Can You Fire Alcoholic Worker for Showing up to Work Drunk?

SITUATION

A nursing assistant at a residential care facility, whose duties include lifting, transferring and repositioning residents and otherwise assisting in their care, shows up for her night shift drunk. After a resident complains to staff, a manager confronts the assistant and finds she's slurring her words, smells of alcohol, isn't walking well and looks tired. She initially denies she has been drinking and is sent home for the night in a cab. The next day, two managers and a union representative meet with the assistant to discuss her behaviour the prior evening. They explain that her drunken condition jeopardizes the safety of residents, other workers and herself. The assistant admits to having had a drink before work and concedes that she shouldn't have come to work in that condition. She doesn't claim to be an alcoholic, blame her conduct on any addiction or request an accommodation. The manager knows, however, from the assistant's personnel record that she has a history of similar conduct that resulted in discipline and her participation in an alcohol treatment program. But under the collective agreement, those incidents should've been deleted from her record because they were more than two years old.

QUESTION

Can the employer fire the nursing assistant'

A. No, because no one was injured by her while she was drunk.

B. No, because she's an alcoholic.

C. Yes, because she was drunk at work.

D. Yes, because she didn't claim she had an addiction at the time of her termination.

ANSWER

B. The employer knows from records that the assistant has a problem with alcohol and therefore should offer her an accommodation rather than terminate her.

EXPLANATION

This hypothetical is based on a Saskatchewan labor arbitration decision that said termination of a residential care facility worker for being drunk on the job was discriminatory and the employer should've accommodated the worker instead. Showing up to work drunk jeopardized the safety of residents and co-workers and warranted discipline, unless the conduct wasn't culpable, the arbitration panel said. But it determined that the employer knew about the worker's past problems with alcohol from her work history and her prior attendance at alcohol treatment programs'with its support. The employer had also previously accommodated her. So the employer knew or had a reasonable suspicion that the worker had a disability, i.e., an addiction to alcohol. Therefore, the panel said it was clear her conduct in this instance wasn't culpable but was due to her disability. Further, the employer breached the collective agreement by not removing the prior incidents from her record and being influenced by them in deciding to fire her. Thus, termination in this case was excessive and discriminatory, so the panel reinstated the worker conditioned on her participating in a treatment program.

WHY THE WRONG ANSWERS ARE WRONG

A is wrong because a worker's termination for a safety violation can be justified even if no injuries occur as a result. For example, if a worker recklessly operates a forklift and almost runs over a co-worker'but doesn't'he could still be fired for this near miss. In this case, the assistant has a safety-sensitive position as she's responsible for the care of residents. Although she didn't injure anyone while she was drunk, she could easily have, say, dropped a resident. So her conduct, if she was culpable, warrants discipline even though no one luckily was injured by her. But the assistant wasn't culpable because her misconduct was due to her disability. So the employer should accommodate her disability rather than terminate her.

C is wrong because simply showing up to work drunk isn't automatic grounds for termination. Even if an employer has a zero tolerance policy on drugs and alcohol in the workplace, it still must consider all the facts and circumstances before terminating a worker for violating that policy. Here, the assistant admitted drinking and conceded that she shouldn't have come to work in that state. More importantly, her violation was very serious given the nature of her duties. But the employer knows the assistant has a history of alcohol addiction, which is a disability, and this incident was a relapse. Therefore, the employer is obligated to accommodate her disability rather than immediately terminate her for coming to work drunk.

D is wrong because a worker doesn't have to claim addiction for an employer to be obligated to accommodate that disability. If an employer has direct knowledge or a reasonable suspicion that a worker has a disability, including an addiction, the employer should offer her an accommodation. In this case, the fact that the worker didn't blame her conduct on an addiction at the meeting with her manager doesn't matter because the employer already knows of her alcoholism based on her disciplinary history and attendance at

an alcohol treatment program, which it supported. Thus, the employer has reason to know of the assistant's alcohol addiction and should offer her an accommodation despite the fact she didn't request one or claim to be an alcoholic.

***Insider* Says:** For more information about properly disciplining workers, go to the Discipline and Reprisals Compliance Centre.

SHOW YOUR LAWYER

Canadian Union of Public Employees, Local 4777 v. Prince Albert Parkland Health Region, [2016] CanLII 48150 (SK LA), July 27, 2016