

October 21, 2014

Mr. Dale Nelson

Dear Mr. Nelson:

**RE: Disciplinary Action Complaint – Enersul Limited Partnership**

Jobs, Skills, Training and Labour, Occupational Health and Safety (OHS) has completed an investigation into the complaint you filed on October 2, 2014 which alleged that you were wrongfully disciplined by Enersul Limited Partnership (Enersul) for your complying with the *Alberta Occupational Health and Safety Act*, Regulation, or adopted Code.

In order for OHS to uphold your allegation of disciplinary action taken against you by Enersul, it is necessary to establish that there was a contravention of Section 36 of the *Occupational Health and Safety Act*. The OHS Act, Section 36 states:

*"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."*

An OHS investigation into disciplinary action complaints must establish the following three elements:

1. There has been an act of compliance with the legislation on the part of the worker,
2. There was disciplinary action taken against the worker, and
3. There is a causal connection between the act of compliance and the disciplinary action taken.

Our assessment into this matter included the gathering and review of information and statements from you and Enersul. The findings, in relation to the three elements, are as follows:

## Disciplinary Action Complaint – Enersul Partnership Ltd./Dale Nelson

### 1. Is there an act of compliance with the legislation on the part of the worker?

The evidence gathered shows that you raised several safety concerns to your employer, in particular, the activities planned for completing the work in the remelt pit that day.

The evidence gathered partially supports your allegation that you were acting in compliance with section 2(2) of the *Occupational Health and Safety Act*.

This section states, “*Every worker shall, while engaged in an occupation,*

(a) *take reasonable care to protect the health and safety of the worker and of other workers present while the worker is working, and*

(b) *co-operate with the worker’s employer for the purposes of protecting the health and safety of*

(i) *the worker*

(ii) *other workers engaged in the work of the employer, and*

(iii) *other workers not engaged in the work of that employer but present at the work site at which that work is being carried out.”*

Your work refusal was based on concerns relating to worker safety while performing assigned tasks in the remelt pit on September 17, 2014. The refusal requested that an incident investigation be completed relating to events that took place on September 17, 2014 and that no procedures were in place to address the work you were assigned in the remelt pit the previous day. This supports the requirements of Section 2(2) of the *Occupational Health and Safety Act*.

However, the evidence gathered indicated that you left the work site and did not cooperate with your employer with respect to the conduction of an investigation into the concerns you raised with your employer. This contravenes Section 2(2) of the *Occupational Health and Safety Act*.

### 2. Was disciplinary action taken against the worker?

On September 18, 2014, you were informed by the Plant Manager, Dave Puddell, via messages left on your phone, “that leaving the site meant that you quit and no longer work for the company”. Later that day, at the conclusion of a meeting between you and Trevor Greer, Operations Manager, Mr. Greer informed you that since you had left the site without permission, you were being terminated.

## Disciplinary Action Complaint – Enersul Partnership Ltd./Dale Nelson

This supports an employer's option under Section 35(5) of the *Occupational Health and Safety Act*.

This section states, "*The employer may require a worker who has given notification under subsection (3) to remain at the worksite and may assign the worker temporarily to other work assignments that the worker is reasonably capable of performing.*"

Both parties agreed to the fact that the worker was terminated from employment with Enersul as of September 18, 2014.

### **3. Is there is a causal connection between the act of compliance and the disciplinary action taken?**

I find there is not sufficient evidence to support a connection between an act of compliance with the *Occupational Health and Safety Act*, Regulation, and adopted Code and the action taken by Enersul.

- The evidence gathered shows that the employer terminated your employment due to job abandonment and not remaining on site to discuss the work refusal issue.
- There is no evidence supporting that your employment was terminated for bringing up safety concerns.

Based on the results of the investigation, the complaint filed does not establish all three elements of a disciplinary action complaint. As all three elements are not established, OHS cannot substantiate that there exists a violation of Section 36 of the *Occupational Health and Safety Act* by the employer.

If you wish to appeal the decision regarding this disciplinary action complaint, you may request a review of this matter under section 37(3) of the *Occupational Health and Safety Act*. A review may be conducted by the Occupational Health and Safety Council at their discretion and all documents provided to OHS will be made available to the Council at that time.

Section 37(3) requires that to commence this process you must serve a Notice of Appeal on the correct forms to OHS Director of Inspection, within 30 days of the receipt of this letter (the "written record"). These forms can be found at:

**<http://humanservices.alberta.ca/working-in-alberta/6446.html>**

**Disciplinary Action Complaint – Enersul Partnership Ltd./Dale Nelson**

**Sincerely,**

**Ken Clarke  
Occupational Health and Safety Officer**

**pc: Enersul Partnership Ltd.  
Derek Kearney, Director of Inspection, Alberta Occupational Health and Safety**



Jobs, Skills, Training  
and Labour

**Occupational Health and Safety Council**

**NOTICE OF APPEAL**

All parts of this form must be correctly completed for the appeal to be registered.

