

Court Second Guesses Arbitrator's Decision to Reinstate Breast Grabber



A City employee was fired for sexual assault after grabbing a co-worker's breast without her consent. The arbitrator said the penalty was too harsh and reduced it to a lengthy suspension. The City appealed and the case landed in the Alberta Court of Appeal, which took the relatively unusual step of striking down the arbitration ruling as unreasonable. The arbitrator's characterization of what was essentially a sexual assault as 'sexual annoyance harassment' understated the seriousness of the conduct. The arbitrator also didn't adequately consider the City's obligation to provide a harassment-free workplace, the Court explained. Result: The ruling was unreasonable and the case had to go back down to a different arbitrator [*Calgary (City) v CUPE Local 37*, 2019 ABCA 388 (CanLII), October 16, 2019].