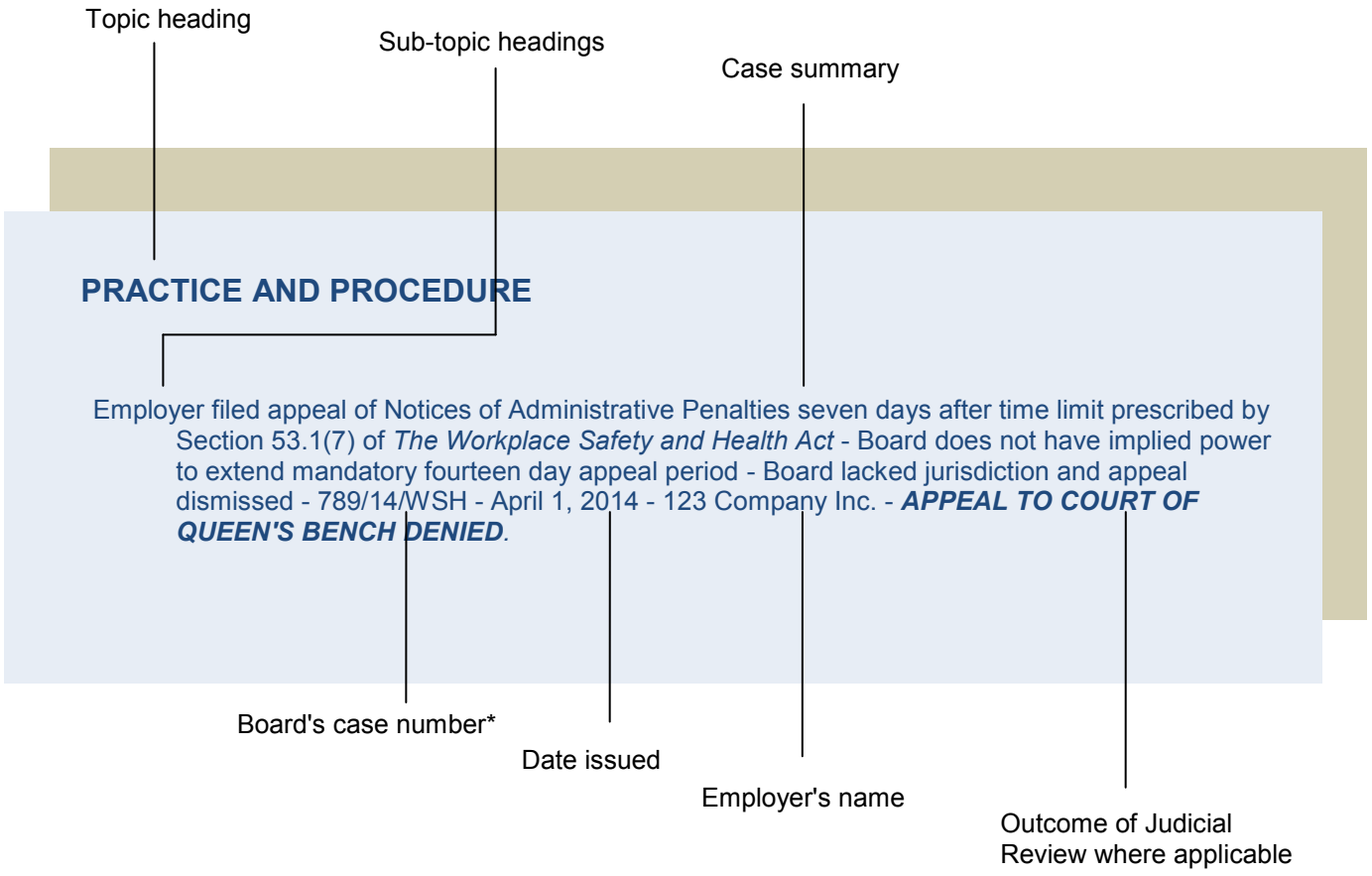
THE WORKPLACE SAFETY AND HEALTH ACT

This index includes selected Written Reasons for Decisions and Substantive Orders issued by the Manitoba Labour Board between January 1, 1984 and March 25, 2014 pursuant to **The Workplace Safety and Health Act**.

HOW TO FIND A DECISION



To obtain further information on a specific decision, contact the Manitoba Labour Board at mlb@gov.mb.ca, 204-945-3783, or 500 - 175 Hargrave Street, Winnipeg MB R3C 3R8. The full text of Written Reasons and Substantive Orders issued since January 2007 are available on the Board's website http://www.gov.mb.ca/labour/labbrd/decision/index.html. The full text of all Board decisions are available on-line through the LexisNexis Quicklaw service. In addition, some decisions have been published in the Canadian Labour Law Reporter, in the Canadian Labour Relations Boards Reports and at CanLii.org.

