

# Is Nearly Running over a Co-Worker Grounds for Termination?



## SITUATION

Several tractor trailer drivers are at loading bays while their trucks are being loaded and unloaded. One worker is removing placards from his truck while wearing highly visible reflective clothing. Another driver makes a turn at a high speed and maneuvers very close to the worker, leaving him upset and shaking. The pavement's covered with snow and slush, which reveal tire tracks demonstrating that the truck came within a few feet of the worker. Another co-worker witnesses the event, takes pictures of the tire tracks and files a report, claiming the driver recklessly and at high speed drove dangerously close to the worker. During the employer's investigation of the near miss, the driver says he saw the worker removing the placards before he started his truck but didn't see the worker at all while maneuvering around the bay. He admits he may have been exceeding the speed limit for that location but expresses no remorse, saying he doesn't feel he did anything wrong. The driver has a 30-year history with the employer and a recent suspension for workplace violence.

## QUESTION

**Can the employer fire the driver'**

- A. Yes, because he has a prior safety infraction.
- B. Yes, because he committed a serious safety violation and shows no remorse.
- C. No, because his long history with the company merits lesser discipline.
- D. No, because no one was injured.

## ANSWER

**B. The driver committed a serious safety violation and showed no remorse, giving the employer no confidence the conduct won't be repeated and thus justifying his firing.**

## EXPLANATION

This scenario is based on an Ontario labour arbitration decision that upheld termination of a tractor trailer driver for violating safety policy by driving recklessly in slushy conditions and causing a near miss. Despite some debate about whether the driver saw the worker when he drove very near him, the arbitrator said termination was warranted. If he did, in fact, see this worker while driving in the loading bay area, his conduct was a willful breach of safety policy. Even if he failed to see the worker, the arbitrator said he was still grossly negligent in operating his vehicle'especially because he acknowledged seeing the worker near the truck before starting out and so should've known the worker was still likely in the area and at risk. Plus, the worker was wearing highly visible, reflective clothing. Moreover, although the driver had been an employee for more than 30 years, he didn't apologize, express remorse or indicate that he'd conduct himself differently in the future. So the employer had no confidence such behaviour wouldn't be repeated and was justified in firing him.

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

**A is wrong** because although the driver's prior suspension is a factor to consider and progressive discipline does generally support increasing discipline for subsequent offenses, one suspension doesn't automatically justify termination for the next infraction. All the facts and circumstances must be considered. For example, if the prior suspension was for a very different type of offense or occurred a long time ago, it may not justify termination for a subsequent offense. Here, however, the driver's suspension was recent and related to workplace violence. The current allegations are similar in that the driver is alleged to have used a vehicle to potentially harm a co-worker's violent and threatening act. The potentially life-threatening consequences of that conduct, even without the prior suspension, would justify termination. Therefore, the totality of the circumstances'not just the one suspension'are what support termination in this case.

**C is wrong** because simply having a long history with an employer, even a completely unblemished history, doesn't mitigate a very serious safety infraction that has potentially life-threatening consequences. Length of employment is among the factors that should be considered in determining appropriate discipline for a safety infraction. In general, long-term employees are given more slack than newer employees. In this case, other factors such as the driver's prior and recent suspension, his lack of remorse, the seriousness of his conduct and its potential consequences outweigh his 30 years of history with the employer. Therefore, such service doesn't provide sufficient mitigation to preclude termination.

**D is wrong** because a worker can be terminated for a safety violation even if no injuries occur as a result. Yes, a safety infraction that results in an injury, fatality or serious property damage is likely to result in more severe discipline than a near miss. However, when a worker's behaviour has the potential for serious, even life-threatening injury, termination may be warranted even if no one is injured. Here, operating large tractor trailers is a safety sensitive task. But the driver operated his truck recklessly by speeding in poor road conditions. Although he didn't hit the worker, the outcome could've been much different and the worker could've been seriously injured or killed. In any event, the worker was justifiably upset and shaken by this incident. So given the willfulness of the driver's conduct, the danger it presented and his

lack of remorse, the fact he was fortunate that he didn't injure anyone doesn't make termination unreasonable.

***Insider Says:*** For more information on properly disciplining workers, go to the [Discipline and Reprisals Compliance Centre](#).

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*Coca-Cola Refreshments Canada Co. Brampton Plant v. Unifor Local 973*, [2016] CanLII 57978 (ON LA), Sept. 1, 2016