

Do Threats Made During Angry Outburst Justify Termination?



SITUATION

A trucking company mechanic tags a truck to indicate it needs service, which bars the driver from using the truck until it's repaired. The driver sees the tag and storms into the mechanic's office, swearing, yelling threatening comments and making aggressive physical gestures. As he moves toward the mechanic, another worker steps between the two and escorts the driver out of the office. The driver doesn't actually physically attack the mechanic and his comments don't include any specific violent words or specific threats of physical violence. But the mechanic complains, so the employer investigates. The mechanic says that he felt the driver exhibited 'aggressive body language' and that there was a threat of violence. The driver claims he didn't intend any violence and was just angry because he felt the mechanic was 'picking on him' by placing the tag on his truck. However, other witnesses say they thought violence was about to occur. The driver has no prior disciplinary actions and no history of violent behaviour but the employer fires him for violating its zero tolerance harassment and violence policy, which says violence warrants 'appropriate disciplinary action, including termination of employment.' The union argues termination is excessive.

QUESTION

Was termination of the driver excessive'

- A. No, because the employer had a zero tolerance policy that warns termination could result from violations.
- B. No, because the mechanic felt threatened.
- C. Yes, because it was a first offense, no actual violence occurred and he made only general threats.
- D. Yes, because verbal threats don't violate workplace violence policies.

ANSWER

C. The driver made only general threats and no physical violence actually occurred, so termination for this first offense was excessive.

EXPLANATION

This hypothetical is based on an Alberta arbitration decision that deemed excessive the termination of a driver after he cursed, yelled and acted aggressively toward a co-worker he felt was 'picking on him.' The arbitrator found that the driver had an inexcusable outburst of anger toward a co-worker, who didn't deserve such treatment. But the driver didn't make any specific threats of violence nor did any actual physical violence occur. In addition, it was the driver's first violation and the employer's policy didn't require workers to be automatically terminated for violations. Thus, the arbitrator concluded that a lesser form of discipline would be more appropriate than termination.

WHY THE WRONG ANSWERS ARE WRONG

A is wrong because although the employer did have a zero tolerance workplace violence policy that indicated violations could result in termination, that policy didn't require termination for any and all violations. Deeming a policy 'zero

tolerance' doesn't mean that any violation results in termination or that termination's the only discipline available. The policy can require *some* discipline for *any* violation but the individual circumstances of each incident must be considered in determining what *level* of discipline is appropriate. In this case, it was a first offense and the driver had no prior history of violence. His words also didn't convey a specific threat. Therefore, termination was excessive here.

Insider Says: For more information about zero tolerance in workplace violence policies, see ['Workplace Violence: Why Zero Tolerance is Just a Myth.'](#)

B is wrong because the mechanic's subjective opinion isn't a definitive factor justifying termination as the appropriate discipline. Although the mechanic's perception of a threat is relevant and could be a factor in determining the appropriate discipline, it's not the only factor. Additionally, simply because an individual says he felt threatened doesn't mean it was reasonable for someone in those circumstances to perceive a threat. Here, there were witnesses who similarly believed actual violence might occur, so the mechanic's perception is likely to have been reasonable. But there were other mitigating factors in this case that favored imposition of a lesser penalty than termination.

D is wrong because verbal threats alone *can* constitute violence in violation of workplace harassment and violence policies. In fact, some jurisdiction's OHS laws specifically include verbal threats in their definition of 'violence.' For example, Ontario's *OHS Act* specifically states that verbal threats can be considered violence. So a genuine, credible and specific threat directed at a particular person could be grounds for termination. In this case, however, although the threats were directed at the mechanic, they were general in nature rather than specific threats and the other circumstances indicated there wasn't a strong threat of

physical violence.

Insider Says: For further discussion about when you can fire workers for verbal threats, see [‘Are Workers’ Threats ‘Just Cause’ for Termination’](#) July 2008, p. 1. And for more information and resources regarding workplace violence, visit the [Workplace Violence Compliance Centre](#).

SHOW YOUR LAWYER

[*Waste Management of Canada v. CAW, Local 4050*](#), [2013] CanLII 71953 (AB HRC), Nov. 1, 2013