

Federal Court of Appeal



Cour d'appel fédérale

Date: 20250501

Docket: A-151-24

Citation: 2025 FCA 89

**CORAM: GLEASON J.A.
LEBLANC J.A.
HECKMAN J.A.**

BETWEEN:

JAMES STEWART

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

Heard at Ottawa, Ontario, on May 1, 2025.
Judgment delivered from the Bench at Ottawa, Ontario, on May 1, 2025.

REASONS FOR JUDGMENT OF THE COURT BY:

GLEASON J.A.

Federal Court of Appeal



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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Ottawa, Ontario, on May 1, 2025).

GLEASON J.A.

[1] The applicant seeks to set aside the decision of the Federal Public Sector Labour Relations and Employment Board (the Board) in *Stewart v. Treasury Board (Correctional Service of Canada)*, 2024 FPSLREB 48. In that decision, the Board dismissed a reprisal complaint filed on behalf of the applicant under section 133 of the *Canada Labour Code*,

R.S.C. 1985, c. L-2 [the *Code*], finding that the applicant had not engaged in a work refusal within the meaning of section 128 of the *Code*.

[2] The Board's decision is reviewable under the deferential reasonableness standard:

Canada Post Corp. v. Canadian Union of Postal Workers, 2019 SCC 67, [2019] 4 S.C.R. 900 at para. 27; *Duiker v. Canada (Attorney General)*, 2024 FCA 195 at para. 5.

[3] In light of the deference owed to the Board, the factual nature of its determination, and the unusual facts in this case, we see no basis to interfere with the Board's decision. As admitted by the applicant during the hearing, the Board's decision can be fairly understood to rest on two bases: there was no work refusal because the applicant admitted he had not exercised his right to refuse unsafe work and because the applicant was not at work when he left the premises. Considering the applicant's admissions made during his testimony before the Board that he had not exercised his right to refuse unsafe work and had not wanted to do so, we find the Board's conclusion that there was no valid work refusal to be reasonable.

[4] However, in upholding the Board's decision, we should not be understood to endorse the Board's interpretation of "while at work" within the meaning of subsection 128(1) of the *Code*. We leave open the possibility that an employee may well be able to exercise their right to refuse unsafe work under the *Code* where the refusal is made before they commence their shift, as occurred, for example, in *Claude Marois v. Transport Norcité Inc.*, 2020 CIRB 951.

[5] Accordingly, this application is dismissed, with costs.

“Mary J.L. Gleason”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-151-24
STYLE OF CAUSE:	JAMES STEWART v. ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	OTTAWA, ONTARIO
DATE OF HEARING:	MAY 1, 2025
REASONS FOR JUDGMENT OF THE COURT BY:	GLEASON J.A. LEBLANC J.A. HECKMAN J.A.
DELIVERED FROM THE BENCH BY:	GLEASON J.A.

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