Do Four Prior Safety Infractions Justify Termination?



SITUATION

A 69-year-old works as a long-haul truck driver in a heavily regulated and safety-sensitive industry. Within one year, he's involved in five separate incidents in which his conduct violates the employer's policies and federal safety regulations. The employer talks to the driver about the first infraction for failing to stop at a weight scale and completes a Disciplinary Action Form documenting the conversation. His second infraction involves his truck's weight being over the legal limit and leads to another Disciplinary Action Form. The employer labels his third infraction for failing a safety inspection as his 'second offense' and gives him a written warning. After the driver gets a speeding ticket, the employer completes a third Disciplinary Action Form, gives him another written warning and informs him that another violation would result in termination. And this time, the employer has the driver sign the form. He makes excuses for each of these infractions and downplays their importance rather than expressing remorse. Finally, the driver receives a ticket for failing to maintain his daily log book, is fined $400 and put out of service. So the employer terminates him.

QUESTION

Did the employer have just cause to fire the truck driver’

A. No, because he hadn’t been adequately warned he could be fired.

B. No, because he’s over 65, so there’s a presumption his firing was due to age discrimination.

C. Yes, because his pattern of safety violations over a year justified his firing.

D. Yes, because he’d violated industry safety regulations.

ANSWER

C. The driver’s multiple safety violations within a one-year period justified his termination.

EXPLANATION

This hypothetical is based on a labour arbitration under the *Canada Labour Code* in which an arbitrator upheld the termination of a truck driver following his fifth safety violation within a year. The arbitrator emphasized the heavily regulated and safety-sensitive industry in which the employer operated and the negative consequences to the employer’s record and reputation caused by its drivers’ safety infractions. Of the driver’s five infractions, the arbitrator decided that four warranted some form of discipline and each got progressively more serious. The driver was clearly warned after the fourth that future infractions would be grounds for termination. Additionally, the arbitrator wasn’t convinced by the driver’s excuses and efforts to downplay these infractions and their potential for harm or adverse impact on the employer. Each infraction was an indication of his ‘lack of attentiveness or error in judgment in an industry that is highly safety sensitive,’ concluded the arbitrator. Finally, the employer didn’t condone the violations and therefore, the arbitrator found just cause to fire the driver.

WHY THE WRONG ANSWERS ARE WRONG

A is wrong because the driver was, in fact, warned after his speeding violation that termination would result for another infraction. To provide adequate warning of potential termination, an employer must:

- Establish and communicate a performance standard to the worker;
- Indicate when the worker's failing to meet that standard and the potential discipline; and
- Inform the worker that termination could be a consequence of future violations.

In this case, the employer had advised the driver that his conduct violated safety requirements and completed multiple Disciplinary Action Forms documenting these discussions. It also warned him following the speeding incident that future infractions would lead to termination and had the driver sign that form following that incident. Thus, the driver was adequately warned that he could be fired for another infraction.

***Insider* Says:** For more tips on how to issue warnings under a progressive discipline policy, see 'How to Use Progressive Discipline Against Workers Who Violate Safety Rules, Part 1,' March 2005, p. 1.

B is wrong because there's no presumption that firing any worker over the age of 65 is age discrimination. When a worker alleges age discrimination, he bears the burden of proving there was discrimination, that is, that age was a factor in his termination. There was no evidence in this case that would link this driver's age to his termination. For example, the employer never mentioned the driver's age or called him 'old.' Instead, all the evidence clearly indicates his termination was the result of a series of violations of both the employer's safety policies and federal safety regulations.

D is wrong because violating safety or other regulations doesn't automatically warrant termination in all cases. *All* the relevant facts and circumstances must first be considered. For example, if worker fails to wear a hard hat or other PPE required by law for his job, termination may not be warranted if it's his first offense or if there are other facts that mitigate the violation, such as his sincere apology and expressed commitment to comply in the future or evidence the employer failed to consistently enforce the PPE requirement. Here, over the course of just a year, the worker violated five safety requirements imposed by law and the employer's policies, was repeatedly informed his conduct wasn't acceptable to the employer and was warned that termination could result for future violations. Thus, his continuing pattern of safety violations is what justifies his termination.

***Insider* Says**: For more information about discipline and factors relevant to determining what's appropriate, visit the Discipline & Reprisals Compliance Centre.

SHOW YOUR LAWYER

Reale v. Light Speed Logistics Inc., [2015] C.L.A.D. No. 189, Aug. 11, 2015