

Can Employer Terminate Probationary Employee for Safety Violations?



SITUATION

A telecommunications company hires a service technician to install and repair internet, phone and TV services. His employment's subject to a probationary period, during which he can be terminated if found unsuitable. The technician attends 12 weeks of safety training, where he learns about the company's safety protocols including its safe driving standards and the use of PPE. At a service call a few weeks after training ended, the technician stands on a ladder and attempts to cut a line without being properly tied in and without wearing safety boots or glasses, which violates the company's safety rules. He loses his footing and slides down the ladder, breaking his leg. He admits that he'd used poor judgment. While the technician's out of work for several months recovering, the company learns that he'd gotten a speeding ticket for going 93 kph in a 50 kph construction zone while driving a company truck on duty. The technician never reported the ticket. When he recovers from his injury and is ready to return to work and still within the probationary period the company terminates him. The union files a grievance.

QUESTION

Did the company properly terminate the technician'

- A. No, because he's disabled due to his broken leg and so termination would be discriminatory.
- B. No, because the company waited several months to impose discipline.
- C. Yes, because he's a probationary employee, who was unsuitable for the position.
- D. Yes, because violating a safety rule is just cause for termination.

ANSWER

C. Because the company has discretion to terminate a probationary employee and there was evidence the technician was unsuitable for the position, its termination of him was appropriate.

EXPLANATION

This hypothetical is based on an Alberta arbitration in which the arbitrator upheld the termination of a technician during his probationary period. An employer has the right to dismiss a probationary employee if the employee's found to be unsuitable. The arbitrator explained the technician had a fair opportunity to demonstrate his suitability during his probation. However, despite getting safety training, he violated the safe driving standards by exceeding the speed limit by 40 kph and failed to follow PPE requirements and safe ladder protocols, leading to his fall and broken leg. In addition, he didn't report the speeding ticket, which he got while driving a company vehicle on duty. Thus, the company's decision to terminate him was reasonable and based on a careful assessment of his performance and suitability, concluded the arbitrator.

WHY THE WRONG ANSWERS ARE WRONG

A is wrong because although a broken leg likely qualifies as a temporary disability, there's no grounds for disability discrimination claims here. To show discrimination, a worker must demonstrate he not only has or was perceived to have a disability but also that he suffered an adverse employment action in which that disability was a factor. Here, the company didn't terminate the technician until *after* he'd recovered from his broken leg and was no longer disabled. So disability wasn't a factor in his termination at all. Therefore, the company didn't commit disability discrimination.

B is wrong because the company didn't unreasonably delay terminating the technician. Discipline must be imposed in accordance with standards of just cause and procedural fairness. And termination can't be challenged based on delay if the employer acts within the probationary period. Here, the company had the option to terminate the technician during a probationary period if it found him unsuitable for the position for which he was hired. His conduct in failing to follow safety protocols and hiding his speeding ticket provide a reasonable basis for finding him unsuitable. And the company terminated him within the probationary period. Moreover, the delay, which was due to the technician's absence while recovering from his broken leg, didn't harm or prejudice him as it allowed him to collect workers' comp benefits during that period of time.

D is wrong because although the technician did fail to follow safety protocols, violations of safety rules aren't always just cause for termination. Just cause requires consideration of all the facts and circumstances, including the seriousness of the violations, the consequences, the experience of the worker involved, etc. Additionally, a probationary employee can be terminated during the probation period even without just cause. In this case, the technician was still on probation when he was fired, so just cause wasn't required.

Insider Says: For information about discipline, go to the [Discipline & Reprisals Compliance Centre](#).

SHOW YOUR LAWYER

[Telecommunications Workers Union, United Steelworkers National Local Union 1944 v. Telus Corp.](#), [2016] CanLII 6195 (AB GAA), Feb. 10, 2016