

How Should Worker Have Been Disciplined for Repeatedly Failing to Wear Hardhat?



SITUATION

A manufacturing company revises its safety policy to require hardhats in all work areas except the office. The company also has a progressive discipline policy that was negotiated as part of its collective agreement with the union. The policy calls for verbal and written warnings and suspension before termination. A worker fails to wear his hardhat and receives repeated verbal warnings. However, he continues to refuse to wear the hardhat, complaining that the requirement is ridiculous and that the hat obstructs his vision, makes him hot and isn't necessary while he's operating a forklift. So the worker receives a written warning that says he could be fired for further infractions, yet still refuses to wear the hardhat. He admits he's 'stupid and pigheaded' about his objections and intends to push the boundaries on this requirement. Otherwise, however, he has a good work record and no other disciplinary issues. The company fires the worker for his consistent refusal to wear a hardhat. The worker files a grievance, arguing he should've been suspended first.

QUESTION

Did the company improperly fire the worker'

- A. Yes, because you can never skip steps in a progressive discipline policy.
- B. Yes, because a suspension might've prompted the worker to change his behaviour.
- C. No, because the worker had been warned he could be fired.
- D. No, because safety infractions nearly always merit termination.

ANSWER

B. Giving the worker one more chance by suspending him was called for by the company's policy and might have changed his conduct.

EXPLANATION

This hypothetical is based on a decision by an Alberta arbitrator, who concluded that a manufacturing company should've followed its progressive discipline process and not skipped the suspension step before firing a worker for repeated safety infractions. Despite the worker's admittedly pigheaded attitude and consistent failure to wear a hardhat in all required work areas, the arbitrator said there was no evidence that suspending him would've been pointless or ineffective. Skipping the suspension step would only be justified, the arbitrator said, if there were 'some out of the ordinary or compelling circumstances,' which there weren't in this case. The arbitrator noted that the union and company had bargained for the progressive discipline policy and that the worker had an otherwise good employment record. Thus, a suspension might've given him the chance to change his conduct. So the arbitrator substituted a five-day suspension for the termination.

WHY THE WRONG ANSWERS ARE WRONG

A is wrong because employers *can* skip steps in a progressive discipline policy under certain circumstances. For example, the policy itself may indicate that steps can be skipped and termination can be justified for even a first offense if the misconduct is serious enough. Even without such express permission, very egregious or dangerous conduct could justify immediate termination, despite progressive discipline policies. Here, the conduct wasn't so egregious or dangerous. No one has been injured and the worker otherwise has a good work record. So departing from the established policy wasn't warranted.

Insider Says: For more information on progressive discipline, see our Discipline and Reprisals Compliance Centre.

C is wrong because although the worker was indeed warned he could be fired, that warning doesn't mean termination is necessarily justified. An employer must have sufficient evidence to justify a termination for cause—particularly when there's a negotiated progressive discipline policy requiring certain disciplinary steps before termination. And the theory behind progressive discipline is to allow for education and rehabilitation of an otherwise valuable employee. In this case, the worker had a good work record and no other disciplinary issues. There was no compelling, out-of-the-ordinary circumstances that indicated there was no hope of rehabilitating him. So going straight from a written warning to termination wasn't justified.

D is wrong because not all safety infractions merit immediate termination. Minor safety infractions aren't grounds to terminate a worker. Factors to consider when determining the type of discipline most appropriate include, the severity of the safety infraction, the consequences of that infraction—that is, whether the worker or another worker suffered injury—how the employer handled similar violations in the past, whether the worker took responsibility for his violation and his prior safety infractions. Here, the worker was repeatedly warned for failure to comply with the hardhat requirement but no one had been injured and the worker had an otherwise good record with the company. So termination, in this case, wasn't appropriate for these safety infractions.

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OEM Remanufacturing v. Christian Labour Association of Canada, [2014] CanLII 228 (AB GAA), Jan. 6, 2014