

Court rejects random alcohol tests

Workplace policy affects staff privacy

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OTTAWA — The Supreme Court of Canada says an employer who wants to impose random alcohol testing on unionized workers in a dangerous work environment must show it is a reasonable move.

The court ruled Friday that a mandatory random alcohol testing policy imposed by **Irving Pulp and Paper** at a Saint John, N.B., kraft mill in 2006 was unreasonable and was properly rejected by a labour arbitration board. In a 6-3 decision, the justices sided with the Communications, Energy and Paperworkers Union of Canada, which brought a grievance against the Irving policy.

A New Brunswick court had overturned the arbitration board's ruling against the company, but the Supreme Court restored it, saying the board was right to reject the tests because there was no evidence of an alcohol problem at the plant. In 15 years before the policy was imposed, there were eight instances in which a worker was found to be under the influence of alcohol and none involved an accident or injury. During the 22 months the policy was in effect, no one tested positive. The justices said the applicable standard for judging such matters is reasonableness.

"In the end, the expected safety gains to the employer in this case were found by the board to range 'from uncertain ... to minimal at best' while the impact on employee privacy was found to be much more severe," Justice Rosalie Abella wrote for the majority.

"Consequently, the board concluded that the employer had not demonstrated the requisite problems with dangerousness or increased safety concerns such as workplace alcohol use that would justify universal random testing."

Gil McGowan, president of the Alberta Federation of Labour, said the ruling will impact similar court proceedings in Alberta. In October 2012, the Court of Queen's Bench issued an injunction stopping **Suncor Energy** from testing 3,400 oilsands workers represented by the Communications, Energy and Paperworkers Union of Canada Local 707 for drugs and alcohol. Suncor appealed, but late in the year, the Court of Appeal upheld the injunction, saying the possible negative effect on workers' privacy was a greater concern than Suncor's dire warnings that safety would be compromised.

The appeal court ordered an arbitrator to take over the case and make a final decision. That arbitrator has adjourned the process for the summer, despite hopes the ruling would come before the end of May.

"From our perspective, the decision handed down by the Supreme Court is a huge victory for working people and their privacy rights," McGowan said. "Basically, what the court said in its ruling (Friday) is that employers cannot arbitrarily impose random alcohol and drug testing regimes that treat workers as guilty until proven innocent unless those employers can

there is a serious problem with drug and alcohol at the workplace. So the onus is on the employer and that had not been previously the case."

Sneh Seetal, spokeswoman for Suncor, said her company interprets the Supreme Court ruling differently than the union and believes it says random testing is legitimate in some circumstances.

"In light of the Supreme Court of Canada decision, we will continue to defend our rights to implement the appropriate measures to ensure we send our workers home to their loved ones at the end of their shifts," Seetal said.

"My understanding of the decision is that it reaffirmed that in appropriate circumstances, random testing is justified. We believe that in the Regional Municipality of Wood Buffalo there is significant evidence of pressing safety concerns and that's why we're in the situation we're in with respect to looking at implementing that component in our already comprehensive safety program."

Seetal said of seven fatalities on Suncor sites since 2000, investigators confirmed three involved drug and alcohol intoxication.

"Employers who have risk-sensitive environments can take proactive measures to ensure the safety of their workplace," Seetal said. "Employers cannot or should not wait for catastrophic incident before implementing appropriate safety programs. ... No one understands our business and the risks better than we do."

Seetal said Suncor has hired a third party to provide testing and independent providers of substance abuse counselling.

"Our view is that one fatality is too many," she said. "That's why we look to random testing and we wouldn't do so if it wasn't absolutely critical."

McGowan said the labour movement isn't opposed to all drug and alcohol testing, just random testing across the board. "The good news is that with this decision, the Supreme Court has agreed with us."

Justice Abella said there are in fact times when employers can test workers.

"An employer can test an individual employee if there is reasonable cause to believe that the employee was impaired while on duty, was involved in a workplace accident or incident, or was returning to work after treatment for substance abuse. In the latter circumstance, the employee may be subject to a random drug or alcohol testing regime on terms negotiated with the union."

"But a unilaterally imposed policy of mandatory, random and unannounced testing for all employees in a dangerous workplace has been overwhelmingly rejected by arbitrators as an unjustified affront to the dignity and privacy of employees unless there is reasonable cause, such as a general problem of substance abuse in the workplace."

J.D. Irving Ltd. declined an interview request Friday, but issued a statement saying it respects the Supreme Court's decision.

The three dissenting judges said they found the arbitration ruling unreasonable and that it was properly set aside by the lower court.