

**Occupational Health and Safety Council  
Appeal Hearing**

June 22, 2010

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**Decision upon Application By:**

**Ron Nagy – Appellant**

**And**

**Safway Services - Respondent  
(previously ThyssenKrupp Safway Inc.)**

**And**

**Occupational Health & Safety– Respondent  
(previously Workplace Health and Safety)**

**Board Members**

Wendy Clark – Appeal Panel Chair, Public Representative,  
Occupational Health and Safety Council  
Cheryl Hamer – Worker Representative  
Occupational Health and Safety Council  
Eugene Sarrasin– Employer Representative  
Occupational Health and Safety Council

**Appearances:**

For the appellant: Ron Nagy

For the respondent: John Evans, Branch Manager, Safway Services

For the respondent: Mark Green, Legal Counsel for Occupational Health and Safety  
Heather Edenloff – Occupational Health and Safety Officer

**Government of Alberta** ■  
Employment and Immigration  
Occupational Health and Safety Council

The Appeal Panel (the Panel) convened on June 22, 2010 to hear an appeal pursuant to Section 36 and 37 of the *Occupational Health and Safety (OHS) Act. (Act)*

Section 36 of the Act reads:

- 36 *No person shall dismiss or take any other disciplinary action against a worker by reason of that worker acting in compliance with this Act, the regulations, the adopted code or an order given under this Act or the regulations.*

Section 37 of the Act reads:

- 37(1) *A worker who has reasonable cause to believe that the worker has been dismissed or subjected to disciplinary action in contravention of section 31(5) or 36 may file a complaint with an officer.*
- (2) *An officer who receives a complaint under subsection (1) shall prepare a written record of the worker's complaint, the investigation and the action taken and shall give the worker and the employer a copy of the record.*
- (3) *A worker or an employer who receives a record under subsection (2) may request a review of the matter by the Council by serving a notice of appeal on a Director of Inspection within 30 days from the receipt of the record.*
- (4) *After considering the matter, the Council may by order*
- (a) *dismiss the request for a review, or*
  - (b) *require one or more of the following:*
    - (i) *reinstatement of the worker to the worker's former employment under the same terms and conditions under which the worker was formerly employed;*
    - (ii) *cessation of disciplinary action;*
    - (iii) *payment to the worker of money not more than the equivalent of wages that the worker would have earned if the worker had not been dismissed or had not received disciplinary action;*
    - (iv) *removal of any reprimand or other reference to the matter from the worker's employment records.*
- (5) *If the worker has worked elsewhere while the dismissal or disciplinary action has been in effect, those wages earned elsewhere shall be deducted from the amount payable to the worker under subsection (4)(b)(iii).*
- (6) *An appeal lies to the Court of Queen's Bench from an order of the Council on a question of law or a question of jurisdiction and on hearing the matter the Court may make any order, including the awarding of costs, that the Council considers proper.*
- (7) *An appeal under subsection (6) shall be made by way of originating notice within 30 days from the date that the order of the Council is served on the person appealing the order of the Council.*
- (8) *The commencement of an appeal under subsection (6) does not operate as a stay of the order of the Council being appealed from except insofar as a judge of the Court of Queen's Bench so directs.*

**The specific reasons for appeal are:**

- On November 16, 2009, Mr. Nagy was dismissed from Safway Services.
- Mr. Nagy believes he was dismissed for requesting specific information related to an asbestos exposure in which he and others were affected.
- Mr. Nagy believes this action was a violation of section 36 of the OHS Act.
- Mr. Nagy filed an appeal under section 37(3) of the OHS Act

**The respondents contend that:**

- The disciplinary action taken against the appellant does not constitute a violation of s.36 of the Act.
- Mr. Nagy was dismissed for insubordination as a result of his aggressive behaviour toward his Supervisor and a co-worker.

**The Issue to be Resolved:**

Does the action taken against the appellant by the employer constitute a violation of s.36 of the Occupational Health and Safety Act?

**Submissions Considered by the Appeal Panel**

***From the Appellant, Mr. Nagy***

- OHSC Complainant Questionnaire – completed by Mr. Nagy
- Evidence presented by Mr. Nagy (Appellant)

In consideration of the Decision the Appeal Panel reviewed all the submitted material.

***From the Respondent, Safway Services and Occupational Health & Safety (OHS)***

***Package of information relating to the appeal obtained from both the Appellant and the Respondent including:***

- OHSC Complainant Questionnaire – completed by Mr. Nagy
- OHSC Employer Questionnaire- completed by Mr. Evans, Safway Services.
- Statements provided to OHS by Safway Services.
- Field Level Hazard Assessments
- Witness Testimony – Heather Eldenloff, OH&S; Shawn MacLean, Clair MacDonald, John Ray MacLeod, Bill Wiseman, John Evans of Safway Services.
- Witness statements of Shawn MacLean, Clair MacDonald, John Ray MacLeod, Grace Prince, Colton Dejarlais, Winston Lemieux, and Andrew Stewart
- Submission binder produced from OHS containing the Appellant's information, OHS investigation, investigating officer notes and findings [as applicable].
- Exhibit 'A'- Safway Services Asbestos Exposure Information Package.
- Exhibit 'B'-Safeway Services *Rules and Regulations of Personal Conduct*

In consideration of the Decision, the Appeal Panel reviewed all the submitted material.