**Before completing this form, you are strongly advised to read the *Rules of Procedure of the Occupational Health and Safety Council* (available at <http://work.alberta.ca/occupational-health-safety/6446.html>).**

<b>APPELLANT (please print)</b>		
Name <i>Dale A Nelson</i>		
Address		
City and Postal Code		Valid Email
Home Phone	Business Phone	Fax
<b>RESPONDENT (please print)</b>		
Name (Company and Responsible Individual)		
Address		
City and Postal Code		Valid Email
Home Phone	Business Phone	Fax

**Please return this Notice of Appeal, signed and dated to:**

Director of Inspection *OR*  
Alberta Jobs, Skills, Training and Labour  
6<sup>th</sup> Floor, 727-7<sup>th</sup> Avenue SW  
Calgary, Alberta T2P 0Z9

Director of Inspection  
Alberta Jobs, Skills, Training and Labour  
10<sup>th</sup> Floor, Capital Health Centre, South Tower  
10030-107 Street, Edmonton, Alberta T5J 3E4

**What are you appealing? (Please check one. Complete a separate Notice of Appeal for each matter being appealed.)**

- Order of an Officer (*section 16 of the OHS Act*)
- Administrative Penalty (*section 16 of the OHS Act*)
- Cancellation/Suspension of License or Permit (*section 16 of the OHS Act*)
- Ruling from an Imminent Danger Complaint Investigation (*section 35 of the OHS Act*)
- Ruling from a Disciplinary Action Complaint Investigation (*section 37 of the OHS Act*)

**APPEAL FORMAT**

**Do you request an oral hearing OR an appeal by written submissions?**

?

- Written submissions only (no opportunity to cross-examine witnesses)
- Face-to-face, in-person oral hearing (may increase costs and time to final appeal decision)

**If you request an oral hearing, do you or any of your witnesses, require. . .**

- special accommodation for access to buildings. Explain please.
- services of a language or sign interpreter. Explain please.

**I certify that the information provided in this Notice of Appeal is true and accurate to the best of my knowledge.**

\_\_\_\_\_  
**Signature**

Occupational Health and Safety Council  
Notice of Appeal

SE Nov 17/2014  
**Date**

March 2014  
Page 2 of 6

1. List the specific reasons or grounds for this appeal.

Job refusal. These were four issues mentioned I don't feel all four of these issues were ~~the~~ investigated. Just the task layed out Sept 17. That was not our intention of our job refusal. Yes we wanted the confined space entry rule breaking investigated. Put also, we were in full cooperation with our employees then our most experience ~~at~~ employee lost control coordinated I know and trust and he is contact with operations manager Treva, Great. Understand our company has had a lot of Management turn over in 5 years we have had 3 superintendents 2 L.L.C., 2 foremans, No vice president, A new company salty man, Treva as a new operations manager out of the Calgary office.

Sorry there is a lot of confusing information here it has been a tough couple of months. I'm not too good at this stuff. Could you folks give me another month to get my act together.

I'm just going to give you copies of everything I have

Nov 17/14

List of specific reasons or grounds for this appeal

ITEM 1 A safe loader to melt with.

ITEM2 There are no procedures for pit cleaning.

ITEM3 This plant is not reporting incidents and is a hazard to the health and safety of the men on the ground.

ITEM4 This incident needs to be fully investigated by someone outside this plant.

Only the task we did on wed sept 17/14 was investigated and found we were in compliance yes.

But did not co-operate with our employer. I DISAGREE we were in contact with a senior loss control coordinator in the company days before the most recent incident. This incident was just frosting on the cake towards the long list of concerns we had.

Trevor Greer was informed days before how could he say we were not co-operative.

If things were investigated fully ohs would have found there in fact was no procedure for pit cleaning and assembly a task we have been doing for four years and if there was we would not have been in the pickle we were in attaching new chains to rotten ones .

The years prior we melted 350,000tons threw this pit without incident and without destroying a single coil. Mr. Puddell in charge of the plant we have melted 50,000tons and destroyed 4 sets of coils @\$ 20,000 each. It has gotten very dangerous and I could not pull it off safely any more. Mr Puddell is a people\ money man and does not have a grasp on the mechanical aspect of our plant he just expects it done.

Again the pit is just a small part of many issues we were seeing .As a none trade plant we are playing around with some pretty dangerous stuff. I AM not an educated man and find this very challenging to do. Pushing buttons on a computer asking for help that is. I assure you folks my 30 years of non-trade experience is telling me these people are playing a dangerous game with their position of power.

