

Drug & Alcohol Testing: Is Refusing to Take a Post-Incident Test Grounds for Termination?



Post-incident drug/alcohol testing is less controversial than random testing because occurrence of an incident is grounds to suspect impairment. At least that's the theory. In reality, post-incident testing isn't automatically allowed simply because an incident occurs and there's a post-incident testing policy in place. To justify overriding the worker's privacy rights and invoking the policy there must also be evidence that drug/alcohol impairment caused the incident. Things typically come to a head when a worker gets fired for refusing to submit to post-incident testing after being involved in a work incident. The following cases show how arbitrators decide these grievances.

CASE 1: REFUSING TEST = JUST CAUSE TO FIRE

Situation: Refusal is grounds for termination under a trucking company's post-incident testing policy. So, the pink slip the trucker gets for refusing to be tested after a traffic accident comes as no surprise. But the union claims that demanding testing in this situation was an abuse of the testing policy.

Ruling: The federal arbitrator disagrees and upholds the termination.

Reasoning: The company's insistence that the trucker submit to post-incident testing was 'reasonable and prudent,' the arbitrator reasoned citing the following factors:

- The safety-sensitive nature of the trucker's job;
- The trucker's involvement in previous incidents;
- The warning the trucker received that he'd be tested if another incident occurred;
- The trucker's awareness of the firing-for-refusal policy;
- His failure to provide reasons for refusing; and
- The total lack of any other extenuating circumstances.

Mielke v. Entrec Corp., [2015] C.L.A.D. No. 272, Nov. 30, 2015

CASE 2: REFUSING TEST ' JUST CAUSE TO FIRE

Situation: A 65-year-old electrician backs a company pickup truck into a parked vehicle. He immediately reports the accident and admits that his carelessness was to blame. The site superintendent asks him to undergo breathalyzer and urine drug testing. The electrician refuses. And since refusing post-incident testing is grounds for termination, he gets the boot.

Ruling: The Ontario labour arbitrator upholds the union's grievance.

Reasoning: While acknowledging that the workplace was safety-sensitive, the arbitrator found that invoking the testing policy in this situation served no safety purpose justifying violating the electrician's privacy rights citing the following factors:

- The electrician's clean record and lack of any history of drug or alcohol abuse;
- The fact that there was a believable explanation for the accident, namely, the electrician's carelessness; and
- The absence of evidence suggesting that the electrician was in any way impaired and that he was allowed to drive himself home after refusing to be tested.

Jacobs Industrial v. IBEW, Local 353, [2016] CanLII 198 (ON LA), Jan. 7, 2016