

How Did Employer Mishandle Workplace Violence Incident?



SITUATION

A worker hits a co-worker in the head with his lunch pail and calls him 'stupid.' The victim suffers a minor injury and is embarrassed because the incident happens in front of his peers. The worker has a history of anger management problems, bullying in the workplace, making critical and disrespectful remarks to co-workers and using profanity. In fact, he has a prior suspension for swearing at a supervisor. However, the victim considers the worker a friend and has socialized outside of work with him. A supervisor hears about the incident and immediately starts an investigation even before the victim formally reports it. The worker comes to work the next day and apologizes to the victim. During the investigation, he downplays but does admit the conduct and the victim doesn't indicate he's fearful of the worker. The employer assigns the worker and victim to different shifts while the investigation proceeds. Following an investigation in which a supervisor separately interviews the two workers involved in the incident as well as witnesses, the employer suspends the worker for five days for violating its harassment and violence policy, which is more than 10 years old and doesn't cover the latest requirements in the province's OHS law.

QUESTION

What did the employer do wrong?

- A. It should've anticipated and prevented the incident.
- B. It should've updated its policy addressing harassment and workplace violence.
- C. Its investigation was inadequate.
- D. It should've terminated the worker.

ANSWER

B. The employer should've updated its workplace harassment and violence policy to include all required elements under the OHS law.

EXPLANATION

This hypothetical is based on Saskatchewan labour arbitration decision. In that case, the injured victim's union brought a grievance seeking damages for lost work time, claiming the employer failed to comply with the collective agreement and take action to protect the victim. The arbitrator ruled that despite the worker's past history of verbal outbursts and bullying, the violence wasn't foreseeable. So the employer didn't violate the collective agreement by failing to protect the victim. However, the arbitrator found that the employer *did* violate the collective agreement by failing to keep its harassment and workplace violence policy current and compliant with the OHS law's requirements. It therefore ordered the employer to update its policy to include all the elements required by the *OHS Act* and to properly train workers on the new policy.

WHY THE WRONG ANSWERS ARE WRONG

A is wrong because the worker's past history of angry outbursts and disrespectful attitude toward other workers didn't mean the employer should've anticipated he would become physically violent. The worker's prior bad behaviour was all verbal, such as the use of profanity and critical comments to others in the workplace. There was no evidence he had potential for *physical* violence. So his physical assault of a co-worker wasn't foreseeable. Therefore, the employer didn't have a duty to take action to prevent a violent act it couldn't have predicted would occur.

Insider Says: For more information about dealing with workplace violence, see the Workplace Violence Compliance Centre.

C is wrong because the employer *did* adequately investigate the incident. For example, a supervisor promptly began the process for an investigation even before the victim formally reported the incident. The investigation included separate interviews of the two parties involved and all witnesses. And the employer immediately changed the workers' shifts so they wouldn't be working together. Thus, the employer's investigation was prompt, unbiased and gathered appropriate evidence from all parties with knowledge of the incident.

Insider Says: For more on proper investigations, see '9 Traps to Avoid When Investigating Workplace Violence Complaints,' March 2010, p. 1.

D is wrong because termination isn't always justified for every incident of workplace violence. The entire circumstances must be considered. In this case, the worker didn't have a prior history of violence. Additionally, he apologized to the victim immediately and voluntarily, and he cooperated with the investigation. The victim also didn't express any fear of the worker. And the injury he'd suffered was minor. Therefore, for this first offense of a violent nature, the employer's suspension of the worker was an appropriate disciplinary action.

SHOW YOUR LAWYER

Shaw Pipe Protection Ltd. v. Construction and General Workers' Local Union No 180, [2013] CanLII 94439 (SK LA), Oct. 7, 2013