

Does Tampering with Critical Safety Device Justify Termination?



SITUATION

Every train in a city's transportation system has a deadman override mechanism that consists of a floor pedal and a button on the cab's dash. Either the button or the pedal must be engaged by the operator at all times for the train to run. If the operator doesn't engage either the button or pedal, the override function will stop the train. After a train operator ends his shift, a co-worker finds a first aid kit jammed between the deadman override button and the dash, which allows the train to run without the operator and prevents the deadman override from engaging in an emergency. No injuries to any individuals or damage resulted from the tampering. But the employer's policies warn that tampering with this safety feature can result in discipline, including termination. When confronted, the operator denies jamming the button. Later, however, he admits jamming it but then recants again and claims his union representative advised him to confess. However, the employer determines that, at the very least, the operator would've seen the first aid kit jamming the override button even if he wasn't the one to have put it there. He has no prior disciplinary record, but the employer terminates him anyway.

QUESTION

Was the operator's termination appropriate'

- A. No, because no one was harmed and no damage occurred.
- B. No, because this infraction was his first safety offense and so progressive discipline was required.
- C. Yes, because his conduct had potentially fatal consequences.
- D. Yes, because the employer's policy warned termination could result.

ANSWERC. The employer was justified in terminating the train operator because of the potentially dire consequences of his conduct.

EXPLANATION

This hypothetical is based on an Alberta grievance arbitration that upheld the termination of a train operator based on circumstantial evidence that indicated he tampered with a deadman override button. Tampering with the deadman override function was perhaps the most major safety violation on a train, the arbitrator explained. The arbitrator also found that the operator wasn't credible because he changed his story, first denying, then admitting and then denying again that he tampered with the button. Additionally, regardless of his denials, the arbitrator found it improbable that any other person had tampered with the button. Even if the operator hadn't been the culprit, he should've seen the button was jammed and removed the first aid kit himself. Thus he drove the train knowing the button had been disabled and this act alone was serious misconduct. Most importantly, the potentially deadly consequences of tampering with the safety device justified termination to deter similar misconduct and enforce standards required for safety-sensitive positions, concluded the arbitrator.

WHY THE WRONG ANSWERS ARE WRONG

A is wrong because it isn't necessary for a safety infraction to actually cause injury or property damage for it to warrant disciplinary action. In fact, an employer could have difficulty demonstrating it exercises due diligence if it *doesn't* impose discipline for workers' violations of safety rules that result in near misses and the same misconduct occurs again later, resulting in injury (see, '[Near Misses: Should You Discipline for Violations that Cause a Near Miss](#)'). In this case, although no one was injured and no damage occurred due to the tampering with the safety device, the *potential* consequences were so significant—potential loss of life of passengers and workers—that termination was warranted to serve as a deterrent to future similar misconduct by other workers.

B is wrong because progressive discipline isn't mandatory for every safety infraction or misconduct. In general, employers should impose discipline that gets increasingly harsher the more infractions an employee commits. A typical progression is from a warning to a suspension and ultimately termination. But some conduct can be so egregious that it warrants the most severe discipline, termination, after just one incident. Here, as we've said, the potential consequences of tampering or disabling a deadman override function on a train are so significant that even a first offense justified termination. So this train operator's termination was justified for such a serious infraction of safety rules despite his lack of any prior misconduct.

Insider Says: For more information about progressive discipline, visit the '[Discipline & Reprisals Compliance Centre](#).'

D is wrong because termination isn't warranted simply because the safety rules indicate a violation of the rules 'could' result in termination. A worker should be made aware of the

possible consequences of violations of the employer's safety rules. And a failure to notify a worker that an infraction could result in termination may undermine that worker's subsequent firing. However, indicating that termination is possible for certain misconduct doesn't always justify a firing for such misconduct. The circumstances surrounding the misconduct, its seriousness and other factors must still be considered. Here, for example, if the potential for harm due to the safety device's disablement wasn't so significant, perhaps the operator's clean disciplinary history might've warranted imposing discipline short of termination.

SHOW YOUR LAWYER

Calgary (City) v. Amalgamated Transit Union, Local 583 (Khan Grievance), [2016] A.G.A.A. No. 4, March 11, 2016