* Case numbers, which are underlined, provide a hyperlink to the full text decision that has been posted on the Manitoba Labour Board's website

ADMINISTRATIVE PENALTY

Appeal - Appellant appealed Administrative Penalty for failure to comply with Improvement Order (I.O.) arguing he had insufficient time to acquire saw guards that were in compliance with regulation, and penalty was too high given low profit margins of his business - With guidance from Workplace Safety and Health Officer, Appellant complied with I.O., but three months after I.O. compliance date and one month after Administrative Penalty was issued - Since Appellant did not appeal I.O., Board constrained by subsection 53.1(9) of *The Workplace Safety and Health Act* to confirm Administrative Penalty as it had no jurisdiction or discretion to excuse or condone non-compliance - Board's jurisdiction to vary amount of Administrative Penalty only arose if Administrative Penalty was not established in accordance with regulations - Board concluded I.O. was validly issued as saw guard was "device" within meaning of term "control measure" as defined in Administrative Penalty regulation - Substantive Order - 25/13/WSH - June 11, 2013 - Anco Lumber Warehouse.

Appeal - Appellant appealed administrative penalty issued for failure to comply with Improvement Order (I.O.) - I.O. was not appealed when it was issued and time for appealing under section 39(2) of *The Workplace Safety and Health Act* expired - Under section 53.1(9) of the *Act,* jurisdiction of Board limited to determining whether Appellant complied with improvement order as Board can only confirm or revoke administrative penalty - Board did not have jurisdiction to assess merits or reasonableness of improvement order for purpose of varying order because jurisdiction to vary an order only vested in Board under section 39(6) of the *Act* when improvement order was appealed - Board satisfied Appellant failed to comply with I.O. and penalty imposed established in accordance with the *Administrative Penalty Regulation 62/2003* - Appeal dismissed - Substantive Order - 117/13/WSH - July 24, 2013 - G4S Secure Solutions (Canada).

Appeal - Appellant appealed administrative penalty for failure to comply with Improvement Order (IO) which was issued for not providing and/or implementing fall protection systems for its workers - Appellant argued Safety Officers discontinued Stop Work Order (SWO), concurrently issued with IO, and therefore, no need to appeal IO as it had effectively been rescinded - It also argued it should not be responsible for Administrative Penalties resulting from employees failing to follow safety procedures which it directed them to follow - Third, it submitted some requirements of regulation were impractical and may create unsafe situations if enforced too vigorously - Board determined that although SWOs had been lifted IO remained in force - Board sympathetic to Appellant's frustration that employees do not use safety equipment, however, Appellant's efforts not basis for overturning Administrative Penalty - Safety officer authorized to issue IO against "person" which by *The Interpretation Act* is defined to include corporation - Therefore, IO can be issued to Appellant rather than to workers on site - IO was not appealed and Board's jurisdiction limited to determining whether IO had been complied with - Appellant's observations with respect to the regulation were interesting, but Board proceedings not appropriate forum to assess or comment upon content of regulation - Board satisfied Appellant failed to comply with IO and as a result of noncompliance, confirmed Administrative Penalty - Appeal Dismissed - Substantive Order - 218/13/WSH - December 20, 2013 - M & M Roofing & Exteriors.

APPEAL

Suspension of Improvement Order pending appeal - Order issued as result of death of an employee - Board declined to exercise discretion to suspend Order for concern of endangering worker safety; relatively minor degree of prejudice to Employer to comply with the Order prior to its appeal being heard as Order merely contemplated review of Employer's procedures; and on face of the record success of appeal could not be determined - Board concluded that it should not exercise discretion granted under section 39(7) of *The Workplace Safety and Health Act* - 611/05/WSH - March 21, 2006 - Tolko Industries, Manitoba Solid Wood Division

Mootness - Standing - Employee appealed report by Mines Inspector - Employee not employed by Employer since his refusal to work under The Workplace Safety and Health Act was not person “directly affected” within meaning of Section 39(1) of the Act - “Directly affected” are words of limitation and reflect Legislature’s caution to Board not to expand appeal beyond direct/personal interests of individual and to ensure live issue exists - At time appeal filed and as of hearing date, Employee and Employer left work site - No present live controversy existed and criteria for exercising discretion to hear moot case did not exist - Appeal dismissed - Substantive Order - 97/09/WSH - January 20, 2010 - Forage Orbit Garant.

Mootness - Improvement Order issued stating unguarded excavation being carried out adjacent to area where public or worker not usually engaged in the work may pass - Company submitted excavation 25 feet behind property line and not reasonably practicable to consider excavation that far back as adjacent - Company sought as remedial relief clear indication of what fair and reasonable course of action would be for future excavations - Held remedy sought not remedy that Board should grant because each appeal must be decided on facts relevant to that appeal only - Board does not issue general declarations of “fair and reasonable” standards to be followed in undefined factual situations which may arise - Given excavation was backfilled within one week of issuance of Order, any real dispute which may have existed had disappeared as a “live controversy” - Issue moot - Appeal dismissed - Substantive Order - 52/11/WSH - May 4, 2011 - KDR Design Builders Inc.

Grounds - Company challenged legitimacy of requirement in legislation and asserted legal obligation ought to rest on manufacturers to install safety equipment - Board could not rewrite provision of legislation - Seeking such relief does not constitute arguable ground of appeal - Appeal dismissed - Substantive Order - 317/11/WSH - December 9, 2011 - Kinetic Machine Works Ltd.

