Just six months after a City of Calgary employee started her job as a tractor-trailer driver, everything started to go wrong.

Her foreman and indirect supervisor both ignored her concerns about the workload, insisting she simply wasn’t trying hard enough. They mocked her appearance, spread rumours she was having an affair with a colleague and didn’t interfere when she was ostracized for asking for a women’s washroom. She began to suffer from anxiety and depression, and went on short-term disability leave for three weeks in the spring of 2015. Moving to long-term disability leave that June, she hasn’t worked since.

After one botched workplace investigation that found little wrongdoing on the supervisor’s part and a thorough one that found a great deal of harassment, the City accepted liability for the employee’s injuries, acknowledging its responsibility for employees’ behaviour in violation of their collective agreement.

In April 2018, nearly five years after the driver’s troubles began, an Alberta grievance arbitration board awarded her $75,000 in general damages, plus lost wages for the entire time she was on disability.

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Furthermore, when the driver told the first investigator she had recordings of conversations with her supervisor but didn’t want to give them to him, he didn’t ask if he could at least listen to them.

Lessons from a workplace harassment investigation gone wrong

By Sara Tatelman

Lessons learned

“It is a case that screams out for lessons learned,” says Casey Dockendorff, a partner at Filion Wakely Thorup Angelett LLP in London, Ont.

The first lesson is the importance of well-trained management. Not only did the foreman and supervisor fail to step in when other employees harassed the driver, but they joined the “gender-based ostracism” as well, the arbitrators found. Furthermore, the supervisor invited the driver to what he said was a work event, which turned out to be a date, and insisted on discussing a possible promotion in a pub.

When an organization first introduces female employees into a male-dominated environment, it’s “an appropriate time to proactively engage in some training of these managers,” says Dockendorff.

According to the Australian Human Rights Commission, this could involve communicating the business case and strategy for gender diversity to all employees, ensuring senior leaders show their support of women in non-traditional roles and rewarding leaders who champion diversity in the workforce.

As well, superficial interactions between men and women in male-dominated workplaces can increase gender stereotypes, according to a study in the journal Social Sciences. On the other hand, acquaintanceship, which involves sharing personal information with and befriending colleagues of all genders, has the potential to change employees’ attitudes and thereby reduce prejudice, the study found.

Get to the heart of the matter

The case also demonstrates the importance of well-trained workplace investigators, says Dockendorff.

A human resources employee for the City of Calgary, who conducted the first investigation in the summer and fall of 2015, concluded that the supervisor used inappropriate language but that none of the driver’s other allegations were supported. While he did interview the driver and her supervisor, he didn’t speak with any co-workers who might have corroborated the story. He didn’t even follow up with any of them after he read their written statements.

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“To be aware that there were recordings and to do nothing with that information is a bit of a problem, particularly given the probative value that something like that is likely to have in terms of showing whether there was bullying and harassment or not,” says David Woolias, an associate at Harris & Co. LLP, a management-side employment and labour law firm in Vancouver.

Due to the flaws in the first investigation, the harassment continued for a total of 18 months. If that investigation had been more effective, the driver wouldn’t have suffered so much and the City would likely have been liable for significantly less, notes Woolias. Nevertheless, “you can be sympathetic towards the investigator,” he says. For many human resources employees, such investigations are just a small part of their job.

He recommends employers turn to outside investigators if a senior manager or a human resources employee is the subject of the investigation, or if the organization lacks expertise.

“This is the sort of case where I would think [an external investigator is not necessarily required],” says Woolias, noting large municipalities should have some capacity to conduct workplace investigations. “This isn’t one that raises those flags. It was just, in these particular circumstances, it didn’t work out.”

Don't dodge responsibility
While $75,000 is a high award, Woolias suspects it could have been even higher had the City not immediately accepted responsibility. “The City clearly indicated it knew what ought to have happened and recognized it hadn’t happened in this case,” he says. “And that, I think, played very well with the arbitrators.”

The City of Calgary also shared with the arbitrators its newly developed strategies for preventing this kind of harassment from recurring. These include: requiring new employees to review the respectful workplace policy during orientation; adding training for all employees about the practical differences between respectful and disrespectful behaviour; creating a Women in Transportation Network to address issues facing women working in male-dominated environments; and providing more training to managers about their responsibilities.

Harassment and discrimination can present significant challenges to all organizations, the arbitrators wrote in their decision. “It is clear to us that despite the very serious failure in the [driver’s] case, the City is attempting to be a leader in this area.”

Sara Tatelman is a Toronto-based freelance writer.