Can Worker Be Fired for Striptease and Sexual Harassment at Company Event?

SITUATION

An employer hosts a day-long social event for workers, with alcohol being served at dinner in the evening. Video surveillance outside the restaurant shows a male worker stripping in the parking lot, climbing onto a female co-worker's car, striking various naked poses and stroking his body while another worker takes pictures. The video also reveals the worker who'd stripped slapping a female co-worker on the buttocks and repeatedly kissing another female co-worker's hand while she tries to get away from him'this woman was also the owner of the car on which he posed naked. The employer shows the worker the footage and he admits his actions. But he claims he was drunk, argues the conduct wasn't sexual harassment and doesn't express remorse or demonstrate any understanding of the impact of his actions on others. He's also heard telling others about the stripping incident, describing it as 'the funniest thing ever.' Despite a clean disciplinary record, the employer fires him.

QUESTION

Is the worker's termination justified'

A. Yes, because he engaged in inappropriate and sexually harassing conduct for which he showed no remorse.

B. Yes, because he was drunk at a company event.

C. No, because the employer hosted the event and supplied the alcohol, and so is liable for the worker's behavior.

D. No, because he had no prior disciplinary history.

ANSWER

A. Because the nature of the worker's conduct was inappropriate and sexually harassing and he showed no remorse, his termination was justified.

EXPLANATION

This hypothetical is based on an Ontario arbitration that upheld the termination of a plant worker who performed a drunken striptease atop a co-worker's vehicle, slapped some female workers on the behind and made other 'touchy feely' overtures toward co-workers at a day-long company event. The worker's conduct was caught on video surveillance. When confronted, he admitted the conduct but didn't express remorse or understanding of how the conduct impacted his co-workers. He also was heard retelling the events and making light of them. In fact, the arbitrator concluded that the worker's 'only true remorse' was that his behaviour was recorded by video cameras. The arbitrator also found that the worker's actions were harassment as they constituted vexatious conduct that would reasonably be expected to be unwelcome and served no work-related purpose. His behaviour also constituted *sexual* harassment specifically because the conduct was of a sexual or gender-related nature. Finally, the arbitrator noted that the sexual harassment was an indicator of 'potential risk to co-workers and to the employer in the future.' Therefore, the arbitrator decided termination was appropriate despite the fact the worker had no prior disciplinary record.

WHY THE WRONG ANSWERS ARE WRONG

B is wrong because being drunk at an employer's social event doesn't always warrant termination. A worker's conduct committed while intoxicated that interferes with the employment relationship or negatively affects co-workers may be grounds for discipline. But the simple act of consuming alcohol to the point of intoxication by itself doesn't call for termination. Here, the worker arguably got drunk at a company event at which alcohol was provided. But the employer didn't fire the worker for drinking too much'it fired him because of the nature of his conduct *while* drunk. And such conduct justified his termination.

C is wrong because an employer's provision of alcohol doesn't absolve workers of any responsibility for their own conduct when they choose to drink to the point of intoxication. The law does impose some so-called 'host' liability on employers that provide alcohol to workers during a social event, such as liability for a worker's drunk driving after such an event. However, an employer may still'and, in fact, should'discipline a worker who drinks to extreme at a work-related social event and then engages in inappropriate behaviour or violates the employer's policies. Here, the worker did get drunk at an employer-sponsored event. But he then engaged in sexual harassment and showed no remorse when confronted with his actions. So although the employer might share some responsibility to any individuals harassed by that drunk worker, it may still discipline him for his conduct.

D is wrong because a lack of prior discipline may not be enough to mitigate the egregiousness of some conduct. In general, employers should impose discipline that gets increasingly harsher the more infractions a worker commits and ultimately results in termination. But conduct that puts the lives of others at serious risk can justify the most severe discipline after even just one offense. In this case, the worker showed no remorse or understanding of the seriousness of his conduct as demonstrated by his retelling of the

striptease and characterizing it as the ‘funniest thing ever.’ This lack of understanding and remorse signal a potential for future misconduct and that risk, plus the nature of the worker’s harassing conduct, provide justification for his termination that isn’t mitigated by a lack of prior offenses.

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Innophos Canada Inc. v. United Steelworkers, Local Union 6304, [2016] CanLII 30878 (ON LA), May 12, 2016