(Next Section: Sec. 4.3)

DISCHARGE

Discriminatory Action - Exercising Legislative Rights - Employee alleged termination due to requests he made to have access to WHMIS documents - Employer countered that termination was result of insubordination; one of the days Employee alleged to have requested materials was a non-working day; and amended Workplace Safety and Health Order removed item dealing with availability to all employees of certain material - Held Employee failed to establish a *prima facie* case - Application dismissed - 292/02/LRA & 293/02/WSH - September 17, 2002 - Crosstown Dental Laboratory Ltd.

Prima facie - Consistent evidence of Employer's witnesses that decision to terminate Employee was not related to complaints over safety issues but Employee's negative attitude and dealings with others - Employee failed to establish prima facie case under Section 42.1(4) of *The Workplace Safety and Health Act* - Appeal dismissed - 27/08/WSH - August 14, 2008 - Barkman Concrete.

Employee's failure to testify led Board to accept on balance of probabilities that Employer's decision not to offer her further shifts and to reject her on probation was not because she raised safety and health concerns - Employer's Appeal of Order allowed - Substantive Order - 441/07/WSH - November 26, 2008 - Manitoba Family Services and Housing.

DISCRIMINATORY ACTION

Prima facie - Employer suspended Employee for three days for failing to follow established organizational channels when he sent an email to a member of Board of Directors regarding a large cellular bill incurred by a senior executive - Employee filed complaint with Workplace Safety and Health maintaining decision to discipline was influenced by health and safety concerns which he had raised - Director affirmed decision of Workplace Safety and Health Officer that suspension was not contrary to *The Workplace Safety and Health Act* - Employee appealed decision to Board - Board noted suspension without pay constitutes a "discriminatory action" defined in section 1 of the *Act* which includes an act or omission which adversely affects any term or condition of employment - Reference by Employer in discipline letter to previous occasions Employee failed to follow proper channels established Employee acted in manner not condoned and confirmed Employer had issued clear direction that such conduct was unacceptable - Fact that Employee raised health and safety issues year before was not sufficient to establish nexus between disciplinary suspension and one of the protected forms of conduct in Section 42(1) of the *Act* - Employee was not disciplined for raising those matters - Board satisfied Employee failed to establish *prima facie* case that reasonable and timely nexus between suspension and any conduct described in section 42(1) of the *Act* - Appeal dismissed - 271/11/WSH - November 13, 2012 - Burntwood Regional Health Authority.

Employee appealed dismissal of his discriminatory action complaint on basis termination of his employment was discriminatory because he raised safety concerns with Employer relating to company van's ABS brakes - Employer stated Employee was terminated because he made false entries on time sheets and because he did not accept responsibility for ticket issued for failing to stop van at red light - Board noted not clear whether ABS brakes issue was ever referred to Employer's Workplace Safety Committee - However, by raising issue with chair of Workplace Safety Committee and service manager, Board concluded Employee gave information about workplace conditions affecting safety, health or welfare of any worker to person acting on behalf of employer and was acting within subsection 42(1)(c)(i) of *The Workplace Safety and Health Act* - Company president's clear and unequivocal evidence, combined with timesheets and video evidence sufficient to discharge onus to prove decision to terminate not influenced by Employee raising safety concerns - Appeal dismissed - Sections 42.1(1), 42(1) and 42(2) of the *Act* considered - Substantive Order - 119/13/WSH - March 25, 2014 - Accurate Technology Group (The).

EMPLOYEE LAY-OFFS

Discriminatory Action - Discharge - Witness Credibility - Employees claimed lay-offs resulted from complaint they filed with Workplace Safety and Health - Board found inconsistencies in the evidence of the Employees - Held lay-off decision made before complaint filed, and was not related to report of safety violations - Discriminatory action contrary to Section 42 of **The Workplace Safety & Health Act** not established - 1071 & 1094/92/WSH and 9/93/WSH - February 25, 1994 - Dewar Insulations (Western) Limited.

(Next Section: Sec. 5.5)

EVIDENCE

Discriminatory Action - Discharge - Witness Credibility - Employees claimed lay-offs resulted from complaint they filed with Workplace Safety and Health - Board found inconsistencies in the evidence of the Employees - Held lay-off decision made before complaint filed, and was not related to report of safety violations - Discriminatory action contrary to Section 42 of **The Workplace Safety & Health Act** not established - 1071 & 1094/92/WSH and 9/93/WSH - February 25, 1994 - Dewar Insulations (Western) Limited.

Privilege - Subpoena - Compellability of Minister of Crown - Although Minister of Labour subpoenaed, he could claim protection offered by "privilege" - 648/94/WSH - December 20, 1994 - Westfair Foods Ltd.

Discrimination for exercising rights under legislation - Employee who complained to Workplace Safety and Health about improper exhaust system was terminated days after Stop Work Order issued - Employer claims Employee resigned - Employer does not meet onus to prove termination did not result from complaint filed under *The Workplace Safety and Health Act* - Compensation of $250 ordered - 555/99/LRA & 556/99/WSH - January 19, 2000 - Watertown Inc.

Onus - Obstructed view - Employer ordered to replace signs covering window with one-way film - Employer fails to demonstrate Order would not enhance employees safety - Appeal dismissed - 431/99/WSH - November 29, 2000 - AOV Adults Only Video - **PENDING BEFORE COURT OF QUEEN'S BENCH- DECISION ISSUED ON PRELIMINARY MATTERS**.

