

# Unreasonable Employer Actions Violate Alberta Employee Rights



[ATCO Electric Ltd. v Canadian Energy Workers Association, 2024 CanLII 37038 \(AB GAA\)](#) is a recent decision by arbitrator James Casey in which an employer demanded a post-incident drug test and took further steps which unreasonably breached the employee's privacy rights, failed to comply with ATCO's safety obligations, and constituted an unreasonable exercise of management rights in the application of ATCO's Alcohol & Drug Standard for Employees.

The decision highlights that just because an employer *can* take a particular action, if they do so in a patently unreasonable way they may be exposing themselves to damages.

## **Facts**

The following is a summary of the facts as found by Arbitrator Casey:

- The grievor employee, Sean Mowat, was struck in the lower leg by a power pole at work, causing serious injury to his leg and ankle.
- Mowat was taken to the hospital by his coworkers where it was determined he had suffered a serious fracture and he was scheduled for urgent surgery the following day.
- The accident was reported to ATCO, which determined that under its Alcohol & Drug Standard for Employees, the employees involved would be required to attend a third-party testing site for a drug and alcohol test.
- Mowat was discharged from the hospital on the understanding he would return the following day once his surgery was scheduled. Mr. Mowat was unable to put any weight on his broken foot and the hospital did not have any crutches in his size, which made it difficult and painful for him to move.
- In the hospital parking lot, there was a disagreement between the ATCO supervisor, who insisted Mr. Mowat had to attend for alcohol and drug testing, and Mr. Mowat's family and friends, who wanted to take him home. There was no clear plan as to how Mr. Mowat would be able to go up the stairs at the testing facility if he was taken for a drug and alcohol test as even getting him into a vehicle was challenging. The ATCO supervisor relented and Mr. Mowat was taken home around 9 p.m.
- Soon after, another ATCO supervisor appeared at Mr. Mowat's home to caution him that a refusal to submit to a drug and alcohol test could result in disciplinary action up to and including termination of employment. Mowat insisted that he was

not refusing to be tested, but that he needed proper medical transportation to the testing site given his very badly broken ankle and the potential for further damage.

- For the next hour the ATCO supervisor continued insisting that Mr. Mowat be tested without a plan on how to achieve that testing safely as alternative options, such as mobile testing at Mr. Mowat's home, were not available. ATCO eventually abandoned plans to try and get Mr. Mowat to go for testing.
- Mowat had surgery the next day in which two pins were inserted into his broken ankle.
- Mowat's [union brought a grievance](#) on his behalf making a number of allegations, including that ATCO breached Mr. Mowat's privacy rights by entering his home without consent, failed to comply with its safety obligations by insisting at Mr. Mowat's home that he go for testing, and failed to exercise its management rights in a reasonable way in administering the testing regime.

## **Analysis / Conclusion**

The Arbitrator found that there was a valid reason for the initial demand for drug and alcohol testing. The Arbitrator further found that while ATCO did not breach its safety obligations or fail to exercise its management rights reasonably in the hospital parking lot, its continued insistence on testing eventually crossed a line.

Arbitrator Casey ultimately held that ATCO failed to respect Mr. Mowat's privacy rights, breached its safety obligations, and exercised its management rights in the administration of the drug and alcohol testing policy unreasonably in respect to the situation at Mr. Mowat's home.

After reviewing past cases regarding damages for the tort of intrusion upon seclusion and labour arbitration decisions regarding a breach of privacy and improper drug and alcohol testing, the Arbitrator awarded damages of \$7,500 to Mr. Mowat for ATCO's actions.

## **My Take**

Often [employment contracts](#) and collective agreements will include language which empowers an employer to take some step or exercise some discretion. The ATCO case summarized here highlights that just because an employer can do something doesn't mean that they should.

The Courts and other decision makers have previously recognized that there is no such thing as unlimited discretion in the employment context. Arbitrator Casey provided a reminder for employers that an agreement giving them the power to do something will provide minimal protection if an employer exercises that power unreasonably.

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*The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.*

Author: [Chris Jones](#)

Bow River Law