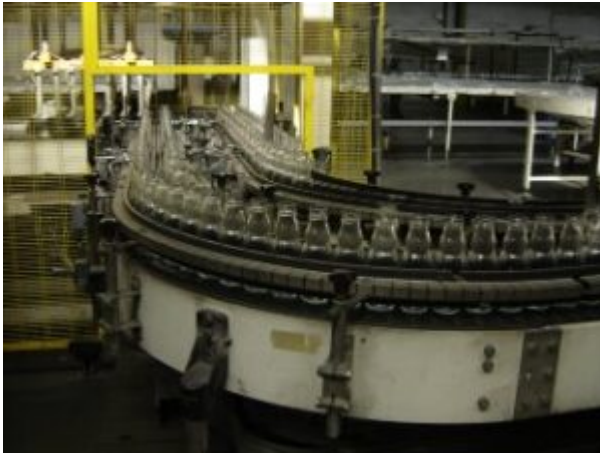


Can Temp Worker Be Fired for Second Safety Infraction?



SITUATION

A temporary worker in a beer factory works a conveyor line that packages the beer bottles. While working the line, a problem with the cardboard packaging occurs. The worker stops the line but doesn't follow formal lockout procedures, which would initiate an additional failsafe to prevent the line from restarting. He reaches into the conveyor to manually adjust the cardboard. A supervisor sees him perform this task without following safety procedure and sends him home. The worker says he thought he performed the formal lockout procedure because doing so is usually 'automatic' for him. He previously violated another safety rule by failing to wear gloves when required. Other workers who committed similar safety violations regarding lockout procedures were suspended; they were either permanent fulltime employees or temporary workers without prior safety violations. After an investigation in which the supervisor consults the union steward and other senior managers, and reviews discipline of other workers for similar offenses, the worker is terminated.

QUESTION

Is termination justified for the worker's safety infraction'

- A. Yes, because this safety violation was his second.
- B. Yes, because the worker is a temp and his firing wasn't arbitrary, discriminatory or in bad faith.
- C. No, because the violation wasn't serious and no one was harmed.
- D. No, because other workers weren't terminated for similar violations.

ANSWER

B. The worker's firing was justified because he's a temp and thus the employer doesn't need just cause to terminate him'it must only show that the firing

wasn't arbitrary, discriminatory or in bad faith, which it wasn't.

EXPLANATION

This scenario is based on an Ontario labour arbitration decision that ruled a temporary worker could be fired for violating lockout procedure. The arbitrator explained that for temporary employees, the standard by which termination is reviewed isn't just cause but rather whether the employer's decision was 'arbitrary, discriminatory or in bad faith.' The arbitrator noted that the employer conducted an investigation, consulting senior managers and a union representative, and reviewing prior disciplinary actions for similar offences, to determine the appropriate response in this case. Additionally, the worker had a prior safety offense and another temporary worker who committed safety violations was also fired. Therefore, the arbitrator dismissed the worker's grievance, finding that his termination was appropriate.

WHY THE WRONG ANSWERS ARE WRONG

A is wrong because simply having more than one safety violation doesn't automatically support termination of a worker. The nature of individual safety violations, the significance of the rule violated, the amount of time passing between the violations and the worker's attitude about safety are all factors that could affect a determination of appropriate discipline. For example, if the prior safety violation occurred many years ago, was minor in nature with limited potential consequences and/or differed significantly from the current violation, and the worker expressed remorse in both cases, termination may not be warranted. Here, the temp had a prior safety violation involving failure to wear gloves when required. Additionally, his response that following procedure was automatic rather than a thoughtful act shows he wasn't consciously thinking of or focusing on safety. Therefore, the employer's decision to fire him after two safety infractions wasn't arbitrary or capricious.

C is wrong because the violation was, in fact, serious and the fact that no one was harmed by it's a so-called 'near miss' doesn't mean termination was unreasonable. Safety violations that potentially can cause severe injury or even loss of life'such as lockout violations'must be taken seriously and disciplined accordingly, even when no one's injured or no damage is done. In this case, the failure to lock out the conveyor line could've caused severe injuries. For example, the machinery could've restarted while the temp was adjusting the cardboard, entangling him in the equipment and resulting in broken bones or even an amputation. So the employer was correct in treating the temp's lockout violation as serious and disciplining him accordingly.

D is wrong because although other workers weren't terminated for similar violations, those workers had differing circumstances that distinguish their situations from this worker's case. Employers *do* need to consistently apply discipline. But that doesn't mean that discipline must be identical for each similar violation. Surrounding circumstances and differences in other factors can justify different discipline for the same violation. Here, the worker was a temp and not entitled to the same protections as a permanent employee who violated the same safety rule. He also had a prior safety violation. Therefore, he could be terminated even if another temporary worker with a clean record wasn't terminated for the same lockout violation.

Insider Says: For further guidance on determining appropriate discipline, visit

the Discipline and Reprisals Compliance Centre.

SHOW YOUR LAWYER

Service Employees' International Union Local 2, Brewery General and Professional Workers Union v. Labatt Brewing Co. (Prior Grievance), [2017] O.L.A.A. No. 3, Jan. 6, 2017