Employee's failure to testify led Board to accept on balance of probabilities that Employer's decision not to offer her further shifts and to reject her on probation was not because she raised safety and health concerns - Employer's Appeal of Order allowed - Substantive Order - 441/07/WSH - November 26, 2008 - Manitoba Family Services and Housing.

During hearing, Employee sought leave to introduce e-mail he received, after first two days of hearing had been conducted, from Director of Inspection Services with Workplace, Safety and Health - Notwithstanding legitimacy of Employer's objections, Board allowed e-mail to be introduced because it was potentially probative of important issue in proceedings - On basis of e-mail, Board found transport van would be considered by Workplace, Safety and Health to be unsafe in any period when ABS braking system not functioning - Substantive Order - 119/13/WSH - March 25, 2014 - Accurate Technology Group (The).

HEALTH AND SAFETY

Board determines whether a Co-chair of the Workplace Safety and Health Committee was discriminated against for asserting his rights under **Workplace Safety and Health Act** - Sections 1, 2(1), 40(6), 40(7), 42 and 43 of **Workplace Safety and Health Act** considered - 340/88/WSH – Nov. 14, 1988 - City of Flin Flon.

Improvement Orders - Board finds the said regulations were not in conflict - Employer required to install personal respiratory equipment - Section 11 of **M.R. 108/88 (Workplace Safety Regulation)**; Section 31 of **M.R. 53/88 (Workplace Health Hazard Regulation)**; and, Subsection 43(8) of **The Workplace Safety and Health Act** considered - 183/89/WSH – Dec. 14, 1989 - Roma Auto Body Ltd.

Discriminatory Action - Discharge - Witness Credibility - Employees claimed lay-offs resulted from complaint they filed with Workplace Safety and Health - Board found inconsistencies in the evidence of the Employees - Held lay-off decision made before complaint filed, and was not related to report of safety violations - Discriminatory action contrary to Section 42 of **The Workplace Safety & Health Act** not established - 1071 & 1094/92/WSH & 9/93/WSH - February 25, 1994 - Dewar Insulations (Western) Limited.

Onus - Obstructed view - Employer ordered to replace signs covering window with one-way film - Employer fails to demonstrate Order would not enhance employees safety - Appeal dismissed - 431/99/WSH - November 29, 2000 - AOV Adults Only Video - **PENDING BEFORE COURT OF QUEEN'S BENCH - DECISION ISSUED ON PRELIMINARY MATTERS.**

Discriminatory Action – Interference - Employee who raised concerns to Employer's Safety Officer told to wait while management consulted - Safety Officer did not return and this contributed to angry exchange between Employee and management which resulted in him being sent home for two days – On his return to work, he was assigned snow shoveling duties and was permanently laid off two days later - Workplace Safety & Health issued Order determining Employer discriminated against Employee for raising health and safety concerns, by assigning Employee task of snow shoveling and then laying him off - Employer appealed Order - Board noted an improper motive does not have to be dominant motive or reason for Section 42.1(4) of *The Workplace Safety and Health Act* to be applied – However, Board accepted decision to lay-off based on *bona fide* assessment of staffing requirements, criteria used in determining lay-offs were not reflective of an "anti-safety" animus and decision made prior to time Employee raised safety concerns - Snow shoveling fell within scope of normal duties and Employee suffered no reduction in pay so duties not "discriminatory action" - Order rescinded and Employee not entitled to reinstatement - However, decisions to send Employee home on days in question and issuing Disciplinary Action Notice influenced in part for raising health and safety concerns - Employee compensated for loss of earnings and $1,000 for damages for interference with Employee's exercise of rights under the *Act* – Substantive Order – 277/09/WSH – April 15, 2010 – Capitol Steel Corp.

(Next Section: Sec. 10.0)

JURISDICTION

Board held that Section 12 of **Manitoba Regulation 158/77** of **The Workplace Safety & Health Act** was "ultra vires" and was inconsistent and restricted the provisions of the **Act** - Although the Applicant failed to comply with Section 12, Board still has jurisdiction to hear matter - Subsection 18(1) of **The Workplace Safety & Health Act** considered - 833/83/WSH - May 15, 1984 - Wilkinson Trucking Ltd.

Health and Safety - Board determines it has jurisdiction to hear merits of Workplace Safety and Health appeal that was filed three days after mandatory 14-day time limit - 491/00/WSH – March 15, 2001 – Canada Safeway.

Health and Safety - Hearings - Oral Hearing - Employer appealed penalties received for failure to comply with Improvement Orders - Director of Workplace Safety and Health requested Board dismiss appeal without oral hearing - As per Sections 53.1(8) and 53.1(9) of *The Workplace Safety and Health Act* Board could only exercise its jurisdiction following the hearing of an appeal - Substantive Order - 314/07/WSH - July 24, 2007 - Shaw Laboratories.

Employer appealed Notices of Administrative Penalties but had not filed an appeal of Improvement Orders - Board's jurisdiction limited to determining whether Employer complied with improvement order - Jurisdiction to vary Improvement Order only vested when the improvement order itself was appealed - Under Section 53.1(9) Board must accept improvement order as issued - Appeal dismissed as Employer failed to comply with Improvement Orders and penalties were imposed in accordance with Regulation - Substantive Order - 382/07/WSH - February 13, 2008 - Protech Scale.

