

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Pereira v. British Columbia (Workers' Compensation Board)*,
2025 BCSC 65

Date: 20250117
Docket: L21964
Registry: Terrace

Between:

Corinne Pereira

Petitioner

And

Workers' Compensation Board of British Columbia (WorkSafe BC)

Respondent

Before: The Honourable Justice Thomas

Reasons for Judgment

The Petitioner, appearing in person:

C. Pereira

Counsel for the Respondent:

J.M. Goosen
E. Kwok, A/S

Place and Date of Trial/Hearing:

Terrace, B.C.
December 6, 2024

Place and Date of Judgment:

Terrace, B.C.
January 17, 2025

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[1] This is an application by Ms. Pereira for judicial review of the Workers' Compensation Board of British Columbia's (WorkSafeBC) decision of the Review Division Decision of December 4, 2023, with reference numbers R0309663 and R0309664 (the "Review Decision").

Background Information

[2] This is the second judicial review relating to this matter. The first judicial review was conducted by Justice Gomery *in Pereira v. British Columbia (Workers' Compensation Board)*, 2022 BCSC 1654 aff'd 2023 BCCA 195 [*Pereira*].

[3] Justice Gomery summarized the background facts leading up to his judicial review as follows:

[1] In 2020, Corinne Pereira was employed as a Guest Service Agent and Front Desk Clerk at Crossroads Lodge in Kitimat, British Columbia. Her employer was Dexterra Group. Ms. Pereira was advised by her supervisor that she was the subject of a complaint concerning her behaviour in the workplace and an alleged lack of respect towards her co-workers. Dexterra disciplined Ms. Pereira by issuing two warnings for violation of its Code of Conduct. Ms. Pereira says that she was not told who had made the complaints leading to this discipline, or given details of the behaviour in question. She was sure that she had done nothing wrong, and she thought she knew who had made the complaints against her.

[2] Ms. Pereira considered that she was being bullied or harassed by false accusations advanced by malicious co-workers. Through her union, she grieved the discipline she had received. She also launched a series of complaints pursuant to Dexterra's Respectful Workplace Policy. As one of the complaints, on June 27, 2020, she alleged that she was a victim of workplace "mobbing", that is, coordinated personal attacks in the form of unsubstantiated and generalized false accusations.

[3] On June 28, 2020, Ms. Pereira withdrew from the workplace, advising Dexterra that she was taking a medical leave because of anxiety resulting from the conflict in the workplace. She provided to Dexterra a doctor's note indicating that she should not return to work until the conflict was resolved.

[4] On June 30, 2020, Ms. Pereira complained to the Workers Compensation Board ("WorkSafeBC") that she was a victim of harassment and bullying in the form of mobbing. This was a complaint that, by tolerating mobbing, Dexterra was failing to fulfill its obligation to provide a safe workplace. In a questionnaire accompanying her complaint, Ms. Pereira named four co-workers she thought were responsible for the mobbing.

[5] WorkSafeBC assigned an occupational safety officer to look into Ms. Pereira's complaint. Some considerable time later, in late 2021, a second occupational safety officer, Mr. Legros, assumed conduct of the investigation.

[6] In the meantime, the union had settled Ms. Pereira's grievance on terms not to her satisfaction, because there was no determination that she had been the subject of false complaints, as she maintained. Nevertheless, on September 20, 2020, Ms. Pereira advised Dexterra that she wished to return to work. Several days later, on September 23, Dexterra terminated Ms. Pereira's employment.

[7] On January 24, 2022, Mr. Legros belatedly issued a report addressing Ms. Pereira's mobbing complaint of June 27, 2020. In less than a page, the report reviews the requirements of WorkSafeBC's policy addressing workplace bullying and harassment, and a guideline interpreting that policy. It then states:

Based on the evidence provided by the employer, I find that the employer's response to this matter is compliant with WorkSafeBC requirements.

[8] Ms. Pereira sought a review of this determination as provided in the *Workers Compensation Act*, S.B.C. 2019, c. 1 [WCA], Part 6. The Review Officer, Ms. Frost, received substantial written submissions from Ms. Pereira and Mr. Legros. On May 4, 2022, she issued a six-page written decision in which she agreed with Mr. Legros' conclusion and confirmed his decision.

[9] Ms. Pereira applies for judicial review of the Review Officer's decision. She seeks other relief as well, which I will address in these reasons, but the substance of the case turns on whether the Review Officer's decision was reasonable according to the legal test of reasonableness enunciated in the authorities.

