

# Case Is a Reminder that Serious Safety Incidents Can Justify Worker's Termination



Disciplining workers can be a tricky business. For example, if you suspend a worker because he refuses to do unsafe work, you're violating the OHS laws by punishing him for exercising his rights under those laws. And even in situations where you can clearly discipline a worker, such as when he's violated a safety rule, determining the appropriate discipline 'Warning' 'Suspension' 'Dismissal' isn't always clear cut. A recent decision by an arbitrator in Ontario is a reminder that serious safety incidents, especially in safety-sensitive workplaces, may justify a worker's firing. Here's a look at that case.

## THE CASE

**What Happened:** A miner was assigned to operate a trolley used to transport cars loaded with ore or waste underground. While operating the trolley, which weighed 20 tonnes, the miner was involved in an incident, resulting in the derailment of three full cars of ore and the trailing trolley. In addition, there was significant damage to the rail line and production was interrupted for four days. As a result, the employer estimated that it incurred more than \$200,000 in costs. Its investigation of the incident concluded that it was caused by the miner's operation of the trolley at excessive speeds. Due

to this 'reckless and careless' conduct, the employer fired the miner. The union argued that the employer didn't have cause to fire him, claiming that a broken rail caused the incident.

**What the Arbitrator Decided:** An Ontario arbitrator upheld the miner's termination.

**The Arbitrator's Reasoning:** The arbitrator first addressed the cause of the incident, noting that it was clear from the photographs that the damage done by the derailment was extensive. He found that the union's theory of how and why the derailment occurred was 'implausible.' Instead, the arbitrator concluded that it was likely that the trolley was traveling 'well in excess' of the maximum allowable speed under the OHS law of 12 km/hour. In fact, the arbitrator was satisfied that the miner was more probably than not driving the trolley at least 19 km/hour and probably faster when it derailed, and that this excessive speed caused the derailment. Operating the trolley at an excessive speed constituted reckless conduct under the circumstances, which warranted discipline, concluded the arbitrator.

As to the appropriate discipline for the miner's reckless conduct, the arbitrator noted the following key facts:

- The miner was a relatively short-service employee;
- He had a safety-related disciplinary record;
- His reckless operation of the underground train, at an excessive speed well above what he knew was the maximum speed permitted, caused a derailment that resulted in substantial damage and significant economic loss to the employer;
- The incident could easily have resulted in serious personal injury or death; and
- The miner refused to acknowledge that his actions had anything to do with the derailment, offer any apology or display any real remorse.

Observing that ‘the underground mine environment is a dangerous and extremely safety-sensitive one,’ the arbitrator refused to substitute lesser discipline than termination [[Sudbury Integrated Nickel Operations v. Sudbury Mine, Mill & Smelter Workers’ Union Unifor, Local 598](#), [2015] CanLII 32018 (ON LA), May 30, 2015].

## **ANALYSIS**

One interesting thing to note about the *Sudbury* case is that no one was hurt or killed in the derailment. Nonetheless, the arbitrator still concluded that it was a serious safety incident based on the extensive property damage done and the economic costs to the mine as a result. Moreover, the incident happened in a safety-sensitive environment. *Bottom line*: Employers may not always be able to fire a worker for causing a serious safety incident. But such infractions’even if they don’t result in injuries or fatalities’will nearly always justify imposing a higher level of discipline than for other types of misconduct. For more on discipline, go to the Discipline and Reprisals Compliance Centre.