Safety and Health Officer not prevented from issuing Improvement Order for mandatory wearing of hard hats even though no express provision in *Workplace Safety and Health Act* and *Regulation* - 115/08/WSH - May 12, 2009 - City of Winnipeg.

Employer undertaking risk assessment and job hazard analysis does not limit authority for Workplace Safety and Health Division to enforce *Act* through Improvement Orders - Division retain overriding authority under *Act* to review employer's safety program - 115/08/WSH - May 12, 2009 - City of Winnipeg.

Appeal - Appellant appealed Administrative Penalty for failure to comply with Improvement Order (I.O.) arguing he had insufficient time to acquire saw guards that were in compliance with regulation, and penalty was too high given low profit margins of his business - With guidance from Workplace Safety and Health Officer, Appellant complied with I.O., but three months after I.O. compliance date and one month after Administrative Penalty was issued - Since Appellant did not appeal I.O., Board constrained by subsection 53.1(9) of *The Workplace Safety and Health Act* to confirm Administrative Penalty as it had no jurisdiction or discretion to excuse or condone non-compliance - Board's jurisdiction to vary

JURISDICTION

amount of Administrative Penalty only arose if Administrative Penalty was not established in accordance with regulations - Board concluded I.O. was validly issued as saw guard was “device” within meaning of term “control measure” as defined in Administrative Penalty regulation - Substantive Order - 25/13/WSH - June 11, 2013 - Anco Lumber Warehouse.

Appeal - Appellant appealed administrative penalty issued for failure to comply with Improvement Order (I.O.) - I.O. was not appealed when it was issued and time for appealing under section 39(2) of *The Workplace Safety and Health Act* expired - Under section 53.1(9) of the *Act,* jurisdiction of Board limited to determining whether Appellant complied with improvement order as Board can only confirm or revoke administrative penalty - Board did not have jurisdiction to assess merits or reasonableness of improvement order for purpose of varying order because jurisdiction to vary an order only vested in Board under section 39(6) of the *Act* when improvement order was appealed - Board satisfied Appellant failed to comply with I.O. and penalty imposed established in accordance with the *Administrative Penalty Regulation 62/2003* - Appeal dismissed - Substantive Order - 117/13/WSH - July 24, 2013 - G4S Secure Solutions (Canada).

Costs - Employer stated Employee's complaint was abuse of process and was raised as collateral attack on decision to terminate his employment, and urged Board consider making award of costs - Section 39(6) of *The Workplace Safety and Health Act* states that after hearing an appeal, Board may make order confirming, varying or setting aside order or decision appealed from and may also make any other order it considers necessary mentioned in subsection 31(4) of *The Labour Relations Act* - Subsection 31(4) of *The Labour Relations Act*, which outlines remedies for unfair labour practice, does not expressly confer upon Board authority to order costs against unsuccessful party - Board declined to order costs, because it had reservations about its jurisdiction to do so in context of the proceedings - Substantive Order - 119/13/WSH - March 25, 2014 - Accurate Technology Group (The).

(Next Section: Sec. 14.0)

NATURAL JUSTICE

Statutory Interpretation - Applicant filed Notice of Appeal within a 14-day period after Improvement Order received but three days after 14 days mandatory time limit as set out in section 39(1) of *The Workplace Safety and Health Act* - Board held having time limits run from a decision not communicated to the person affected by it would be a denial of natural justice - Preliminary motion to dismiss on basis on timeliness dismissed - 491/00/WSH – March 15, 2001 – Canada Safeway.

(Next Section: Sec. 16.4)

PRACTICE AND PROCEDURE

Board held that Section 12 of **Manitoba Regulation 158/77** of **The Workplace Safety & Health Act** was "ultra vires" and was inconsistent and restricted the provisions of the **Act** - Although the Applicant failed to comply with Section 12, Board still has jurisdiction to hear matter - Subsection 18(1) of **The Workplace Safety & Health Act** considered - 833/83/WSH - May 15, 1984 - Wilkinson Trucking Ltd.

Privilege - Subpoena - Compellability of Minister of Crown - Although Minister of Labour subpoenaed, he could claim protection offered by "privilege" - 648/94/WSH - December 20, 1994 - Westfair Foods Ltd.

Statutory Interpretation - Applicant filed Notice of Appeal within a 14-day period after Improvement Order received but three days after 14 days mandatory time limit as set out in section 39(1) of *The Workplace Safety and Health Act* - Board held having time limits run from a decision not communicated to the person affected by it would be a denial of natural justice - Preliminary motion to dismiss on basis on timeliness dismissed - 491/00/WSH – March 15, 2001 – Canada Safeway.

Hearings - Director of Workplace Safety and Health Division submitted that Board confirm administrative penalties and dismiss appeal without oral hearing - Pursuant to Sections 53.1(8) and 53.1(9) of *The Workplace Safety and Health* Board can only exercise its jurisdiction following hearing of an appeal - Substantive Order - 314/07/WSH - July 24, 2007 - Shaw Laboratories.

