

Are Automatic Penalties Justified for Violations of Zero Tolerance Policies?



SITUATION

A crane operator for a mill drove his wife's vehicle to work because his car wouldn't start. During a random vehicle search that day, security staff find a bottle of vodka in the car's trunk. He cooperates with their investigation, explaining that it wasn't his vehicle and he didn't know the vodka was in the car. He also agrees to take and passes an alcohol test. The crane operator said that the vodka must belong to his daughter, who'd used the car for a camping trip the previous weekend. Over the phone, his daughter confirms that it's her bottle of vodka. The collective agreement includes a just cause standard for discipline. And the employer has a zero tolerance policy barring possession and use of alcohol on the safety sensitive premises. Violating this policy is considered serious misconduct that warrants an automatic minimum suspension of three shifts. So the employer suspends the crane operator for three shifts, even though it was his first offence. He argues that the suspension is excessive.

QUESTION

Is the crane operator's suspension excessive'

- A. No, because he violated a zero tolerance policy.
- B. No, because the workplace is safety sensitive.
- C. Yes, because he tested negative for alcohol.
- D. Yes, because the employer didn't consider all the circumstances in determining the appropriate discipline.

ANSWER:

D. The automatic suspension was excessive because the employer didn't consider the totality of circumstances.

EXPLANATION

This hypothetical, which is based on an Ontario labour arbitration decision, is a good example of the limits of so-called 'zero tolerance' policies. In that

case, the arbitrator found that a three-shift suspension of a crane operator for his 'first unwitting or inadvertent breach' of the employer's zero tolerance alcohol policy was excessive. Safety considerations, especially in a safety sensitive workplace such as this mill, justified such a policy. The arbitrator acknowledged the employer's right to discipline a worker for violating the zero tolerance policy by possessing alcohol in the workplace. But the arbitrator rejected automatic imposition of penalties such as suspensions without consideration of the totality of circumstances, explaining that 'each and every incident is to be investigated and appropriate discipline imposed.' Such automatic penalties also violated the just cause standard in the collective agreement. Thus, given that the crane operator had inadvertently violated the no alcohol policy, completely cooperated with the employer and had no prior record, the arbitrator substituted a written warning instead of the suspension.

WHY THE WRONG ANSWERS ARE WRONG

A is wrong because even violations of a zero tolerance policy don't justify automatic discipline without consideration of all the facts and circumstances related to the violation. It's perfectly appropriate to adopt a zero tolerance policy provided certain conditions are met. (See, 'Discipline for Safety Infractions & 'Zero Tolerance.') But the term 'zero tolerance' is really a misnomer because employers must always consider mitigating factors when determining appropriate discipline for infractions. Labeling a policy as 'zero tolerance' merely signals to workers that this safety policy is so important that, if it's violated, it'll have more serious disciplinary consequences than violations of other policies. In this case, the automatic imposition of any specific discipline was inappropriate and inconsistent with the just cause standard in the collective agreement. Additionally, the crane operator's lack of any prior offenses and the circumstances of this unintentional and unwitting violation demonstrate that suspension rather than a lesser disciplinary measure, such as a warning, was excessive.

Insider Says: For more information about appropriate discipline for safety rule violations, go to the Discipline and Reprisals Compliance Centre.

B is wrong because the fact the workplace is indeed safety sensitive doesn't justify automatic discipline for a breach of safety rules. Violations of rules in a safety sensitive workplace may warrant more severe discipline than in a non-safety sensitive environment. But even in a safety sensitive workplace, such as this mill, all safety infractions aren't created equal. For example, failing to wear protective coveralls over clothing is likely to be considered a minor infraction compared to removing a machine guard from equipment. And in any event, the totality of circumstances surrounding the infraction must always be considered, not *just* the safety sensitivity of the workplace.

C is wrong because the policy prohibited even possession of alcohol on work premises. The reasonable objective was to prevent anyone from drinking alcohol at work. So even if the crane operator wasn't drinking the vodka himself, by bringing it to the workplace, he could've given it to others to drink at work. Thus, despite the fact the crane operator hadn't drunk the vodka, he still violated the policy by bringing alcohol to the work site, albeit inadvertently.

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U.S. Steel v. United Steelworkers, Local 1005, 2014 CanLII 50003 (ON LA), July

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