[10] From the beginning, consideration of Ms. Pereira's mobbing complaint has been complicated by many complaints, accusations, suits, and charges she has pursued against her co-workers, Dexterra, her union, and WorkSafeBC in various forums. She has grieved the termination of her employment. She has complained to the Labour Relations Board that the union breached its duty of fair representation under s. 12 of the *Labour Relations Code*, R.S.B.C. 1996, c. 244. She has commenced court actions against her co-workers, and threatened other court actions. She has accused WorkSafeBC of writing false reports and complicity in a cover-up in public postings on Twitter and Facebook (accusations also advanced in this proceeding). She has written open letters to the Minister of Labour, copied to all members of the Legislative Assembly, denouncing the handling of her complaints by Dexterra, the union, and WorkSafeBC. According to Mr. Legros, Ms. Pereira has "sent numerous inappropriate and accusatory emails to this prevention officer, my supervisor, MLAs, the worker's past colleagues and other persons that used offensive language". In oral argument, she told me that her present motivation in pursuing this application for judicial review is to obtain a judicial decision that may help her to persuade a justice to authorize criminal charges against Dexterra and the union. It would not be surprising if some of those on the receiving end of this barrage have lost patience with her.

[11] Be all that as it may, the question before me is a legal one focused on Ms. Pereira's mobbing complaint. Was the Review Officer's decision that Dexterra complied with its legal obligations in addressing the mobbing complaint reasonable?

[4] He concluded that the Review Officer's decision that Dexterra complied with its legal obligations in addressing the mobbing complaint was not reasonable because the company appeared to have conducted an investigation into the whistleblowing complaint but not a full investigation into the mobbing complaint:

[44] Finally, the Review Officer referred to Dexterra's extensive investigation of the whistle blower complaint. The investigation of the whistle blower complaint did encompass the period from May 12 to June 27, 2020, which is the period identified by Ms. Pereira in the questionnaire that accompanied her mobbing complaint. Dexterra assigned this investigation to an experienced HR manager, Ms. Rajahbalee, who had no previous involvement with the matter.

[45] Ms. Rajahbalee interviewed the HR staff person who dealt with Ms. Pereira, three managers, and Ms. Pereira. She did not interview any of the co-workers who were the subjects of Ms. Pereira's mobbing complaint. However, she asked the managers and the HR staffer about the complaints made by the co-workers against Ms. Pereira – these are the complaints that Ms. Pereira says were false and constituted mobbing – and recorded the following collective response:

All of the statements made against Corinne were investigated by Jana, Andre and Ryan and had different reasons and instances provided. The compilation of the complaints were (sic) non cohesive and due to that it was evident that the employees were not conspiring. There was no evidence of workplace mobbing or that Corinne was being singled out.

[46] Consistently with Policy P2-21-2 and as required by the Board's Guideline interpreting the policy (as summarized by the Review Officer in the passage quoted at para. 27 above), Dexterra's Respectful Workplace Policy describes a formal "investigation process" to be undertaken in respect of complaints of bullying and harassment. It includes the following:

- The investigation process shall involve interviews with the complainant, respondent and any witnesses named by either (if applicable). The investigation team or investigator shall investigate the incident and prepare a written report of the findings. The report shall be provided along with recommendations, if any, to Senior Management for action.
- ...
- If no conclusive evidence is found to substantiate the complaint, the complainant and the respondent will be so informed. Those involved will also be informed that the documentation on the incident will be retained by the HR Department on a separate confidential file (NOT on the employee's personnel file), and in the event that there are other claims of a similar nature in the future, the case may be reopened.

- Where there is reasonable evidence that discrimination, bullying or harassment has occurred, [Dexterra] will take appropriate disciplinary action against the respondent, which may include reprimand, suspension, reassignment, withholding of promotion or dismissal for cause.

[47] It appears from Ms. Rajahbalee's report that she interviewed Ms. Pereira in connection with the whistle blower complaint. Ms. Pereira told her that, so far as she was aware, "there were no facts for specific incidences" underlying her co-workers complaints against her. Ms. Rajahbalee made no effort to address the specifics of the complaints. Her report contains no findings. None were provided to Ms. Pereira.

[48] It is therefore fair to say that the whistle blower investigation touched on the mobbing complaint but fell short of a full investigation into the mobbing complaint, as contemplated by the Respectful Workplace Policy.

[49] The Review Officer appears to have concluded that an investigation that fell short of that contemplated in Policy P2-21-2, the Guideline, and the Respectful Workplace Policy could be excused because "the key determination is whether the employer took reasonable steps to prevent or minimize bullying and harassment". In my opinion, this was not a reasonable interpretation of the Policy having regard to the Guideline's specific requirements that an investigation should be "as thorough as necessary in the circumstances" and "focused on finding facts and evidence, including interviews of the complainant, the subject, and any witnesses". The Review Officer placed a gloss on the Guideline. It is not clear that she would have come to the same conclusion had she not done so.