Employer filed appeal of Notices of Administrative Penalties seven days after time limit prescribed by Section 53.1(7) of *The Workplace Safety and Health Act* - Board does not have inherent or implied power to extend mandatory fourteen day appeal period - Board lacked jurisdiction and appeal dismissed - Substantive Order - 497/07/WSH - January 28, 2008 - Sherbeth Enterprises.

Employer appealed Notices of Administrative Penalties but had not filed an appeal of Improvement Orders - Board’s jurisdiction limited to determining whether Employer complied with improvement order - Jurisdiction to vary Improvement Order only vested when the improvement order itself was appealed - Under Section 53.1(9) Board must accept improvement order as issued - Appeal dismissed as Employer failed to comply with Improvement Orders and penalties were imposed in accordance with Regulation - Substantive Order - 382/07/WSH - February 13, 2008 - Protech Scale.

Employer filed appeals to Notices of Administrative Penalties beyond the date prescribed by Section 53.1(7) of *The Workplace Safety and Health Act* - Time limits to appeal Administrative Penalty are mandatory - Held appeals were untimely and were dismissed - Substantive Order - 268/08/WSH - November 20, 2008 - Integra Castings.

PRACTICE AND PROCEDURE

Validity of Orders not affected by not containing specific direction for compliance nor identifying specific hazards - Section 33 of *Workplace Safety and Health Act* contained sufficient legislative authority to issue orders in that form - 115/08/WSH - May 12, 2009 - City of Winnipeg.

Mootness - Standing - Employee appealed report by Mines Inspector - Employee not employed by Employer since his refusal to work under The Workplace Safety and Health Act was not person “directly affected” within meaning of Section 39(1) of the Act - “Directly affected” are words of limitation and reflect Legislature’s caution to Board not to expand appeal beyond direct/personal interests of individual and to ensure live issue exists - At time appeal filed and as of hearing date, Employee and Employer left work site - No present live controversy existed and criteria for exercising discretion to hear moot case did not exist - Appeal dismissed - Substantive Order - 97/09/WSH - January 20, 2010 - Forage Orbit Garant.

Hearings - De novo - Director of Workplace Safety and Health argued right to appeal to Board was an appeal merely "on the record" - Appellant disagreed and wanted to present fresh evidence to challenge validity of Director's investigation - Section 39(5) of *The Workplace Safety and Health Act* provides for Board to conduct hearing and accord interested persons right to present evidence and make submissions, which expresses legislative intent that Board conduct hearing *de novo* - Section 37(3) of the *Act* indicates Director “is not required to hold a hearing before deciding an appeal” - Fact Director has statutory authority to decide appeal without a hearing, provides further support that appeal of Director’s decision must be *de novo* proceeding - Board directed hearing be conducted on *de novo* basis - 271/11/WSH - November 13, 2012 - Burntwood Regional Health Authority.

Mootness - Appellant appealed three Stop Work Orders (SWOs) - Director raised preliminary motion that issues raised in appeal were moot because SWOs were discontinued prior to filing of appeal with Director - Board satisfied there continued to be live controversy between parties to justify appeal proceeding to hearing on its merits pursuant to section 39(b) of *The Workplace Safety and Health Act* - Appellant had sufficient business or ongoing legal interest in seeking determination that SWOs should not have been issued in first instance - Even in circumstances where issue may be moot because there was no ongoing or live controversy, Board retained discretion to decide to hear case and Board satisfied it should exercise its discretion to hear appeal - Preliminary motion dismissed - Substantive Order - 140/13/WSH - January 24, 2014 - Oakwood Roofing & Sheet Metal.

(Next Section: Sec. 18.4)

REMEDY

Director of Workplace Safety and Health submitted regardless of disposition of appeal, Employee was entitled to monetary benefits had Order been implemented immediately - Held employee was casual and assigned work on case-by-case basis so relief requested would be speculative and inconsistent with determinations of merits of the appeal - 441/07/WSH - November 26, 2008 - Manitoba Family Services and Housing.

Discriminatory Action – Interference - Employee who raised concerns to Employer's Safety Officer told to wait while management consulted - Safety Officer did not return and this contributed to angry exchange between Employee and management which resulted in him being sent home for two days – On his return to work, he was assigned snow shoveling duties and was permanently laid off two days later - Workplace Safety & Health issued Order determining Employer discriminated against Employee for raising health and safety concerns, by assigning Employee task of snow shoveling and then laying him off - Employer appealed Order - Board noted an improper motive does not have to be dominant motive or reason for Section 42.1(4) of *The Workplace Safety and Health Act* to be applied – However, Board accepted decision to lay-off based on *bona fide* assessment of staffing requirements, criteria used in determining lay-offs were not reflective of an "anti-safety" animus and decision made prior to time Employee raised safety concerns - Snow shoveling fell within scope of normal duties and Employee suffered no reduction in pay so duties not "discriminatory action" - Order rescinded and Employee not entitled to reinstatement - However, decisions to send Employee home on days in question and issuing Disciplinary Action Notice influenced in part for raising health and safety concerns - Employee compensated for loss of earnings and $1,000 for damages for interference with Employee's exercise of rights under the *Act* – Substantive Order – 277/09/WSH – April 15, 2010 – Capitol Steel Corp.

