Is Drinking on the Job Just Cause for Termination?



SITUATION

An auto dealer's manager with many years' experience in the industry oversees 10 employees, runs the dealership and sells vehicles. Under his management, the dealership increases revenue. Traveling to monthly meetings at a regional office, the manager sometimes uses a company vehicle and stops at a nearby restaurant, having a glass of wine with lunch. Company executives question him after other workers report smelling alcohol on his breath. But he shows no signs of impairment. Still, the company fires the manager, saying co-workers and customers have complained about his alcohol use. The company has a zero tolerance alcohol policy and company executives claim they told the manager about the policy. However, their memories of the conversations are vague and conflict with the manager's version. And the policy wasn't in writing or included in any employment manuals until *after* his termination. The manager freely admits to occasionally having a glass of wine at lunch or after work with co-workers but says he never drank on company premises and was only told he should be responsible about alcohol use. The manager asserts he was never impaired at work and the company can present no evidence of his impairment. So he claims the termination lacks just cause.

QUESTION

Was the manager’s termination justified’

A. No, because his drinking didn’t affect his work or destroy the employment relationship.

B. No, because he wasn’t warned that he could be terminated for drinking on the job.

C. Yes, because the company has a zero tolerance policy on alcohol.

D. Yes, because drinking alcohol during work hours is always grounds for termination.

ANSWER

A. The manager’s termination wasn’t justified because there was no evidence he was impaired at work or that the employment relationship was damaged.

EXPLANATION

This hypothetical is based on an Ontario court decision in which the court ruled an auto dealer’s termination of a manager for consuming alcohol during work hours was a disproportionate response. The court explained that the employer didn’t provide sufficient evidence that the manager’s consumption of a glass of wine or two over lunch impaired him or affected his ability to meet his work responsibilities. Instead, it merely produced testimony of co-workers who said they smelled alcohol on his breath and claimed he was impaired but provided no specifics facts to support that allegation. The court found this evidence to be vague and without sufficient detail. Additionally, the manager had a good work record and the company admitted he was a trusted employee. Therefore, termination was disproportionate to his minor misconduct and a suspension would’ve been more appropriate, concluded the court.

WHY THE WRONG ANSWERS ARE WRONG

B is wrong because in this case, there are several facts and circumstances that render the termination unjustified'not just the lack of a warning. It's good practice to warn workers of the possible consequences for violations of company policies. But if circumstances are sufficiently egregious, a worker can be fired without warning. For example, if a worker who operates equipment in a safety-sensitive workplace shows up to work visibly impaired and causes a safety incident, injuring co-workers, there may be grounds for termination without warning. In this case, however, the circumstances weren't egregious and, in fact, there's little evidence that the manager was actually impaired at all or that his having a drink at lunch had any effect on his ability to do his job. It's those additional factors rather than the mere lack of warning that render his termination a disproportionate response to the drinking during work hours.

C is wrong because workers can't automatically be fired for violating any company policy'even a so-called zero tolerance policy. Instead, all the facts and circumstances surrounding the worker's behaviour must be considered. Additionally, the employer must notify workers of the zero tolerance policy's existence before it can impose any discipline on them for violating that policy. In this case, there's no evidence of what the alleged zero tolerance policy contained or that it was ever presented to the manager. And because the policy wasn't in writing, such policy was ambiguous at best. Therefore, termination on the basis of violating an alleged zero tolerance policy isn't supported by the facts of this case.

***Insider* Says:** For more information about enforcing zero tolerance policies, see 'Discipline for Safety Infractions & 'Zero Tolerance.''

D is wrong because drinking on the job isn't always grounds for termination, by itself. In some cases, it may be acceptable to have alcohol during work hours or on work

premises. For example, the employer might permit drinking alcohol at a company party held on the premises during work hours. Additionally, for some jobs, such as salesmen, drinking while socializing with customers and clients may be acceptable conduct. Therefore, it’s inaccurate to say that drinking at work or during work hours is never permissible.

SHOW YOUR LAWYER

Volchoff v. Wright Auto Sales Inc., [2015] ONSC 8029 (CanLII), Dec. 30, 2015