Does Zoo Worker’s Release of Gorillas Justify Termination?



SITUATION

A zookeeper cleaning and preparing a gorilla enclosure fails to properly lock an enclosure door in violation of safety protocols. Some gorillas escape the enclosure into adjacent areas. The zookeeper’s able to return the gorillas to the enclosure before they encounter any other people. But he’s injured when a large silverback gorilla charges, bites and drags him. The zookeeper, who specializes in gorillas, admits that he thought he’d fully locked the enclosure door but must’ve been mistaken and accepts full responsibility for the error. In the past, he received a four-day suspension after leaving a hose running in a crocodile enclosure and failing to secure that enclosure, causing flooding and risk to the crocodiles. According to the zoo’s progressive discipline policy, the four-day suspension is the last level of discipline prior to termination. So the zoo fires the zookeeper. The union argues termination is too severe because the zookeeper has a 25-year history of employment with the zoo, the error was inadvertent and discipline will be career-ending because only two other zoos in Canada have gorillas. The employer argues that the violation was serious and endangered other zoo workers, contractors who were in the area, visitors and the gorillas themselves.

QUESTION

Was the zookeeper’s termination justified’

A. Yes, because of the significant risk caused by the serious safety violation.

B. Yes, because termination is the next step in the progressive discipline policy.

C. No, because no one was seriously harmed.

D. No, because he was a long-time employee, expressed remorse and termination was career-ending.

ANSWER

A. The zookeeper’s safety infraction was so serious and the potential consequences so significant that the employer was justified in terminating the zookeeper.

EXPLANATION

This hypothetical is based on an Alberta arbitration decision that upheld termination of a zookeeper who failed to lock a gorilla enclosure in violation of safety requirements. The escape of the gorillas endangered other zoo employees, contractors who were working in the area, visitors and the gorillas themselves. The employer argued it couldn’t trust the worker with the animals. The arbitrator agreed, describing the zookeeper’s failure to secure the door to the exhibit as ‘a very serious safety violation.’ Although he was a long-time employee who’d taken responsibility for the incident, his record included prior safety violations. The arbitrator also noted that the zookeeper worked in a ‘high risk’ environment, his error breached a fundamental duty and the potential consequences were severe. Thus, his safety violation was ‘among the most severe workplace offenses.’ Therefore, despite his lengthy service of 25 years and the fact that termination could be career-ending, the arbitrator found firing the zookeeper wasn’t unreasonable given the prior incident and the

zoo's obligation to provide a safe environment for employees, animals and visitors.

WHY THE WRONG ANSWERS ARE WRONG

B is wrong because a progressive discipline policy doesn't automatically require the next step to be an increase in discipline. Even with progressive discipline policies in which discipline typically increases from warnings to suspensions and ultimately termination, the facts and circumstances of each incident must still be considered. Successive disciplinary incidents that are minor or completely unrelated to prior incidents may warrant the same or even a lesser level of discipline. In this case, however, the zookeeper's current safety infraction is similar to the last (both involved unsecured enclosures) and the potential consequences of the latest infraction are even more significant than the last incident. So it wasn't unreasonable for the employer to progress to a higher level of discipline and fire the zookeeper.

***Insider Says*:** For more information about progressive discipline, see our two-part series focusing on the basics of applying progressive discipline and properly documenting your efforts to support your disciplinary decisions

C is wrong because the fact no one other than the zookeeper was harmed doesn't diminish the seriousness of his safety infraction or the potential consequences that might have resulted. Simply because serious harm didn't actually occur doesn't mean lesser discipline should be imposed. In fact, workers should be disciplined for 'near misses' in which *no* injury or damage occurs. Here, although the zookeeper sustained minor injuries, the potential for injury or even death to another human or to one of the gorillas was very real. Arguably, the zoo was simply lucky nothing serious occurred. And luck doesn't justify lesser discipline for a serious safety violation.

D is wrong because although mitigating factors such as length of service, remorse and impact of discipline on the worker are factors to consider in imposing discipline, they aren't the only factors. All facts and circumstances must be considered. Here, the potential harm that could've been caused was significant'the error was life-threatening. And this incident was the second time the zookeeper had committed the same type of serious infraction. Thus, the mitigating factors cited didn't outweigh the aggravating factors.

***Insider Says*:** For more information about discipline for safety infractions, visit the Discipline & Reprisals Compliance Centre.

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Calgary (City) v Canadian Union of Public Employees, Local 37, [2015] CanLII 15352 (AB GAA), March 17, 2015