Case In Point

Termination of Employee Following Work Refusal Results in Finding of Reprisal

Date: March 28, 2013

The Ontario Labour Relations Board has found an employer violated the *Occupational Health and Safety Act* ("OHSA") when it immediately terminated an employee instead of taking any steps whatsoever to investigate a work refusal.

The employee was a probationary truck driver who had worked with the employer for three months. He felt that the truck assigned to him was dangerous, pointing to broken mirrors, a leaking fuel tank, and an engine brake that did not work. His employment was terminated almost immediately after he raised these concerns with his employer and indicated he would not drive that truck.

The Vice-Chair accepted the employee's evidence that he reasonably believed that the truck was unsafe to operate and that he exercised his right to refuse work under the OHSA. The Vice-Chair also found that the employer's decision to terminate the employee was motivated, at least in part, by the employee's work refusal, amounting to a reprisal under the OHSA. The Vice-Chair declined to reinstate the employee, but ordered back wages of $18,000.

This decision emphasizes the need for all employers to take seriously all work refusals and to investigate them promptly and properly. Any subsequent negative actions against the employee (such as discipline or termination) must be in no way motivated by the worker's exercise of his or her right to refuse work due to reasonable health and safety concerns.

Barber v. LP Services, 2013 CanLII 9952 (ON LRB)