Management history

Vise president resigned new year 2014

Operations manager retired spring 2014

Company safety manager resigned spring 2014

Our plant has had 3 superintendents, 3 interm superintendents in 5 years

Our plant has had 3 lcc in as many years

This plant has had 8 deaths in 30 years most resent 8 years ago

As day shift maintenance operators we saw a lot of things and were told too much to just sit there and watch it happen. I am 50 years old and seen a lot and this is wrong how they pushed us aside instead.



Appeal page # 3

A connection between us being fired and the job refusal, told by The LCC Randy Prestion, Forman George Stillman, the Secretary and later confirmed by Dave Puddell that Trevor was moving to vice president , Dave to operations, Wayne Crawford to superintendent would explain their non-compliance of our HSE rules and Shells policy's regarding reporting of incidents. Although it may be a pipe dream of Mr. Puddells. This guy will tell you a lie and not even bat an eye. Being Trevor Green is so new on the other hand only knows what he is told much like our investigator??

2. Do you have any relevant evidence, information or documentation that was not shared with the OHS officer, and which you would like Council to consider in your appeal? If so, please send one hard copy of this new evidence to the Respondent and four copies to the OHS Council Secretary as soon as possible. In the space below, please state how this new evidence is relevant to your appeal and why, with ordinary diligence, it could not have been shared with the OHS officer(s) in the original investigation.

Yes a doctors note:

2 incidents relating to the job refusal and plants lack of desire to address hazards.

1 - a skid steer for a door latch missing actually had its door destroyed since ✓

2 - Tank # 2 losing and good portion of its roof sheeting

Those incidents were clearly noted as foreseeable incidents

3. If you request an oral hearing, will you be calling any witness(es) at the hearing? If so, provide name(s) and their role(s), along with a concise "will say" summary of their anticipated evidence.

would love to do a oral hearing with myself and Jody Meggie present but believe we lack the resources

## New Information

Oh by the way the day tanks in the M-2 plant Tank 1 and Tank 3 day tanks the holes on the pump flanges on the north side of them are rotted to a size you can put your hand thru now.

In the past they were tape over with tin tape !!

~~From~~

The source of a Hazardous condition report from the men operating this process last summer

Later JR & I pulled 2 pumps in there, missing work the next day because of head aches !! both of us. It was discussed but not acted on. We were told to leave the door open it would help ?

If the man down was investigated properly and not passed off as a medical condition you would know that by now

TKII

The large tank JR + I are the only men to go on that tank, we know it personally. We used up 20 full SCBA bottles on that tank. The pictures would make you jaws drop !! But the new paint in which we did 90% of looks good and <sup>has</sup> gotten better manage

There is so much more in regards to Bullying, intimidation, rule breaking, attitude towards the steel engineers, lady just seeing our plant and blame directed towards our operators. I can't put it all on paper.

JR and I discuss it once in a while and still agree we did the right thing.

You may have noticed littering is not my strong point.

It was easy for us to do our job very effectively with out incident we were very good at what we did.

Some things we just can't fix !!



**5. Please indicate what relief you are seeking from this appeal.**

***If you are appealing an OHS officer's Order, Suspension or Cancellation:***

- Revoke the Order, Suspension or Cancellation
- Vary the Order, Suspension or Cancellation

***If you are appealing an OHS Administrative Penalty:***

- Revoke the Administrative Penalty
- Vary the Administrative Penalty

***If you are appealing a ruling from an Imminent Danger Complaint Investigation (note your request for a review may be dismissed for reasons set out in paragraph V(h) of the Rules of Procedure):***

- Require the Employer to eliminate the Imminent Danger

***If you are appealing a Disciplinary Action Complaint Investigation (note your request for a review may be dismissed for reasons set out in paragraph V(h) of the Rules of Procedure):***

- Reinstatement to your former employment under the same terms and conditions under which you were formerly employed.
- Cessation of disciplinary action.
- Payment of money up to the equivalent wages that you would have earned if you had not been dismissed or had not received disciplinary action.
- Removal of any reprimand or other reference to the matter from employment records

*Please note: This document will be shared with other parties involved in this appeal. Final appeal decisions will be publicly posted on OHS Council's website.*

**From:** Dale Nelson

**Sent:** Friday, February 27, 2015 10:14 AM

**To:**

**Subject:** Re: FW: Notice of Hearing: Dale Nelson vs. Enersul Limited Partnership

Sorry I'm going to withdraw my appeal. Unfortunately Don't have the time or the support from witness or the union documentation I have been seeking. The truth has not prevailed!!!