



IN-TOUCH

The Basics of Health and Safety: Your Right to Refuse Dangerous Work

August 2016

Recently members have expressed some frustration to the union about the way their work refusals have been handled at both mainline and Rouge. Your CUPE H&S representatives have brought these concerns to the company, and safety management has been working to address them with us. That being said, we figured that the right to refuse dangerous work would be a good place to start a three-part series on the basics of health and safety.

This may not be the most stimulating read, but it is important. We hope that despite its length, you will take the time to look it over and keep it with you.

Some Good Things to Know

- ✓ You are protected from discipline, including the threat of discipline from management as long as you act in good faith.
- ✓ Once a work refusal is initiated, no one can replace you on the flight until the Minister has been informed and consented (STEP 3 – See below in yellow).
- ✓ An RTR cannot be denied by the company, including crew scheduling. To be clear, there is no “work now grieve later” for work refusals. Please let your union know immediately if this happens by calling the office or the emergency line in off-hours!
- ✓ Crew scheduling is our “gateway” to the company, but they are unionized employees and cannot represent the company (management) in the process. The procedure is for your call to be transferred to the safety manager on duty.
- ✓ You are pay protected for your flight credits in the event of a work refusal. However, the employer may reassign you to alternate duties. This would typically involve an alternate flight assignment once the investigation is concluded, and conforming to the collective agreement.
- ✓ The right to refuse dangerous work is an INDIVIDUAL decision. No one should pressure you into exercising your right or otherwise.
- ✓ You must be physically present at the workplace.
- ✓ You must act in good faith, and the work refusal mustn't be trivial, vexatious or frivolous in nature ex: it wouldn't be wise to refuse to work due to a *general* fear of flying, nor would it be appropriate to refuse work because you happen to be upset with your supervisor.
- ✓ Starting at step 2 you always have the right to union representation.
- ✓ If a group of employees are all refusing dangerous work, they may elect a spokesperson. But this cannot be forced.
- ✓ The person(s) refusing always have the right to be present for every step of the process unless they decide not to be.

- ✓ There are no specific words that must be said to initiate a work refusal. The important thing is to convey to the company that you feel that you are in danger and that you do not wish to work as a result. However, It may help to say ``I'm exercising my right to refuse dangerous work``.
- ✓ If your work refusal occurs ``in operation`` and the captain tells you that you must continue to work, think of it as hitting a pause button. The refusal will continue from where it left off in the process the minute the plane comes to a rest at destination.

When Can You Exercise Your Right to Refuse?

This question is the one that people ask the most often. It wouldn't be responsible of us to leave out what the law states, so we have included it here. Further down, you will find the official government summary.

THE LAW:

Danger means any hazard, condition or activity that could reasonably be expected to be an imminent or serious threat to the life or health of a person exposed to it before the hazard or condition can be corrected or the activity altered. (CLC Part II 122. (1))

128 (1) Refusal to work if danger - *Subject to this section, an employee may refuse to use or operate a machine or thing, to work in a place or to perform an activity, if the employee while at work has reasonable cause to believe that*

- a) the use or operation of the machine or thing constitutes a danger to the employee or to another employee;*
- b) a condition exists in the place that constitutes a danger to the employee; or*
- c) the performance of the activity constitutes a danger to the employee or to another employee.*

(2) No refusal permitted in certain dangerous circumstances - *An employee may not, under this section, refuse to use or operate a machine or thing, to work in a place or to perform an activity if*

- a) the refusal puts the life, health or safety of another person directly in danger; or*
- b) the danger referred to in subsection (1) is a normal condition of employment.*

(3) Employees on ships and aircraft - *If an employee on a ship or an aircraft that is in operation has reasonable cause to believe that*

- a) the use or operation of a machine or thing on the ship or aircraft constitutes a danger to the employee or to another employee,*
- b) a condition exists in a place on the ship or aircraft that constitutes a danger to the employee, or*
- c) the performance of an activity on the ship or aircraft by the employee constitutes a danger to the employee or to another employee,*

the employee shall immediately notify the person in charge of the ship or aircraft of the circumstances of the danger and the person in charge shall, as soon as is practicable after having been so notified, having regard to the safe operation of the ship or aircraft, decide whether the employee may discontinue the use or operation of the machine or thing or cease working in that place or performing that activity and shall inform the employee accordingly.

