

AVOID THE COSTS OF IMPROPER FINDINGS TIPS FOR CONDUCTING BETTER WORKPLACE INVESTIGATIONS

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The recent decision from the Alberta Court of King's Bench ("ABKB") in *O'Driscoll v. Suncor Energy Inc.*, 2026 ABKB 43 is an expensive reminder to employers that improperly conducted workplace investigations can be costly.

The company in question, Suncor Energy, terminated one of its shift supervisors for cause. After noticing via a review of GPS data that the employee's truck was stationary for a long period of time on two separate occasions, it conducted an internal investigation following which it concluded that he had fallen asleep on the job and that he was dishonest during the investigation.

Notwithstanding the employee's almost 11 years of service, he was terminated for cause and without notice, with the employer citing the investigation findings. The Court found that the company's investigator had "tunnel vision" which led to them ignoring exculpatory evidence, failing to preserve potentially corroborating evidence, and drawing improper inferences from a selective review of the evidence. Specifically, the investigator ignored the employee's explanation that he was watching a particular operation closely which is why the truck hadn't moved, and his denial of having been asleep, preferring evidence that supported the investigator's own conclusions to other available evidence such as the fact that there was GPS data indicating that other supervisors were parked a few feet away from the employee during the times in question, and none of those other supervisors claimed to have seen the employee sleeping.

Also problematic was the destruction of radio communications which could have corroborated the employee's account that he had made numerous calls during the times he was accused of sleeping.

Ultimately, the Court found that the high burden of cause had not been met, and the company was ordered to pay \$163,909.35 to the aggrieved employee.

Lessons Learned:

- Investigations must be conducted in a manner that is fair, impartial, and thorough
- Avoid being selective, and gather evidence from all available sources
- Don't ignore facts, evidence, or an employee's explanations
- Preserve potential evidence and sources of evidence
- Consider potential exculpatory evidence when making conclusions
- Avoid confirmation bias and other forms of bias in both the investigation and any determinations that flow therefrom

Turner HR Law offers proactive, solution-driven advice. We provide a range of workplace investigation options including conducting in-house investigations and facilitating external third-party investigations depending on your organization's needs. We can also assist you in developing a plan for seeking a suitable investigator to ensure the workplace investigation is appropriate in the circumstances. For more information or assistance, please visit www.turnerhrlaw.com.