**Facts:**

The following is a list of facts received from the parties and considered by the Appeal Panel:

- Mr. Nagy was employed by Safway Services.
- Mr. Nagy received an employer orientation including review of the rules and regulations related to his employment with Safway Services.
- Safway Services has rules and regulations surrounding personal conduct in the workplace.
- There was an asbestos exposure at the Suncor worksite in and around the area of the 5F3 furnace prior to November 16, 2009 in which workers and supervision were potentially exposed.
- Mr. Nagy was requesting information related to the asbestos exposure, including asbestos sample readings and previous hazard assessments conducted by Safway Services, Transfield and Suncor in accordance with s. 2(1)(a)(ii) of the OHS Act and Part 2, s 7(5) of the OHS Code.
- Mr. Nagy participated in daily Field Level Hazard Assessments.
- Mr. Nagy participated in regular update meetings related to the asbestos exposure presented by the employer as information became available.
- Information Packages including asbestos sample information and Safway Services hazard assessments were prepared and to be presented to the affected workers on November 16, 2009.
- There was a confrontation between Mr. Nagy and Shawn MacLean and Mr. Nagy and Clair MacDonald.
- Witness statements and testimony support a heated discussion took place and Mr. Nagy demonstrated aggressive behaviour.
- Mr. Nagy was terminated from Safway Services on November 16, 2009.

**Position of the Parties and Remedy Requested:**

**Appellant**, believes he was terminated for demanding asbestos sample information and hazard assessments related to the Safway, Transfield and Suncor work scopes.

Mr. Nagy believes that the information being requested was not being provided as the site was trying to cover up the extent of exposure. As a result, his emotions were heightened due to the potential for future health implications.

Mr. Nagy does not believe his behaviour warranted the level of discipline administered.

Mr. Nagy does not believe he was insubordinate or aggressive, rather he believes he was adamant about receiving the information requested.

The appellant is requesting the following:

- Reinstatement to my former employment under the same terms and conditions.
- Cessation of disciplinary action.
- Payment of the money not more than the equivalent of wages that would have been earned if I had not been dismissed or had not received disciplinary action. (minus any wages I earned elsewhere while the dismissal or disciplinary action has been in effect).
- Removal of any reprimand or other reference to the matter from my employment records.

Respondent(s) believe the termination was just, based on insubordination as a result of Mr. Nagy's aggressive behaviour toward his supervisor and another co-worker.

The respondent requests the Occupational Health & Safety decision be upheld.

**Decision:**

In order to make a determination as to whether there was a contravention of s.36 of the *OHS Act*, we considered the following:

1. Was disciplinary action taken against the appellant?
2. Was the disciplinary action taken as a result of the appellant acting in compliance with the *OHS Act*, Regulation, or adopted Code; and
3. Is there a causal and demonstrable relationship between the disciplinary action taken against the appellant and the appellant's act of compliance with the *OHS Act*, Regulation, or adopted Code?

The Panel finds the Appellant was acting in compliance with the *OHS Act*, Regulation or adopted Code.

The Panel finds that the Appellant was disciplined by way of termination.

The Panel finds there is no causal and demonstrable relationship between the disciplinary action taken against Mr. Nagy and Mr. Nagy's act of compliance with the *OHS Act*, Regulation or adopted Code.

Therefore the panel finds that the disciplinary action taken against the appellant by the employer does not constitute a violation of s.36 of the *Occupational Health and Safety Act*.

The reasons for the decision are as follows:

- At the time of the confrontations which led up to Mr. Nagy's termination, he had been advised that information packages had been prepared and would be presented to the workforce, including Mr. Nagy on November 16, 2009.
- The respondent's willingness to provide the information requested supports all parties were acting in compliance with the OHS Act, Regulations or adopted code.
- Despite Mr. Nagy being advised of the forthcoming information, he continued to be adamant and aggressive in pursuit of such information as collaborated by witness statements and witness testimony presented during the course of the hearing.
- The weight of evidence supports a heated discussion took place in which Mr. Nagy used aggressive behaviour.
- Based on all facts considered, the employer made every effort to comply with Mr. Nagy's request made in accordance to the OHS Act, Regulation and adopted Code.
- The disciplinary action taken was not a result of Mr. Nagy's compliance with the Act, Regulation or adopted Code.

**Occupational Health and Safety Council Appeal Panel**

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**Wendy Clark, Appeal Panel Chair**  
**Occupational Health and Safety Council**  
**Public Representative**

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**Eugene Sarrasin**  
**Occupational Health and Safety Council**  
**Employer Representative**

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**Cheryl Hamer**  
**Occupational Health and Safety Council**  
**Worker Representative**