[50] In the language of *Vavilov* and *Ahluwalia*, in placing weight on considerations that do not support her conclusion, and in placing a gloss upon WorkSafeBC's Guideline interpreting Policy P2-22-2, the Review Officer came to a conclusion that is not "tenable in light of the relevant factual and legal constraints that bear on it"; *Ahluwalia* at para. 13 (quoted above); *Vavilov* at paras. 105-107.

[51] Accordingly, I conclude that the decision under review is unreasonable and must be set aside. Ms. Pereira's mobbing complaint must be reconsidered by a review officer pursuant to s. 272 of the *WCA*.

[5] In accordance with the order of Gomery J. on December 15, 2022, the Review Division issued a new decision finding the investigation into the mobbing complaint was not sufficient.

[6] On January 23, 2023, WorkSafeBC issued an order finding that Dexterra failed to sufficiently investigate the mobbing complaint and ordered a new investigation.

[7] On July 26, 2023, WorkSafeBC finds that Dexterra has now completed a sufficient investigation of the mobbing complaint. No penalty is issued in respect of the initial failure to investigate the complaint.

[8] In addition, WorkSafeBC finds that Dexterra failed to conduct a sufficient investigation of complaints made by the petitioner's co-workers about the petitioner's conduct in May 2020.

[9] On December 4, 2023 the Review Division upholds WorkSafeBC's finding that the new investigation of the mobbing complaint was sufficient and there was no need for a penalty with respect to the failure to adequately investigate the mobbing complaint (reference number: R0309663) or the failure to investigate the co-workers' complaints (reference number: R0309664).

Test on Judicial Review

[10] The parties agreed that the legal test on judicial review was one of reasonableness as set out by Gomery J. in *Pereira* at paras. 19-20; except for issues of procedural fairness which are reviewed using a standard of correctness: *Nova-BioRubber Green Technologies Inc. v. Investment Agriculture Foundation British Columbia*, 2022 BCCA 247 para. 71.

Issues Raised by the Petitioner

1. Review of the Merits of the Allegations

[11] Ms. Pereira says neither the investigation conducted by Dexterra, WorkSafeBC nor the Review Division reviewed the merits of the allegations made against her.

[12] The Review Decision noted the worker also objects to the investigator's conclusion that the mobbing complaint was not substantiated and stresses that the Board must address the merits to determine whether the investigation was fair and impartial. However, the Board's focus in such matters does not extend to assessing the merits of individual complaints. Rather, the focus is ensuring that employers

have appropriate systems and processes for handling such complaints, and reasonably investigate them.

[13] The Reconsideration Decision noted the Review Officer explained that the Board's role in such cases is not to adjudicate the merits of a bullying and harassment complaint but to determine whether the employer has taken reasonable steps to meet its obligations under s. 21(1)(a) of the *Act*. She also noted that there are circumstances where some consideration of the merits may be warranted, such as where there is an obvious flaw with the investigator's conclusion or with the process. The Review Officer found this was not such a case.

[14] I see no error in the analysis provided by in the Reconsideration Decision.

[15] Ms. Pereira elaborated on this issue at the hearing, saying that the investigation conducted by the investigator and conclusions arising from his investigation is unreasonable and unfair because the conclusions are not based on a detailed explanation of how the evidence was analyzed. She says that this amounts to a fundamental breach as the fairness of the process cannot be analyzed in isolation from a detailed analysis of how the evidence was assessed.

[16] This argument is similar to an argument advanced before Gomery J., it is apparent that what Ms. Pereira wants is a determination on the merits that she was harassed by her co-workers. Justice Gomery rejected this argument:

[59] I reject Ms. Pereira's submission and decline to make the findings of fact requested by Ms. Pereira concerning the reasons for her termination. They are not appropriate on an application for judicial review. Ms. Pereira's complaint that she was wrongfully terminated has been addressed through the legal channels open to a unionized employee. Her argument in this proceeding amounts to a collateral attack on those processes and their outcome.

[17] In my view, this complaint raises a concern over the adequacy of the reasons provided by the investigation. In considering the investigation and conclusions, I note the comments of our Court in *Sacky v. British Columbia (Workers' Compensation Appeal Tribunal)*, 2017 BCSC 1541 [*Sacky*]:

[13] Turning first to the adequacy of WCAT's reasons, it is important to distinguish between inadequate reasons and unpersuasive reasons. The fact that Mr. Sacky is not persuaded by WCAT's reasons does not make them inadequate. Reasons are only inadequate (and therefore procedurally unfair) on administrative law grounds when, read in context, they fail to reveal why the tribunal decided as it did. In *Clifford v. Ontario Municipal Employees Retirement System*, 2009 ONCA 670, the Ontario Court of Appeal put it this way, describing the Supreme Court of Canada's consideration of this issue in *R. v. R.E.M.*, 2008 SCC 51:

29 *R.E.M.* emphasizes that where reasons are legally required, their sufficiency must be assessed functionally. In the context of administrative law, reasons must be sufficient to fulfill the purposes required of them, particularly to let the individual whose rights, privileges or interests are affected know why the decision was made and to permit effective judicial review. As *R.E.M.* held at para. 17, this is accomplished if the reasons, read in context, show why the tribunal decided as it did. The basis of the decision must be explained and this explanation must be logically linked to the decision made. This does not require that the tribunal refer to every piece of evidence or set out every finding or conclusion in the process of arriving at the decision. To paraphrase for the administrative law context what the court says in *R.E.M.* at para. 24, the "path" taken by the tribunal to reach its decision must be clear from the reasons read in the context of the proceeding, but it is not necessary that the tribunal describe every landmark along the way.

30 *R.E.M.* also emphasizes that the assessment of whether reasons are sufficient to meet the legal obligation must pay careful attention to the circumstances of the particular case. That is, read in the context of the record and the live issues in the proceeding, the fundamental question is whether the reasons show that the tribunal grappled with the substance of the matter: see *R.E.M.* at para. 43.

31 In addition, in my view, it is important to differentiate the task of assessing the adequacy of reasons given by an administrative tribunal from the task of assessing the substantive decision made. A challenge on judicial review to the sufficiency of reasons is a challenge to an aspect of the procedure used by the tribunal. The court must assess the reasons from a functional perspective to see if the basis for the decision is intelligible.

[18] WorkSafeBC recognized the potential of this issue and required an explanation for the conclusions formed by the investigator. The company provided a summary of all of the information obtained by the investigator from the witnesses and complainants. With respect to how the investigator came to the conclusion that the petitioner's complaint of "mobbing" was not substantiated, the company provided the following information to the questions posed by WorkSafeBC:

How did the investigator evaluate the evidence to come to the finding of the investigation?

The investigator reviewed and considered the documentation as described above, the investigation meetings, and the written information shared with him throughout the investigation. The investigator considered whether the evidence supported or contradicted the Worker's allegation that the Respondents deliberately or maliciously filed false complaints against her. The investigator took particular note of the information shared by the Worker and the responses from the witnesses. The Investigator then weighed the evidence to determine whether, on a balance of probabilities, part, or all of, the Worker's complaint was substantiated. The Investigator determined it was not.

The worker claims that some of the "accusations" against them gave no specifics such as unnamed people, what she said or did. For example, the worker has stated the following accusations were made against them:

I have seen her over and over again try to bully people out of this camp

Especially with Chef, other GSA's and management

She has been very vocal on wanting people out and admits to making it her mission

She has had a goal to move up and she gets a thrill knowing she is taking people down in the meantime

How were the above accusations addressed for the workers' "mobbing complaint"?

What specific evidence was used when coming to a finding regarding those accusations?

The information provided below is Dexterra's understanding of how the accusations were addressed and the evidence used by the Investigator in coming to a finding regarding those accusations, It is subject to further information provided by the Investigator who has retired and is no longer employed by Dexterra.

First, we wish to highlight that all of the respondents and witnesses, except for one, are no longer employed by Horizon North/Dexterra and therefore, could not be compelled to participate in the investigation. Despite the employer's efforts to contact the respondents and witnesses, the large majority of these individuals refused to participate in the investigation, which contributed to the lack of evidence to substantiate the Worker's mobbing complaint.

Notwithstanding this, the Respondents who did participate were asked to respond to the allegation that their complaints against the Worker were false and malicious and without factual basis. Respondents who responded denied these allegations. Respondent #1 referred to affidavits which was considered. Respondent #7 referenced the stressful and unpleasant work environment thereby corroborating the specifics relating to unnamed people.

Moreover, as provided in our previous response of April 11th to your additional questions, third party witnesses who did participate in the investigation made the following comments during their interviews

They do not believe that the complaints against the Worker had no factual basis given their personal interactions with the Worker, their observations of the Worker's behaviour, and complaints against the Worker from other employees who were not any of the respondents.

The complaints against the Worker almost always had some identifiable part which negated the complaint from being a complete fabrication.

The Worker was vocal about her concerns with the Chef and had shared these concerns with members of management. An investigation revealed that the Worker had spoken to a guest about the Chef, discussed the Chefs personal matters, and had stated to the guest that she had gotten the Chef fired.

Reciprocal issues were present among staff members, including the Worker, and the GSAs who all wanted to move up in the company. The Worker was boisterous and opinionated and there was a clash of personalities.

Co-workers of the Worker broke down in describing their complaint about the Worker's conduct in the workplace. The Worker was always ruffling someone's feathers, wanting to do things her way, and claiming to be more knowledgeable than her co-workers.