(4) No refusal permitted in certain cases - *An employee who, under subsection (3), is informed that the employee may not discontinue the use or operation of a machine or thing or cease to work in a place or perform an activity shall not, while the ship or aircraft on which the employee is employed is in operation, refuse under this section to use or operate the machine or thing, work in that place or perform that activity.*

(5) When ship or aircraft in operation - *For the purposes of subsections (3) and (4),*

- a) a ship is in operation from the time it casts off from a wharf in a Canadian or foreign port until it is next secured alongside a wharf in Canada; and*
- b) an aircraft is in operation from the time it first moves under its own power for the purpose of taking off from a Canadian or foreign place of departure until it comes to rest at the end of its flight to its first destination in Canada.*

THE SUMMARY:

Any employee subject to Part II of the Code has the right to refuse dangerous work as long as they have reasonable cause to believe that it presents a danger. Specifically, the Code states that an employee may refuse in the following circumstances:

- to use or operate a machine that constitutes a danger to the employee or to another employee;
- to work in a place;
- to perform an activity that constitutes a danger to the employee or to another employee.

The Code contains certain exceptions regarding the right to refuse dangerous work. These exceptions include: if the refusal puts the life, health or safety of another person directly in danger; or, the danger in question is a normal condition of employment.

The procedure is different for an employee working on a ship or aircraft that is in operation. If the employee believes that there is a work-related danger, the employee must bring it to the attention of the person in charge who will then decide what to do after taking into account the safety of the aircraft or ship.

What Are the Steps in a Work Refusal?

The right to refuse dangerous work can seem incredibly confusing. It will help if you try to think of it as a **THREE STEP PROCESS**:

1. THE COMPANY INVESTIGATES:

- You feel that your life or health is in imminent danger (or another person's as a result of your work)

- You are physically present at the workplace, and notify the employer (captain and/or crew Sched and/or a manager).
- The company will investigate in your presence, and a report will be written with the results of the investigation.
- If the company concludes that there is a danger, measures will be taken to immediately protect employees and resolve the danger. The company may also conclude that there is no danger.

EITHER WAY, YOU CHOOSE WHETHER YOU NOW FEEL SAFE OR NOT. If you do, it is resolved and the health and safety committee will be notified of the refusal and actions taken to resolve it. You go back to work.

If not, you go to step 2.

2. THE COMMITTEE INVESTIGATES

- The workplace committee, comprised of management and CUPE reps will receive the report from step 1 and investigate again in your presence.
- A report will be written and sent to the company including recommendations which may resolve the refusal. The company may or may not accept the committee's assessment and/or implement the recommendations.
- The company can provide extra information at that point to the committee, which may or may not elect to revise its report.
- If the company concludes that there is a danger, measures will be taken to immediately protect employees and resolve the danger. It could also find danger but conclude that it is a normal condition of employment **or** that the refusal would put the safety of another person(s) in direct danger. The company may also conclude that there is no danger at all.

EITHER WAY, YOU CHOOSE WHETHER YOU NOW FEEL SAFE OR NOT. If you do, it is resolved and the health and safety committee will be notified of the refusal and actions taken to resolve it. You go back to work.

If not, you go to step 3.

