

# Member's Quarterly

# Summer 2025 Edition

## Feature

### 100 Proof: Just Cause and the Balance of Probabilities

*How much proof is needed to establish just cause for driving under the influence?*

The Alberta Labour Relations Appeal Body's (the "Board") recent decision in *Bulldog Energy Group Ltd v Brown*, 2024 ABESAB 9, once again highlights the stringent requirements an employer must establish to show just cause for termination. Employers must provide compelling evidence to prove, on a balance of probabilities, that the employee breached company policy and the misconduct is so severe that it is incompatible with the employment relationship. Mere allegations or circumstantial evidence may be insufficient.

#### Background

The employee flies into Alberta for work and uses a company vehicle for both work and personal purposes.

The employer terminated the employee's employment for just cause for allegedly driving a company vehicle while under the influence. The decision was based on another employee's observations of the employee with a beer bottle in his hand at roughly 10:00 pm at a bar and the company vehicle in the parking lot.

The company vehicle being used by the employee was GPS equipped and showed that the employee was at the bar from 8:52 pm until 1:56 am. There was no direct evidence of impairment, only the evidence of the coworker, and very limited follow up investigation conducted by the employer. The Board found there was insufficient evidence to conclude that the employee was impaired when he left the parking lot at 1:56 am. As such, just cause was not established.

#### Takeaways

This decision highlights several important legal principles that are important for employers to consider:

The onus remains on the employer to prove just cause on a balance of probabilities: In this decision, the employer was unable to prove just cause on a balance of probabilities due to a lack of any direct evidence. The Board reminded the employer that the issue was whether the employer had established just cause for "operating a company vehicle under the influence" as set out in the termination letter. This not only highlights the employer's onus to prove just cause, it also demonstrates the importance of clearly setting out the grounds for termination in the termination letter, as the Board and the courts will assess termination based upon those grounds.

Direct evidence may be necessary to prove misconduct: The Board could only conclude that the employee consumed one or more beers, but there was insufficient evidence to determine how many. The Board also focused on there being no direct proof such as observations of the employee's driving, a lack of a



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breathalyzer test or field sobriety test, accident or police involvement. The Board determined there was insufficient evidence to conclude the employee's state of sobriety when he left the bar and to establish the employee was "under the influence".

#### Supervisor's Duty to Step In

The employer relied on the testimony of a coworker (who was a supervisor) who saw the employee at the bar with a beer in his hand and a company vehicle outside the bar, but the Board questioned why the supervisor did not take steps to ensure the employee would not drive home after seeing him drinking alcohol and witnessing the work vehicle in the parking lot. The Board thought it would be appropriate for a reasonable supervisor to tell the employee to walk back to camp, or even to take away the vehicle keys. Although this generally applies during work, it is important to remember that every supervisor, as far as it is reasonably practicable for the supervisor to do so, must take all precautions necessary to protect the health and safety of every worker under the supervisor's supervision.

Creating clear policies can simplify unclear situations: The employer in this matter did not have a written policy specifically setting parameters around alcohol consumption. Specifically, the

Board stated that there was no policy which addresses a minimum period following drinking before driving, a zero tolerance for any blood alcohol, or a permissible limit lower than 0.08. This is a reminder that employers should set out clear policies, but employers must also be prepared to follow the steps set out in such policies for them to be effective.

#### Employers must avoid post misconduct condonation through their action or inaction:

The Board also looked to the employer's actions after the incident. For example, the employer continued to employ the employee for 2 weeks after the incident was known to the employer and even allowed him to continue using the company vehicle without restriction following the incident. The employer argued that they needed the time to investigate. However, the only investigation in evidence was checking the GPS records, which was completed on the day of the incident, and there were some communications with the bar owner, but that was completed a few days later. As such, continuing to employ the employee for an extended period and allowing him to use the company vehicle, despite that being the reason for termination undermined any argument that the employer considered the employment relationship to be no longer viable, which is the just cause threshold.

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