

You Make the Call – Is This a Valid Group Refusal of Dangerous Work?



OHS laws allow workers to refuse work that they believe endangers their own or another person's safety. However, work refusal rights are supposed to be a safety measure of last resort. Accordingly, restrictions apply. One of the most important restrictions is that the fears prompting the worker to refuse be "reasonable." In addition, reasonableness is measured by an objective rather than subjective standard. In other words, what matters is not the view of the particular worker who engaged in the refusal but whether an ordinary worker in the same circumstances and knowing what the refusing worker knows would find the fears reasonable. While reasonable generally varies from case to case, there may be situations where it's fairly cut and dried. Consider the following scenario.

Situation

A worker refuses to work on a machine that he claims is improperly guarded. After investigating the allegation, the company reports that the machine is safe. But the worker still refuses and exercises its right to call in an OHS inspector. The inspector shows up, does her own inspection, and agrees with the company that there's no danger. Everybody returns to work. The shift ends. Workers on the next shift get wind of

the refusal during the previous shift and they in turn refuse to work. The company shows them the OHS inspector's report declaring the machine safe and explains that nothing has changed. But the workers are still sincerely worried about their safety and refuse to work.

Question

Can the company discipline workers from the second shift for refusing to work?

1. No, because the workers' concern for their safety is reasonable.
2. No, because even if the workers' concern for their safety is sincere.
3. Yes, because the OHS investigation shows that there's no real danger.
4. Yes, because while individuals have the right to refuse work, an entire shift of workers does not.

Answer

1. **The company can discipline the workers because the results of the OHS investigation establish that there's no danger and thus no grounds for continuing the refusal.**

Explanation

This scenario is based on the facts of a venerable case from 1985. The Ontario Labour Relations Board said that the company could discipline the second shift workers because their refusal, while sincere, wasn't reasonable. According to the Board, the workers' fears weren't reasonable because "the issue was previously resolved and workers had information about the resolution." Since the OHS investigation resolved the issue of the danger of not guarding the machine, the

refusal was unjustified and discipline would be appropriate [[United Electrical, Radio & Machine Workers of Canada, Local 550 v. Camco Inc.](#), 1985 CanLII 1058 (ON LRB)]. So, C is the right answer.

Why Wrong Answers Are Wrong

A is wrong because the fact that the OHS investigator found that there was no danger shows that the safety concern of the workers was not reasonable.

B is wrong because while a work refusal does have to be sincere it also has to be reasonable. If sincerity were the standard, workers would be allowed to refuse work that's actually safe based on irrational fears.

D is wrong because it's simply not true that the right of refusal is limited to individual workers. A group of workers—even an entire shift—may refuse dangerous work as long as the refusal meets all legal requirements.