In addition, the Worker was interviewed and provided written response to the complaints made against her which was also considered. As were the text messages and all other documents shared with the Investigator.

Given this information and other information from the witnesses and respondents, it was reasonable for the Investigator to conclude that the Worker's "mobbing" complaint was not substantiated with respect to the above accusations.

We trust that this response satisfies the questions/requests in your e-mail of April 17th. Please let us know if you need anything further.

[19] What Ms. Pereira really wants is a detailed breakdown of how every factual issue in dispute was dealt with and resolved by the investigator and a decisive determination concluding that she was subjected to mobbing. Such an analysis is not required in this context. The investigation required is not akin to a trial, witnesses are not subject to cross-examination; the investigator is not required to provide a precise assessment of each piece of evidence obtained in the investigation. One must take a functional approach in assessing the reasons, specifically considering that this was an investigation:

- a) In a workplace environment involving conflict between workers;

- b) Nearly three years after the fact;
- c) In which some witnesses were no longer employed at the company; and
- d) In which some witnesses did not wish to participate.

[20] It is clear that the investigator grappled with the issues. In my view, the reasons are adequate from a procedural perspective. As noted in *Sacky*, this does not involve assessing the merits of the substantive decision that was made. This review is focused on procedural as opposed to substantive issues.

[21] The grievance procedure invoked by Ms. Pereira through her union dealt with the substantive issues of her complaint. She was unsatisfied with that process, and in my view is attempting to proceed with a collateral attack on the grievance procedure through this judicial review. In saying this, I recognize that she did not have carriage of her grievance, objected to the resolution obtained by her union on her behalf and did not obtain a formal determination of the merits of her grievance.

[22] However, this does not entitle Ms. Pereira to bring a collateral attack on the grievance procedure in this forum; nor does the fact there was no definitive determination about the nature of the complaints, result in a fundamental injustice. See, *Ashraf v. Fraser*, 2023 BCSC 532 at paras. 47-48:

[47] I realize that Mr. Ashraf has been prevented from having this matter litigated on its merits. Within the context of a dispute arising within the ambit of a collective agreement this does not amount to procedural unfairness. It is a policy decision made by the legislature that is both binding on him and the courts.

[48] I note this issue was addressed by Chief Justice Hinkson in *Bruce v. Cohen*, 2016 BCSC 419 at para. 53 citing Chiasson J.A. of the Court of Appeal in *Driol v. Canadian National Railway Company*, 2011 BCCA 74, at para. 18:

[53] The reasoning of the Supreme Court of Canada respecting the principle of exclusive representation was embraced in this province by our Court of Appeal in *Driol v. Canadian National Railway Company*, 2011 BCCA 74. At para. 18 of that decision, Mr. Justice Chiasson explained that in a unionized environment, employees relinquish their individual rights to gain the collective rights provided by the collective agreement:

[18] In the absence of special circumstances, unionized employees give up their individual employment contractual rights in exchange for collective rights provided by a collective agreement. The law was stated succinctly by Russell J. in *Belik v. Purolator Courier Ltd.*, 2007 BCSC 579:

[14] The bargaining relationship that exists between the employer and the union means that the employer cannot negotiate a separate contract with individual employees. The union and the union alone speaks for the employees covered by the collective agreement. The employees give up their individual rights in return for greater power to deal with the employer as a collective body, and the employer gains a degree of certainty, stability and the notion that employees will work now, grieve later in the event of a dispute. There is an additional trade off for the employees as well. As stated by the court in *Noël v. Société d'énergie de la Baie James*, [2001] 2 S.C.R. 207, 2001 SCC 89 at para 44:

... However reluctant the members of a dissenting or a minority group of employees may be, they will be bound by the Collective Agreement and will have to abide by it.

[15] Put simply, a union member has no individual right of action arising out of a dispute with her employer arising out of the Collective Agreement and, if the union decides not to proceed with a grievance, the union member affected must abide by that decision.

[23] The essence of Ms. Pereira's judicial review, although articulated in a number of different ways, amounts to the fact that she has not received a granular assessment of the evidence and a substantive finding that her co-workers mobbed her. For the reasons set out above this aspect of the judicial review is without merit.

2. Other Issues with Respect to the Investigation

[24] Ms. Pereira raised similar concerns about the investigation that she raised at the Review Decision and Reconsideration decision at this judicial review. The following section of the Review Decision sets out the concerns she raised and how her concerns were addressed:

This request for review concerns IR #1, the inspection report in which the Board closed the December 15, 2022 order under section 21(1)(a). The Board indicated that the employer provided evidence that they investigated

the worker's mobbing complaint. The officer noted that the investigator was unable to interview all of the respondents and witnesses because they were no longer employed by the employer. As discussed above, the Board officer decided that the employer had complied with the order under section 21(1)(a) and refused to issue a further order under this section.