Mootness - Improvement Order issued stating unguarded excavation being carried out adjacent to area where public or worker not usually engaged in the work may pass - Company submitted excavation 25 feet behind property line and not reasonably practicable to consider excavation that far back as adjacent - Company sought as remedial relief clear indication of what fair and reasonable course of action would be for future excavations - Held remedy sought not remedy that Board should grant because each appeal must be decided on facts relevant to that appeal only - Board does not issue general declarations of "fair and reasonable" standards to be followed in undefined factual situations which may arise - Given excavation was backfilled within one week of issuance of Order, any real dispute which may have existed had disappeared as a "live controversy" - Issue moot - Appeal dismissed - Substantive Order - 52/11/WSH - May 4, 2011 - KDR Design Builders Inc.

REMEDY

Grounds - Company challenged legitimacy of requirement in legislation and asserted legal obligation ought to rest on manufacturers to install safety equipment - Board could not rewrite provision of legislation - Seeking such relief does not constitute arguable ground of appeal - Appeal dismissed - Substantive Order - 317/11/WSH - December 9, 2011 - Kinetic Machine Works Ltd.

Costs - Employer stated Employee's complaint was abuse of process and was raised as collateral attack on decision to terminate his employment, and urged Board consider making award of costs - Section 39(6) of *The Workplace Safety and Health Act* states that after hearing an appeal, Board may make order confirming, varying or setting aside order or decision appealed from and may also make any other order it considers necessary mentioned in subsection 31(4) of *The Labour Relations Act* - Subsection 31(4) of *The Labour Relations Act*, which outlines remedies for unfair labour practice, does not expressly confer upon Board authority to order costs against unsuccessful party - Board declined to order costs, because it had reservations about its jurisdiction to do so in context of the proceedings - Substantive Order - 119/13/WSH - March 25, 2014 - Accurate Technology Group (The).

REVIEW

Practice and Procedure - Application - Letter requesting appeal sent directly to Minister of Labour - Section 43(8) of **The Workplace Safety and Health Act** did not intend for Minister to accept appeals on behalf of the Board, but specifically provided that the findings may be appealed to the Board - As the letter was neither addressed nor copied to the Board, held letter did not constitute a valid appeal - 648/94/WSH - December 20, 1994 - Westfair Foods Ltd.

(Next Section: Sec. 20.1)

TIMELINESS

Statutory Interpretation - Applicant filed Notice of Appeal within a 14-day period after Improvement Order received but three days after 14 days mandatory time limit as set out in section 39(1) of *The Workplace Safety and Health Act* - Board held having time limits run from a decision not communicated to the person affected by it would be a denial of natural justice - Preliminary motion to dismiss on basis on timeliness dismissed - 491/00/WSH – March 15, 2001 – Canada Safeway.

Health and Safety - Board determines it has jurisdiction to hear merits of Workplace Safety and Health appeal that was filed three days after mandatory 14-day time limit - 491/00/WSH – March 15, 2001 – Canada Safeway.

Employee and three family members filed timely appeals of Workplace Safety and Health decisions to the Board but original complaints not brought until 2 years after employment was terminated and 3 years after workplace safety incident - Board held that while some latitude may be extended to the employees whose inexperience required they take extra time to determine appropriate course of action, delay was extreme and reasons advanced did not persuade the Board that matters ought to proceed – 699, 700, 701 & 702/04/WSH – September 22, 2005 – Hi-Tec Industries - **LEAVE TO APPEAL TO THE COURT OF APPEAL DENIED**.

Employer filed appeal of Notices of Administrative Penalties seven days after time limit prescribed by Section 53.1(7) of *The Workplace Safety and Health Act* - Board does not have inherent or implied power to extend mandatory fourteen day appeal period - Board lacked jurisdiction and appeal dismissed - Substantive Order - 497/07/WSH - January 28, 2008 - Sherbeth Enterprises.

Employer filed appeals to Notices of Administrative Penalties beyond the date prescribed by Section 53.1(7) of *The Workplace Safety and Health Act* - Time limits to appeal Administrative Penalty are mandatory - Held appeals were untimely and were dismissed - Substantive Order - 268/08/WSH - November 20, 2008 - Integra Castings.

Director expressly brought 14-day appeal period to attention of Company - Company, within appeal period, sent letter of expressed intention to appeal decision - By e-mail exchange with Director three months later, no doubt Company well aware of process and had received relevant information and appeal documents from Board - However, appeal not filed until further delay of three months - Held Company did not act diligently when it learned of 14-day time limit either or after it became aware of precise procedures to follow - Appeal dismissed - Substantive Order - 317/11/WSH - December 9, 2011 - Kinetic Machine Works.

TIMELINESS

Employer filed appeal of Notice of Administrative Penalty one day after time limit prescribed by Section 53.1(7) of *The Workplace Safety and Health Act* - Time limit is mandatory - Board does not have any authority to extend time limit to appeal - Appeal dismissed - Substantive Order - 216/12/WSH - November 22, 2012 - Oakwood Roofing Sheet Metal Co. Ltd.