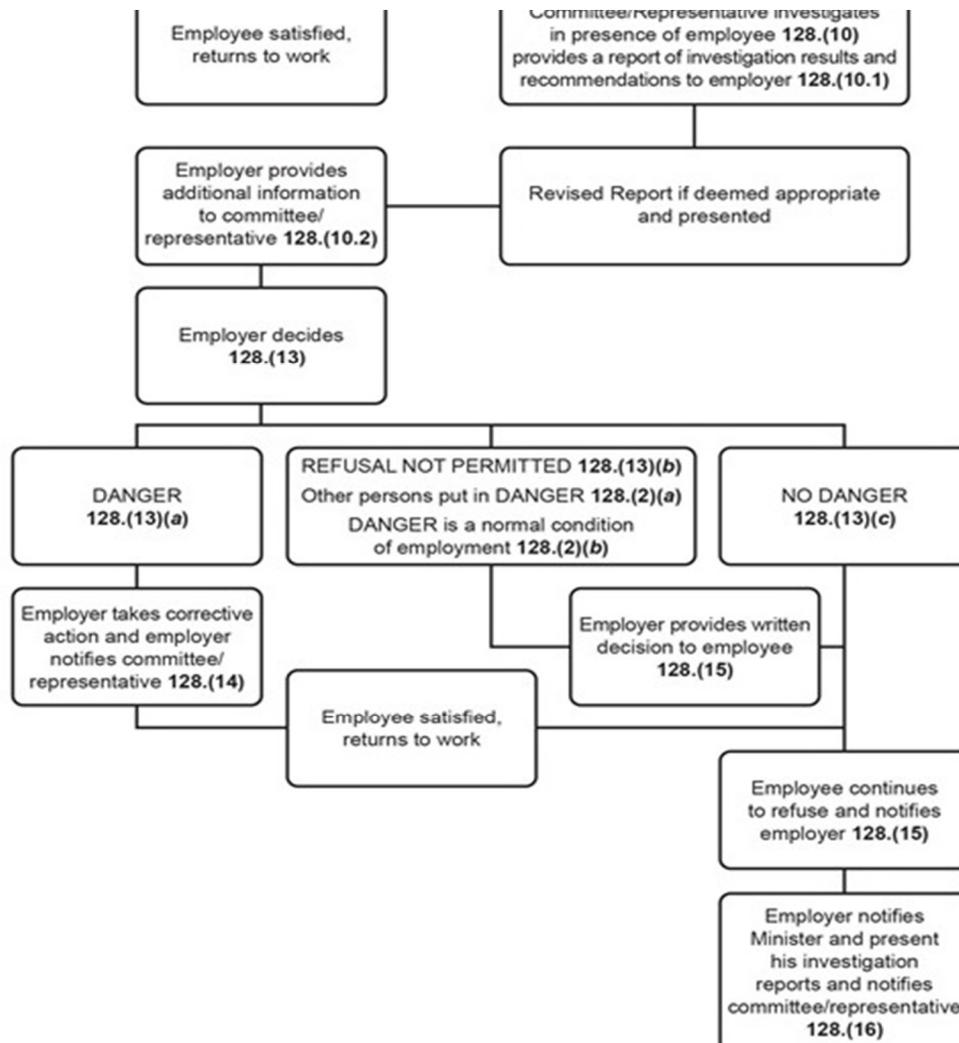
3. THE GOVERNMENT INVESTIGATES

The company will contact the Minister of Labour (or TC on the plane) to investigate the work refusal and notify the workplace committee. The minister will be provided the reports from steps 1 and 2.

- The minister will investigate in the presence of yourself, the employer and the CUPE H&S rep unless one of them decides not to be present.
- **ONLY AT THIS POINT, and with the official's permission can the company replace you with another person – and only if that person is made aware of the refusal and the reasons for it. They may also choose to exercise their right to refuse dangerous work.**
- The official will conduct an investigation and come to a decision of danger or no danger.
 - If a decision of danger is reached, measures will be directed to immediately protect employees and you may continue to refuse work until these measures are put in place.

- If a decision of no danger is made, you must return to work. An appeal can be filed ***within 10 calendar days*** should you still feel that a danger was present. Your union has the resources to conduct such an appeal on your behalf.

LABOUR CANADA WORK REFUSAL FLOWCHART – Aircraft NOT in operation:



A Disagreement:

For the better part of a decade, the company only treated a work refusal as ``in operation`` if the aircraft was moving under its own power, regardless of where in the world it happened. Its interpretation on the matter recently changed, and the union is currently evaluating its options. Please let the union know if your work refusal is treated as ``in operation`` if the plane is not moving under its own power at the time of refusal.

Further Reading:

The following are links to the Federal Labour Program's work refusal guide:

http://www.esdc.gc.ca/en/reports/health_safety/right_refuse.page
http://www.edsc.gc.ca/fr/rapports/sante_securite/droit_refuser.page?&_ga=1.257001803.1983326224.1457370468

The following are links to the Canada Labour Code with a clickable index (work refusals can be found under PART II, section 128):

<http://laws-lois.justice.gc.ca/eng/acts/l-2/page-1.html>
<http://laws-lois.justice.gc.ca/fra/lois/l-2/page-1.html>

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EMERGENCY LINE PHONE NUMBER 1(866)758-3037

The CUPE emergency line operators use key words to direct calls. **It is very important to specify that the call concerns a work refusal, so that you are transferred to a CUPE H&S representative.**

Working towards an even safer workplace for everyone,

Air Canada Component of CUPE Occupational Health and Safety