

Human Rights Tribunal okays drug testing

TORONTO, Ont. -- The Canadian Human Rights Tribunal has found that drug testing for employees in the road transportation sector is acceptable for promoting road safety.

The decision is the result of a challenge brought forward by a coach driver who failed a pre-employment drug test, reports the Canadian Trucking Alliance (CTA). (A negative result was necessary for the company to be able to use the driver in U.S. work.) Even though the driver had been employed by the company for several years, a pre-employment test was required to transfer him to the U.S. DOT regulated pool, a requirement under the U.S. rules to qualify him to drive in cross-border work.

The complainant alleged that he had been discriminated against because the company perceived he was dependent when they terminated his employment after a positive drug test result. The Canadian Human Rights Act prohibits employers from discriminating on the basis of a disability. Drug and/or alcohol dependency is included under the definition of a disability.

In its decision, the tribunal held that the driver did not suffer from a disability, or that he was perceived to be disabled by his employer. The tribunal also looked at whether the absence of drug metabolites is a bona fide occupational requirement for bus drivers in light of the Supreme Court's three tests, and in part, concluded that:

- The employer's goal to promote road safety by preventing driver impairment is connected to the business of providing bus transport;
- The company satisfied the good faith requirement, given the need to comply with U.S. requirements and the lack of direction from Transport Canada;
- Urine testing does assist in identifying drivers who are at an elevated risk of accident;
- The presence of a drug testing policy will serve to deter at least some employees from using alcohol or drugs.

In assessing the company's policy with respect to individuals who test positive either in a pre- or post-employment situation and have a problem, the tribunal found that the employer has a duty to refer them for assessment and accommodate their problem up to undue hardship.

Also significant in the decision is the fact that the existing drug testing policy developed by the Canadian Human Rights Commission was deemed to be virtually irrelevant. The tribunal confirmed that the Commission's policy on testing was not binding on their review of the case, and noted that its policy "is nothing more than a statement of the Commission's opinion on the issue of drug and alcohol testing, an opinion that the Tribunal may agree with or not as it sees fit." [1]