

Brief Senior Management: Firing Worker for Complying with Environmental Laws Can Be Costly



During construction of a dam in Ontario, the hydraulic fluid line on an excavator burst and leaked hydraulic oil onto the ground. The construction company cleaned up the spill and put the clean-up materials into the bucket of a loader. The company's EHS supervisor oversaw the containment and clean-up of the spill but didn't report it to the MOE. However, a worker *did* report the spill to the MOE that night. The company fired him. It was convicted of two environmental violations, including firing an employee because he complied with the *Environmental Protection Act*—the first conviction of its kind in Ontario. The court fined the company \$75,000 and ordered it to pay \$8,000 to the fired worker as restitution for lost wages [*R. v. Carica Construction Inc.*].

THE PROBLEM

Companies can and should discipline workers for violating environmental rules and procedures or the environmental laws. But they shouldn't discipline workers for *complying* with

requirements under environmental law. This principle seems obvious but companies improperly discipline workers all the time. And as the company in *Carica* learned, firing a worker for doing something the law required can be a costly mistake.

THE EXPLANATION

The environmental laws across Canada typically bar employers from disciplining workers for reporting an environmental violation or complying with the law, such as by reporting a spill of a hazardous substance. And the Canadian *Criminal Code* makes it illegal to take or threaten adverse action against a worker for 'whistleblowing,' which includes giving information to a 'person whose duties include the enforcement of federal or provincial law.' Thus, criminal law bars companies from disciplining, suspending, firing, penalizing, intimidating or coercing a worker for reporting an environmental violation to the appropriate environmental officials.

The construction company in *Carica* made two big mistakes. First, when hydraulic oil leaked onto the ground, it should not only have cleaned the spill up but also reported it to Ontario environmental officials. What's particularly egregious about this oversight is that the company's EHS supervisor knew about the spill and even oversaw its clean up. This supervisor should've been aware of the reporting requirement and ensured that the company took steps to comply with it. (For more on responding to spills, see [Spill Response: Answers to 11 Frequently Asked Questions](#).) The company was fined \$35,000 for failing to report the spill.

The company then compounded its initial mistake when it fired the worker who simply did what the company itself had been legally obligated to do but didn't. A smarter approach would have been for the worker to have gone first to his supervisor or another company official and asked about reporting the spill. For all he knew, the company may have already made a determination that the spill didn't have to be reported. But

perhaps he was hesitant to raise these concerns internally out of fear that he'd be disciplined, which, as it turns out, would've been a perfectly justifiable fear. Nonetheless, it was legal for the worker to report the spill himself to the MOE and the company shouldn't have fired him for doing so. For this mistake alone, the court fined it \$40,000'plus, the court ordered it to pay the fired worker \$8,000.

Insider Says: Workers are also usually [protected from discipline for exercising their rights under OHS and employment standards laws](#). For example, you can't suspend a worker for exercising his [right to refuse unsafe work](#).

THE LESSON

As members of senior management, you must ensure that everyone in the company understands the requirements under environmental law and knows that imposing discipline for fulfilling those requirements isn't permitted. In fact, complying with environmental law should be encouraged and rewarded. To ensure that the company doesn't suffer the same fate as the one in *Carica*, you should:

- Make it clear that the company and management are committed to complying with all applicable laws and maintaining high standards of integrity;
- Remind workers that they must also comply with the environmental laws and should report any violations of such laws to a supervisor or company official;
- Have supervisors and managers keep an 'open-door' policy and encourage workers to come forward with environmental concerns;
- Require supervisors and managers who are notified of environmental issues or violations to investigate them and refer them to the appropriate person or body if they're valid; and
- Offer to maintain the anonymity of workers who raise environmental issues but encourage them to provide their

names for the purpose of follow-up investigation.

The company should ideally have a non-retaliation policy that embodies the above principles. For a model non-retaliation policy, see [Traps to Avoid: Disciplining Workers for Exercising Safety Rights](#).

INSIDER SOURCE

[R. v. Carica Construction Inc.](#), Ontario Govt. News Release, March 22, 2012