Section 21(1)(a) of the Act is a general duty section and an employer must exercise due diligence to meet its obligations. In assessing whether the employer took reasonable steps to protect its workers from bullying and harassment, the following Board policy and guidelines apply.

Policy P2-21-2, *Employer Duties— Workplace Bullying and Harassment*, sets out reasonable steps that an employer should take to prevent, where possible, or otherwise minimize, the hazard of workplace bullying and harassment. These steps include:

- Developing a policy statement with respect to workplace bullying and harassment not being acceptable or tolerated and informing workers of the policy statement;
- Taking steps to prevent where possible, or otherwise minimize, workplace bullying and harassment and informing workers of the steps taken;
- Developing and implementing procedures for workers to report incidents or complaints of workplace bullying and harassment;
- Developing and implementing procedures for how the employer will deal with incidents or complaints of workplace bullying and harassment;
- Training supervisors and workers on recognizing, responding to, and reporting bullying and harassment;
- Not engaging in bullying and harassment of workers and supervisors; and
- Applying and complying with the employer's policies and procedures on bullying and harassment.

In addition, Guideline G-P2-21(1)-3, *Bullying and Harassment*, provides guidance on the application of the Board's policy. The guideline explains that the role of Board officers is to ensure that employers have implemented policies and have an appropriate framework for dealing with bullying and harassment, and that supervisors and workers are meeting their obligations under the policy.

In terms of the employer's investigation into the worker's complaints, the Guideline provides that such an investigation should:

- Be undertaken promptly and diligently, and be as thorough as necessary;
- Be fair and impartial;
- Be sensitive to the interests of the parties, and maintain confidentiality to the extent possible;

- Be focused on finding facts and evidence; and
- Incorporate, where necessary, the need for both the complainant and the subject of the investigation to have assistance during the investigation.

In this case, to be clear, I am concerned with the investigation the employer conducted in the spring of 2023, which was for the purpose of complying with the December 15, 2022 order.

The employer hired an experienced internal investigator located in a different province to conduct the new investigation. The investigator had no prior experience with the worker or any of the other people involved in the matter. He had conducted numerous similar investigations during the course of his career.

The worker submits that the employer was required to hire an external investigator to be seen as fair and impartial. I disagree. It is the employer's obligation under the Act to investigate occupational health and safety matters including bullying and harassment in the workplace. Neither Policy P2-21-2 or Guideline G-P2-21(1) require that an investigator be an external party. While it was open to the employer to hire an external investigator, the fact that they chose to use an internal investigator does not mean that the investigation was not fair and impartial. I am satisfied that the investigator the employer selected was sufficiently arm's-length and removed from the situation that there was no appearance of bias. The investigator also confirmed that he received no specific instructions regarding the expected result of the investigation.

The investigator outlined the process that he intended to follow in a February 15, 2023 email to the worker, and she expressed that this process appeared to be appropriate.

From my review of the materials, the investigator followed the outlined process to the best of his ability. He obtained the worker's agreement as to the appropriate seven respondents and four witnesses and contacted them regarding their evidence. Five of the seven respondents and two of the witnesses declined to participate in the investigation and no longer worked for the employer. The investigator had no means of compelling them to participate. Nevertheless, the investigator referred to the written materials, including statements, text messages and so forth that were already on file. While the lack of full participation limited the scope of his investigation, there is no indication that the investigator did not behave reasonably in attempting to contact all pertinent parties and interview them. The employer provided a list of questions asked by the investigator, which was detailed, thorough and focused upon fact finding.

The worker objects to the fact that the investigator contacted an additional witness, a former manager, and obtained information from him without advising her or seeking her input. However, I note that the investigator was tasked with performing a detailed investigation regarding the worker's mobbing complaint. He attempted to contact the respondents and the witnesses noted by the worker, and two respondents and two witnesses replied. However, it was within his discretion to contact other people whom he

considered may have relevant information matters at issue. There was nothing improper or unfair in his doing so.

The worker objects to the fact that the investigator did not follow up with her regarding the information that he obtained from this additional witness. While it was open to him to do so, it was not a necessary part of the process, as he already had the worker's information.

[25] The Reconsideration Decision noted as follows:

You submit there was a breach of procedural fairness because the Review Officer noted in her decision that some complainants expressed fear of you, and that you had been on medical leave then grieved the discipline the employer issued.

