

# Is Cell Phone Use While Driving Just Cause for Termination?



## SITUATION

An employer installs cameras in the cabs of its trucks to record dangerous events and monitor compliance with company policies. The drivers know that they're being recorded. One such camera records a truck driver using his cell phone while pulling away from gas pumps at a truck stop. The recording shows that for eight seconds his eyes aren't on the road and at some points he's using both hands to hold the phone. The employer has a policy forbidding use of cell phones while the vehicle's moving and provincial law likewise bars use of cell phones while driving. The truck driver has four prior disciplinary measures on his record, including a three-day suspension for the most recent violation. None of the prior disciplinary matters involves cell phone usage but they do involve failure to follow rules or direct orders from superiors. Additionally, records indicate that, in each prior disciplinary matter, the driver claimed not to be at fault, downplayed the seriousness of the violation or blamed others. During an investigation of this infraction, the driver's unable to say what he would do differently in the future and emphasizes that the truck stop was empty and no one else was around to be injured. The employer terminates him, which the union argues is excessive.

## QUESTION

**Was employer's termination of the driver justified'**

- A. No, because the employer's recording of the driver was an illegal invasion of privacy.
- B. No, because his prior discipline was for unrelated offenses.
- C. Yes, because the driver's cell phone use violated the law.

D. Yes, because the driver had a record of disciplinary issues and showed no remorse.

## **ANSWER**

**D. The employer was justified in firing the driver because he had multiple prior disciplinary offenses and didn't accept fault or indicate an intent to comply with rules.**

## **EXPLANATION**

This hypothetical is based on an Alberta arbitration that upheld the termination of a truck driver who was caught on camera using his phone while slowly pulling away from gas pumps. The arbitrator found the driver's conduct was unsafe but not egregious because he wasn't on a public road, was moving very slowly and there were no pedestrians or other moving vehicles nearby. However, the arbitrator also determined that the driver didn't show remorse, downplayed the danger and similarly didn't accept fault here or in prior disciplinary matters. Therefore, the arbitrator questioned whether additional discipline would change the driver's behaviour and make him more compliant with rules. Finding progressive discipline had been appropriately implemented, the arbitrator concluded the employer had just cause to fire the driver.

## **WHY THE WRONG ANSWERS ARE WRONG**

**A is wrong** because employers can conduct video surveillance of workers under certain circumstances provided they warn workers that they're under surveillance, and the use is reasonable and necessary to meet a legitimate employer need. Particularly if workers work alone, like this truck driver, video surveillance can have legitimate purposes, such as protecting workers' safety and ensuring compliance with safety rules and policies. When there's no less intrusive way to meet a legitimate employer need, the employer's use of video surveillance may be considered reasonable and not a violation of workers' privacy rights. Here, the employer has a legitimate need for surveillance of this driver, who worked alone and was aware of the surveillance. So it wasn't illegal to record him and the employer could rely on the videotape in disciplining him.

**B is wrong** because progressive discipline doesn't require that all the prior infractions leading to discipline be identical violations or even violations of a similar type. If multiple disciplinary actions are triggered by unrelated conduct but such conduct indicates the worker's unlikely to follow company rules or supervisor's instructions, an employer may be justified in terminating the employment relationship. Here, the driver had a history of committing violations yet refusing to accept fault for his actions and, in fact, tried to place blame elsewhere or downplay the seriousness of the violations. This pattern of behaviour gives the employer no assurance that the driver will try to avoid future violations and thus justifies his termination for violating the cell phone policy.

**Insider Says:** For more information about disciplining workers, go to the Discipline & Reprisals Compliance Centre.

**C is wrong** because conduct that violates the law doesn't automatically warrant

termination. Otherwise, workers could be fired if they simply received a parking ticket or a speeding ticket. Whether a worker violated the law can be a significant factor in determining appropriate discipline and may be enough on its own to justify termination, depending on all the circumstances, including the nature of the violation, the worker's duties and the relationship between the two. Here, the driver's conduct violated not only provincial law but also company policy and was directly related to how safely he performed his employment duties as a truck driver. However, the driver's termination was justified not because he broke the law but because of his refusal to accept fault and his history of repeatedly disregarding rules and refusing to follow orders.

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*BFI Canada Inc. v. General Teamsters Union, Local 362 (Dismissal Grievance)*,  
[2015] A.G.A.A. No. 5, Feb. 12, 2015