

**Occupational Health and Safety Council**

**Appeal Hearing**

**August 9, 2010**

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**Decision upon Application By:**

**City of Edmonton – Fire Rescue Services – Appellant**

**And**

**Occupational Health and Safety, Compliance North– Respondent**

**Board Members**

<b>Judy Barry</b>	<b>Appeal Panel Chair, Worker Representative Occupational Health and Safety Council</b>
<b>Peter Schaefer</b>	<b>Employer Representative Occupational Health and Safety Council</b>
<b>Mike Joyce</b>	<b>Public Representative Occupational Health and Safety Council</b>

**Appeal Heard Through Written Submission:**

**For the appellant:** Jeffrey Fitzgerald, Legal Council City of Edmonton – Fire Rescue Services – Written Brief of the City of Edmonton regarding the disciplinary action complaint of Christopher Reading

**For the respondent:** Occupational Health and Safety Compliance North – Submission Binder dated April 27, 2010

**For the respondent:** Christopher Reading – No submissions provided

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

The Appeal Panel (the Panel) convened on August 9, 2010, to review the written submissions for an appeal pursuant to Section 37 of the *Occupational Health and Safety (OH&S) Act. (Act)*

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:**

- The City of Edmonton – Fire Rescue Services maintain that the reassignment of Chris Reading was not disciplinary in nature

**The respondents contend that:**

- There was sufficient evidence to substantiate that the City of Edmonton contravened Section 36 of the *Occupational Health and Safety Act* and therefore must comply with the order written on April 28, 2010. “*The employer is to reinstate Captain Chris Reading to his former employment and duties within the Edmonton Fire Rescue Services and to remove any notice of disciplinary action related to the investigation.*”

**The Issue to be Resolved:**

Was Chris Reading disciplined while attempting to comply with the *Occupational Health and Safety Act*?

**Submissions Considered by the Appeal Panel**

***From the Appellant, The City of Edmonton – Fire Rescue Services***

- OHSC Appeal Questionnaire – completed by Jeffrey D. Fitzgerald, Barrister & Solicitor, City of Edmonton Law Branch
- Written Brief of the City of Edmonton regarding the disciplinary action complaint of Christopher Reading

***From the Respondent, Workplace, Health and Safety (WH&S)***

- Occupational Health and Safety Compliance North – Submission Binder dated April 27, 2010, specifically including but not limited to:
- Tab 1 – Disciplinary Action Report
- Tab 16 – Letter to Employer supporting worker’s claim

**Facts:**

- The submissions of the Parties provided insufficient information for the Panel to develop a list of agreed upon facts.

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

**Appellant,**

Excerpt from Tab 1, Written Brief, page 6

**II. APPEAL ISSUES AND SUMMARY OF EMPLOYER'S POSITION**

28. The City has appealed the Officer's Disciplinary Action Report (DAR) on 6 grounds which are as follows:

A. The Officer erred in finding that the Employer took "disciplinary action" against the Complainant.

B. The Officer erred in finding that the Complainant was "acting in compliance with the Act" (as required in order for s.36 of the Act to have application).

C. Although the Officer never issued an order compelling the Employer to report the July 1, 2009 fire incident to the OH&S Director of Inspection, investigate or prepare a s. 18 report, it would appear from the Officer's DAR that his s. 36 findings were, at least in part, predicated upon his opinion that the July 1, 2009 fire ought to have been reported and addressed by the Employer as an incident contemplated by s. 18 of the Act. The Employer submits that this collateral finding against the Employer regarding Section 18 of the Act was made in error and therefore should not have formed a basis, or a partial basis for the Officer's conclusion that the Employer was in breach of s. 36 of the Act.

D. The Officer erred in finding that the Employer "denied" requests of the Complainant to investigate. Regardless of whether the Employer had a legal duty to investigate, prepare a report and make such report available to Workers pursuant to s. 18 of the Act and s. 8 of the Regulation, the Employer did in fact investigate the McDonald's Fire twice (Post Incident Review Process and Class 2 Investigation Report) and in doing so, it also met all Employer requirements of s.18 of the Act and s. 8 of the Regulation, if those Sections are applicable to this matter.

E. The Officer erred in finding that the reassignment of the Complainant was disciplinary action against a Worker "by reason" of that "worker acting in compliance with the Act".

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F. As a matter of procedural fairness, the Officer erred in requesting that the Employer prepare a written response to the Complaint in this matter without providing the Employer with a copy of the Written Complaint it was compelled to respond to.

**Remedy Requested:** The Order ought to be revoked by the Occupational Health and Safety Council.

**Respondent:**

From the Disciplinary Action Report the investigating officer has determined: "The Employer; City of Edmonton, Fire Rescue Services has contravened Section 36 of the Alberta Occupational Health and Safety Act. The City of Edmonton, Fire Rescue Services is ordered to, in accordance to Section 9(3)(b) of the Alberta Occupational Health and Safety Act give "reinstatement of the worker to the worker's former employment under the same terms and conditions under which the worker was formerly employed;"

The Respondent requests that "The Occupational Health and Safety Council confirm the following order":

*"The employer is to reinstate Captain Chris Reading to his former employment and duties within the Edmonton Fire Rescue Services and to remove any notice of disciplinary action related to the investigation."*

**Decision:**

Although the Appellant has used the term "Disciplinary Action Report", the Occupational Health and Safety Council has no authority to hear an appeal of an Officer's Disciplinary Action Report but has authority under the *Act* to hear appeals of an Officer's Order. The Panel has heard and properly referenced the appeal as that of a Disciplinary Action Complaint.

It is the decision of the Appeal Panel that there was insufficient evidence to support that Christopher Reading was disciplined for being in compliance with the *Act*. The evidence presented gives no support to the fact that Mr. Reading was not in compliance with the *Act* but rather that the worker had no authority under S 18 of the *Act* to compel the Employer to submit a report.

It is therefore the decision of the Panel that the officer's order be revoked.

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