Can Employer Terminate Supervisor Who Solicits Drugs from Worker?



SITUATION

A senior project manager works in a high risk, safety-sensitive job in the heavily-regulated marine industry in BC. He's responsible for safety at the job site, safety training and enforcement of drug-prohibition policies. His employer fires him without cause, giving him four weeks' pay in lieu of notice. After termination, the employer reviews the manager's company cell phone and finds that the manager used it during work hours to solicit drugs from a worker he supervised. The employer also discovers that the manager used illegal drugs with that worker after work hours, although he apparently never worked while impaired. The manager admits using the company cell phone to solicit illegal drugs from a worker he supervised but claims he was wrongfully dismissed.

QUESTION

Was the employer's firing of the manager justified'

A. No, because he neither used the drugs on the job nor worked while impaired.

B. No, because the employer didn't know about the drug use until *after* firing him.

C. Yes, because the manager was a supervisor in a safety sensitive workplace, who got drugs from and used them with a worker he supervised.

D. Yes, because the manager used illegal drugs.

ANSWER

C. The employer's termination of the manager is justified because he held a supervisory role in a safety-sensitive workplace, and got drugs from and used them with a worker under his supervision.

EXPLANATION

This hypothetical is based on a BC appeals court decision in which the court decided an employer could consider all the factors relevant to the manager's conduct, job and the type of workplace when deciding to terminate him. In finding the termination justified, the court highlighted the following facts:

- The manager admitted engaging in criminal conduct with a worker he supervised;
- He had a 'high level of responsibility' for a workplace 'in one of the highest accident risk industries';
- He was responsible for workplace safety and implementing drug policies; and
- He worked without supervision and 'was expected to supervise his drug dealer in a safety sensitive workplace.'

Was the misconduct something a reasonable employer couldn't be expected to overlook given the 'nature and circumstances of his employment" Trying to get drugs through a worker he supervised went 'to the root' of the employment relationship and so the relationship couldn't be repaired, the court concluded.

WHY THE WRONG ANSWERS ARE WRONG

A is wrong because an employee's termination could still be justified for conduct that occurs outside of work. If the conduct has some connection to the job or the employer, there could be grounds for discipline. (See, 'When is Off-Duty Conduct Just Cause for Discipline'') For example, if a worker's conduct hurts the employer's reputation or its ability to handle operations, the employer may have a right to impose discipline. In this case, the manager engaged in illegal conduct involving a worker who he supervised. And even though they used drugs off-duty, the manager's role in supervising this worker was linked to and affected by the off-duty conduct. Additionally, the manager did use a *company cell phone during work hours* to solicit drugs from this worker, making that worker his drug dealer and creating a potential for conflict in his ability to manage that worker. So discipline for the manager's conduct'whether it occurred on-duty or off'was warranted.

***Insider* Says:** For more information about appropriate discipline, go to the Discipline and Reprisals Compliance Centre.

B is wrong because although the employer didn't know when it fired the manager that he'd solicited drugs from a subordinate, so-called 'after-acquired cause' can be justification to support a dismissal in some cases. Relying on after-acquired cause depends on the facts and circumstances at the time of the termination. Here, the conduct that creates after-acquired cause occurred while the manager was still employed and simply wasn't discovered until the cell phone was reviewed after the manager returned it upon termination. Thus, when the employer fired him, there existed facts that justified his firing, even though the employer was unaware of those facts at the time. But if the employer *had* known of the misconduct when it fired the manager and condoned it (expressly or implicitly), its claims of after-acquired cause

wouldn’t support his dismissal.

D is wrong because an employee’s use of illegal drugs may sometimes’but not always’justify his termination. For example, if a worker uses drugs at work, is impaired while working or causes a safety incident while working impaired, then he could likely be fired due to the illegal drug use. However, drug addiction is a disability and employers are barred from discriminating against workers because they’re disabled. So if the manager had been addicted to illegal drugs and the employer fired him for his addiction, the employer might be found liable for disability discrimination. But there’s no evidence the manager was a drug addict. So it isn’t discriminatory for the employer to fire him based on his use of illegal drugs and the related circumstances.

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Van den Boogaard v. Vancouver Pile Driving Ltd., [2014] BCCA 168 (CanLII), May 1, 2014