I do not consider the statements you identify to be procedurally unfair. The Review Officer was simply pointing out the evidence before her related to the fact that the employer had received informal complaints about your conduct from other workers within a short period of time, and you then made your complaint of being mobbed. Subsequently, there was a separate grievance process as well. The Review Officer was noting that the employer had duties not only to you in respect of your complaint, but also to the other workers, and that this was a complex situation with different processes touching on a common subject which the employer had to deal with. There is no procedural unfairness in discussing evidence or facts relevant to the issue of the nature and extent of the employer's violation and due diligence under 21(1)(a) of the Act, for the purposes of penalty consideration.

On reviewing the steps taken on this review, I consider the Review Officer acted within the bounds of natural justice and procedural fairness in the completion of her review. As such, I do not find the grounds have been met to direct a reconsideration of the Review Division decisions under the common law.

You disagree with the Review Officer that the employer had taken reasonable steps to investigate your complaint by the time of the July 26, 2023 Inspection Report. You feel the employer's investigation in 2023 was unfair because the employer did not hire an external investigator, you were not told about additional witnesses, and you were not followed-up with by the investigator.

The Review Officer correctly pointed out that nothing in law or policy requires an external investigator to be hired. While the investigator took it upon himself to contact an additional witness, a former manager, without seeking your input or following up with you, that was within the discretion of the investigator, and there was nothing improper or unfair in his doing so. The Review Officer noted that the investigator already had your information and the details of your complaints.

[26] I see no basis upon which one could conclude that the Reconsideration Decision on these issues was not reasonable.

3. Evidentiary Findings Made About Dexterra

[27] Ms. Pereira says that the investigation was fundamentally flawed because the Review Decision wrongly inferred evidence about what Dexterra did, or knew and relied upon speculative languages such as “may” and “likely” which was both improper and demonstrative of bias against her.

[28] The following sections of the Review Decision highlight her concerns:

Why are these facts being used to defend Dexterra?

The worker subsequently made a whistleblower complaint in December 2020, which was investigated by an HR representative. The representative considered the worker’s mobbing complaint and noted that the complaints against the worker lacked cohesiveness and thus it did not appear that the complainants had colluded. The HR representative interviewed the worker but did not interview the complainants, to my knowledge

The HR representative (Weedad) who investigated my whistleblower complaint did not make that conclusion. That is what who she interviewed (Jana) said when investigating if the employer had investigated my complaints.

These complaints were investigated by the worker’s managers and HR. While their investigation was not sufficiently thorough, they did conclude that there was some merit in the complaints and gave the worker a verbal warning

Lorenz was speaking on behalf of the employer. This was never ever said by Dexterra, not even in the original submissions to Kevin in 2022. I think she got that from the investigation from Andrew’s interview. That’s the only thing I can think of where she could’ve gotten this defence from.

Not sufficiently thorough, in other words, did not interview me at all so how did they determine there was some merit? Please explain this to me WorkSafe.

While the employer did not conduct a separate investigation into the mobbing complaint, the employer already had some information from the complainants and may not have considered it necessary or appropriate to investigate further at the time.

They had ZERO information from me. Again she is speaking on Dexterra’s behalf. Why is she assuming things for Dexterra contrary to the evidence and submissions I gave her? I don’t know how many times I have to say this, the statements contained vague accusations with no particulars so Dexterra would have to prove why they didn’t think it was necessary to investigate further. She can’t advocate for them. This was a serious breach of procedural fairness. If an employer didn’t think it was necessary to investigate further the burden is on them to show why. This alone will get the decision quashed if I have to take this to court.

The employer did subsequently conduct an investigation into the worker's whistleblower complaint. In the context of that investigation, an experienced FIR representative addressed the worker's mobbing complaint, albeit briefly, and did not conclude that the matter required further investigation. Although this was not an adequate investigation of the worker's mobbing complaint, it is likely that the employer regarded it as such or as confirmation that the overall circumstances had been adequately investigated. As noted, the circumstances of the multiple complaints were complex, and the employer was required to protect the interests of a number of parties.

As stated above in my background facts, this was false information, the whistleblower investigation was the company investigating itself. The HR representative interviewed other HR and managers to determine if my mobbing complaint was investigated, she wasn't investigating the mobbing complaint that's why she never spoke to any of my coworkers. This is the 3rd time now that I've had to tell WorkSafe this.

The underlined statement is again making assumptions on the employer's behalf. Dexterra has never made submissions for any review, why is the review officer speaking for them? Why would Dexterra view it as an investigation into my mobbing complaint when they knew that was not what my whistleblower complaint was about and knew that was not what Weedad was investigating? Explain that to me.

Also, not relevant to procedural fairness but relevant to a penalty, what they did 7 months later is not relevant to the material time of the violation. R0301035 - However, I note that steps taken following a violation are not evidence of due diligence in preventing the violation.

