be corrected, or the activity altered.’ The board acknowledged that the defective footrest ‘diminished the ergonomic fit’ between the engineer and the controls of the locomotive, but ruled it wasn’t a ‘danger.’ The engineer could have ignored the footrest and repositioned himself in the seat for the rest of the trip when the footrest would be repaired. Although the engineer might have been uncomfortable, he wouldn’t have suffered injury, the board concluded.

*Canadian National Railway Co. and Tetley*

## Ergonomic Work Refusal IS Justified

### What Happened

A worker in an Ontario automobile plant refuses to perform an assembly line operation that involves hammering of parts. She claims to be in great pain and that she can’t tolerate the repetitive motion from the hammering. The plant disciplines the worker and the union steps in. Management and the union can’t resolve the dispute so the MOL is called in to investigate. The investigator’s conclusion: The refusal is unjustified because the task the worker refuses to perform poses no ergonomic danger. The union appeals.

## Decision

The labour board reverses the ruling and finds that the worker was endangered.

## Reason

The MOL was right to conclude that the work wasn’t likely to endanger ‘the average worker,’ according to the board. But this worker wasn’t average. She had a pre-existing medical condition that made her especially susceptible to ergonomic injury from repetitive hammering motion. The MOL investigator admitted that he didn’t know this when he did the original investigation. He also admitted that if he had known about the worker’s medical condition, he’d have found that the work did endanger her. Consequently, the board reversed the MOL’s finding and found the task of hammering parts was a danger justifying refusal.

*Re Canadian Auto Workers, Local 397*