Can an Employer Ban Workers from Wearing a Particular Shoe?



SITUATION

A resort worker injures her ankle while wearing sneakers with a curved platform sole intended to tone muscles. She reports the injury to her employer's JHSC. A JHSC member finds information on the Internet about the risks of such shoes and lawsuits in the US concerning injuries allegedly related to wearing them. So the employer issues a ban on wearing curved platform soled shoes at work but permits workers to wear these shoes if they have a doctor's note indicating they need to wear them for medical reasons. The union files a grievance challenging the ban.

QUESTION

Is the employer's ban enforceable'

A. Yes, because a worker was injured while wearing the shoes.

B. Yes, because, under the OHS laws, workers may only wear safety footwear.

C. No, because the employer didn't perform a thorough risk assessment of the shoes.

D. No, because an employer can’t interfere with workers’ right to select their personal footwear.

ANSWER:

C. No, because the employer didn’t first assess the risks of wearing these shoes, its ban is unenforceable.

This scenario is based on an actual arbitration decision from BC in which a union challenged an employer’s ban on wearing Skechers Shape-Up sneakers and similar shoes at work.

The arbitrator upheld the grievance, explaining that a decision about the safety of certain apparel isn’t ‘a matter of subjective or physician judgment’ but rather an ‘evidence based judgment following a thorough risk assessment to identify a hazard, the risk associated with it and appropriate ways to eliminate or control the hazard.’ In this case, the employer performed an ‘inadequate investigation’ of the one injury reported by a worker wearing the shoe. It also relied only on ‘admittedly unreliable, anecdotal internet reports’ and ‘uninvestigated lawsuits against one manufacturer’ of the type of shoe. The arbitrator postponed the effective date of its decision rendering the employer’s ban unenforceable, allowing the employer time to conduct a thorough review to determine if the shoe posed a hazard for certain categories of workers or in certain areas of the workplace.

WHY WRONG ANSWERS ARE WRONG

A is wrong because one injury doesn’t automatically support prohibiting use of particular apparel. For example, the worker may have injured her ankle because she slipped on a wet floor or wasn’t paying attention to where she was going. The employer here didn’t investigate the reported injury and determine whether the shoes were truly its cause. If that investigation had determined the shoes were, in fact, at fault, then the employer should have done a thorough risk

assessment to determine the extent of the risk posed by wearing them.

B is wrong because not all workers need to wear designated safety footwear. Under the OHS laws, workers are generally required to wear safety footwear (or non-slip footwear) when they're exposed to general hazards that could injure their feet, such as the risk of heavy objects falling on their feet, or specified hazards, such as wet floors, electric shock and corrosive chemicals. In addition, workers may have to wear safety footwear in certain workplaces, such as construction or logging sites, for certain jobs, such as firefighters and loggers, and when performing certain tasks, such as using a chainsaw or working in an excavation. Here, whether workers at the resort must be required to wear safety footwear will depend on the jobs they do and any hazards to their feet. (For more information, see 'PPE: Safety Footwear Requirements under OHS Laws,' 02/11, p. 1.)

D is wrong because an employer can interfere with a worker's right to choose his or her own clothing, including footwear, if that clothing presents a safety hazard. Employers are permitted to set dress codes for the workplace, including bans on the wearing of apparel or accessories that create legitimate safety risks. For example, a company may ban workers from wearing rings, necklaces, earrings and other jewellery that could get entangled in machinery and equipment. (For a look at two cases in which workers were disciplined for violating such a policy, see 'Winners & Losers: Is Violation of a No-Jewellery Policy Grounds for Discipline'' Aug. 2008, p. 16.) Here, if the employer did a thorough risk assessment of these shoes and determined they were a legitimate safety hazard, banning them would be enforceable despite interfering with workers' rights.

SHOW YOUR LAWYER

Unite Here Local 40 v. Harrison Hot Springs Resort & Spa

(Footwear Grievance), [2012] B.C.C.A.A.A. No. 68, May 16, 2012