

# Employer Must Appoint Outsider to Investigate Worker's Harassment Complaint



Before Bill C-65, federal OHS regulations required employers to appoint 'competent' persons to investigate workplace harassment complaints and define competency' as being **and being seen** by the workplace parties as being impartial. A railway worker who complained about being sexually harassed by a co-worker tested the limits of that rule by rejecting all 13 of the railway officials her employer proposed to investigate the complaint. The employer claimed the worker was abusing her rights, but a government safety officer disagreed and ordered it to appoint an investigator from outside the railway. The federal OHS tribunal upheld the order and rejected the appeal. There was no history of bad blood between the worker and management nor any evidence to suggest that the worker was deliberately stirring up trouble. But the 13 proposed candidates were a 'pretty homogenous group,' whom in addition to working for the railway, all happened to be male and the worker was entitled to her 'subjective belief' that none of them would be impartial [*Canadian National Railway Company v. United Steelworkers*, 2020 OHSTC 6 (CanLII), September 21, 2020]. **Editor's Note:** The scenario involved in this case won't be possible now that the Bill C-65 rules, including the new requirements for designating persons to investigate workplace harassment and violence complaints, have taken effect.