In this case, the employer appeared to accept the complainants' version of events and did not interview the worker about the complaints before disciplining the worker with a verbal warning. This was not a situation in which the employer failed to conduct any investigation, but rather they determined that the complaints against the worker were substantiated and took disciplinary action against the worker. So, in fact, they took steps to prevent and mitigate bullying and harassment.

I'm at a loss for words, so just accepting complaints as true, without asking for supporting particulars or evidence and without talking to the respondent is not investigating? This is completely contradictory to the violation.

[29] These concerns were specifically addressed in the Reconsideration Decision:

Regarding the issue of whether a further order should be issued to the employer, the Review Officer correctly noted that the issue before her was the reasonableness of the employer's investigation in 2023, not what had occurred prior to that time. It had already been determined that the initial investigation into your complaint was not reasonable, resulting in the initial order under section 21(1)(a) in 2022. The 2022 order was not before the Review Officer. Rather, it was the Board decision finding the employer was in

compliance with section 21(1)(a) of the Act in 2023 that was before the Review Officer.

[30] In this case, it was incumbent on the Review Officer to make findings with respect to the company's state of knowledge and intent. There was sufficient information to support these findings. Therefore I see no basis to interfere with the Reconsideration Decision on this issue.

4. Limitation of Penalty to Procedural Issues

[31] Ms. Pereira says the Review Decision erred in limiting the penalty assessment to Dexterra's inadequacies in investigating complaints of bullying and harassment and the procedures in place for such investigations instead of focusing on the fact that bullying and harassment to occur in the workplace.

[32] The Reconsideration Decision specifically considered this issue:

You submit that the Review Officer misinterpreted the policy in her decisions. You disagree with her finding that the employer's violations under section 21(1)(a) of the Act did not result in a high risk of serious injury or death, for the purposes of penalty consideration. You question how risk can be assessed without determining if there was bullying and harassment. You also feel the Review Officer erred by considering the whistleblower complaint in making this finding. You feel every violation of the kind that occurred in this case should be considered for a penalty.

The Review Officer appropriately set out and applied the criteria in policy P2-95-2, *High Risk Violations* of the *Prevention Manual*, in assessing whether any of the violations were high risk for the purpose of considering a penalty. She noted that the violations at issue were not automatically designated as high risk in the policy and, therefore, the specific circumstances of the violations before her had to be considered, taking into consideration the criteria in the policy.

She pointed out that high-risk violations generally involve the risk of immediate, serious physical injury or death to a worker, while the violations at issue did not have that direct risk. The violations had to do with insufficient investigation by the employer into complaints of bullying and harassment by you and by other coworkers, as opposed to directly exposing you or others to bullying and harassment. The Review Officer specifically found that there was a risk of psychological injury but determined that the risk did not rise to the level of a high risk of serious injury or death.

You questioned how risk could be assessed without determining whether there was bullying and harassment. The Review Officer correctly explained that she did not need to assess the merits of the complaints of bullying and harassment to determine whether the violations under section 21(1)(a) were

high risk. This is because a determination of whether a violation is high risk is based on the effects of the specific facts of the violation and the level of risk to workers. The employer's violations had to do with inadequacies in its investigation of complaints of bullying and harassment and its procedures for informal investigations of such complaints, and not in bullying and harassing workers.

[33] I see no basis to interfere with the Reconsideration on this issue. I agree that the Review Decision was correctly focused on the inadequacies of the investigation and the procedures for informal investigations of such complaints.

5. Failure to Assess a Monetary Penalty

[34] Ms. Pereira asks for this court to overturn the Reconsideration Decision and impose a penalty on Dexterra.

[35] The Review Decision applied its findings to the appropriate policy and refused to impose a penalty. The Reconsideration Decision reviewed the factual basis set out by the Review Decision and noted as follows with respect to its decision not to impose a penalty:

I do not find any error in law or policy in respect of the Review Officer's application of policy P2-95-1, Criteria for *Imposing OHS Penalties*. The policy clearly indicates that not every violation must be considered for penalty, nor can a penalty be automatically imposed because of a violation. While you point out some factors that you feel support the need for a penalty in this case, such as the extent to which the employer was or should have been aware of the hazard and that the Act was being violated, these factors, along with the others set out in the policy, were considered by the Review Officer in concluding that additional enforcement action beyond the orders, in the form of penalties, was not warranted in the circumstances.

[36] I see no error in law or policy with respect to the Review Decision's determination on this issue, or the Reconsideration Decision's review.

Disposition

[37] Ms. Pereira has failed to identify any errors in the Reconsideration Decision. The overall thrust of her complaint is that she was not provided a granular assessment of every issue considered in the investigation and a conclusion that she

was bullied by her co-workers. This amounts to a collateral attack on the grievance procedure mandated by the collective agreement.

[38] The application is dismissed.

“Thomas J.”