(Next Section: Sec. 21.0-W1)

UNFAIR LABOUR PRACTICE

Board determines whether a Co-Chair of The Workplace Safety and Health Committee was discriminated against for asserting his rights under **The Workplace Safety and Health Act** - Sections 1, 2(1), 40(6), 40(7), 42 and 43 of **The Workplace Safety and Health Act** considered - 340/88/WSH - November 14, 1988 - City of Flin Flon.

Discriminatory action - Employees claim discrimination when Employer deducted two hours pay after they refused to work due to exposure to cold drafts - Board rules Employer deducted pay because Employees did not work, not because they exercised rights under section 43 of The Workplace Safety and Health Act - Application dismissed - 136/90/WSH - November 25, 1991 - Versatile Farm Equipment Operations Ford New Holland Canada Ltd.

Discriminatory Action - Discharge - Witness Credibility - Employees claimed lay-offs resulted from complaint they filed with Workplace Safety and Health - Board found inconsistencies in the evidence of the Employees - Held lay-off decision made before complaint filed, and was not related to report of safety violations - Discriminatory action contrary to Section 42 of **The Workplace Safety & Health Act** not established - 1071 & 1094/92/WSH & 9/93/WSH - February 25, 1994 - Dewar Insulations (Western) Limited.

Discrimination - Held Employee discharged for excessive absenteeism and for failing to follow call-in procedures, and not because he filed a complaint under **The Workplace Safety and Health Act** - 130 & 131/96/WSH - August 8, 1996 - Pointe River Holdings Ltd. (Geoplast).

Discrimination for exercising rights under legislation - Employee who complained to Workplace Safety and Health about improper exhaust system was terminated days after Stop Work Order issued - Employer claims Employee resigned - Employer does not meet onus to prove termination did not result from complaint filed under *The Workplace Safety and Health Act* - Compensation of $250 ordered - 555/99/LRA & 556/99/WSH - January 19, 2000 - Watertown Inc.

Discriminatory Action - Exercising Legislative Rights - Employee alleged termination due to requests he made to have access to WHMIS documents - Employer countered that termination was result of insubordination; one of the days Employee alleged to have requested materials was a non-working day; and amended Workplace Safety and Health Order removed item dealing with availability to all employees of certain material - Held Employee failed to establish a *prima facie* case - Application dismissed - 292/02/LRA & 293/02/WSH - September 17, 2002 - Crosstown Dental Laboratory Ltd.

(Next Section: Sec. 21.4)

UNSAFE WORKING CONDITIONS

A pregnant school teacher, on a leave of absence due to an outbreak of German measles at her school, denied wages during her absence - 628/83/WSH - January 6, 1984 - Swan Valley School Division No. 35.

Discriminatory action - Employees claim discrimination when Employer deducted two hours pay after they refused to work due to exposure to cold drafts - Board rules Employer deducted pay because Employees did not work, not because they exercised rights under section 43 of The Workplace Safety and Health Act - Application dismissed - 136/90/WSH - November 25, 1991 - Versatile Farm Equipment Operations Ford New Holland Canada Ltd.

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Discrimination for exercising rights under legislation - Employee who complained to Workplace Safety and Health about improper exhaust system was terminated days after Stop Work Order issued - Employer claims Employee resigned - Employer does not meet onus to prove termination did not result from complaint filed under *The Workplace Safety and Health Act* - Compensation of $250 ordered - 555/99/LRA & 556/99/WSH - January 19, 2000 - Watertown Inc.

(Next Section: Sec. 23.0)

WAGES

A pregnant school teacher, on a leave of absence due to an outbreak of German measles at her school, denied wages during her absence - 628/83/WSH - January 6, 1984 - Swan Valley School Division No. 35.

Discriminatory action - Employees claim discrimination when Employer deducted two hours pay after they refused to work due to exposure to cold drafts - Board rules Employer deducted pay because Employees did not work, not because they exercised rights under section 43 of The Workplace Safety and Health Act - Application dismissed - 136/90/WSH - November 25, 1991 - Versatile Farm Equipment Operations Ford New Holland Canada Ltd.

THE PAY EQUITY ACT

HOW TO FIND A DECISION

EXAMPLE OF CITATION:

606/89/PEA - JANUARY 5, 1990 - THE 23 HEALTH CARE FACILITIES
> > >
> > >
Labour Board's > >
File Number > >
Date of Reasons >
For Decision >
Name of Employer

This index includes selected Written Reasons for Decisions issued by the Manitoba Labour Board between January 1, 1984 and December 31, 1990 pursuant to **The Pay Equity Act**.

To obtain further information on a specific Decision, telephone the Manitoba Labour Board at (204) 945-3783 or write to 402-258 Portage Avenue, Winnipeg, Manitoba, R3C 0B6.

WAGES

Pay equity - Implementation period - Board rules that full pay equity does not have to be achieved within four year period - Application of subsection 7(3) of **The Pay Equity Act** discussed - 606/89/PEA - January 5, 1990 - The 23 Health Care Facilities named in Schedule A of The Manitoba Pay Equity Act et al, and Manitoba Council of Health Care Unions, and Manitoba Health Services Commission. - **BOARD ORDER QUASHED BY COURT OF QUEEN'S BENCH; MATTER REMITTED TO BOARD.**