

# Is Punching a Customer Just Cause for Termination?



## SITUATION

A driver for a small family-owned trucking company makes a delivery to a customer's workplace. While he's there, he gets into an argument with one of the customer's employees, who he punches in the face, knocking out a tooth. The customer complains to the company and asks it not to assign this driver to its workplace again. Referencing the workplace violence and harassment policy, the company suspends the driver indefinitely until the company owners return from vacation and can determine the appropriate discipline. But a few days later, a company dispatcher calls the driver back to work because it needs drivers. Following his return to work, however, another customer complains about his attitude and also asks the company not to send the driver to its workplace. When the owners return from vacation, they fire the driver based on the fight, the latest customer complaint and his prior record. (The driver has a lengthy disciplinary record, including a two-day suspension for disobedience and mistreatment of customers, and a warning for threatening a customer's employee with a knife.) But the termination letter only references the latest customer complaint.

## QUESTION

**Does the company have just cause to terminate the driver'**

- A. Yes, because the customer complaint cited in the termination letter is sufficient grounds to justify his firing.
- B. Yes, because he punched a customer's employee.
- C. No, because the employer didn't properly impose progressive discipline first.
- D. No, because the punching incident didn't happen in the company's workplace.

**ANSWER**

**B. The company had just cause to terminate the driver because he punched another worker in the face.**

## **EXPLANATION**

This hypothetical is based on an Ontario labour arbitration decision involving the firing of a driver who punched a customer's employee, causing that employee to lose a tooth. This conduct violated the company's workplace violence policy. The driver had a history of other disciplinary issues, including a threat of violence. The company's termination letter only mentioned a customer complaint about the driver's attitude that wasn't investigated and occurred after the fight. But the arbitrator found the company's evidence demonstrated that the termination decision was motivated by not only the complaint mentioned in the termination letter but also the punching of the employee and prior disciplinary problems. The arbitrator noted that when the driver was suspended after the fight, he was notified that discipline concerning the punch was to be determined at a later date. And the punching incident, by itself, was sufficient to provide just cause to terminate, concluded the arbitrator.

**Insider Says:** For more information about workplace violence, go to the Workplace Violence Compliance Centre.

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

**A is wrong** because the customer complaint cited in the termination letter would be unlikely to be sufficient to justify termination on its own. Customer complaints about a worker would certainly warrant some form of discipline, depending on the nature of the complaint and the worker's prior disciplinary record. Here, the latest complaint about the driver's attitude was minor. So given his prior record, the company would probably be justified in, say, issuing him a warning because of it. But as the *sole grounds* for termination, it's unlikely that the second customer complaint is sufficient.

**C is wrong** because an employer isn't always obligated to impose progressive discipline, depending on the specific circumstances. In general, employers should use progressive discipline in which the type of penalty for an infraction increases for subsequent infractions. The typical progression is verbal warning, written warning, suspension and finally termination. The idea is to give workers a chance to improve their conduct before being fired. But some incidents, particularly those involving workplace violence, can be so significant that they justify immediate termination on their own. Here, the driver physically assaulted the customer's employee so seriously that the individual lost a tooth. That act of violence alone would certainly justify skipping steps in progressive discipline and, given the driver's history, could be the basis for his termination.

**Insider Says:** For more information on progressive discipline and other disciplinary issues, go to the Discipline & Reprisals Compliance Centre.

**D is wrong** because workers can be disciplined for their conduct on the job wherever that conduct occurs. In most cases, workers do their jobs in the employer's workplace. But in some circumstances, workers such as delivery men, sales representatives and repair technicians perform their duties elsewhere. However, as long as workers are engaged in work duties, employers have the right

to impose appropriate discipline on them, regardless of where the misconduct occurs. In this case, the driver was at a customer's workplace when he punched the employee in the face. He was there because he was making a delivery as a part of his job. Thus, the company is justified in disciplining him for engaging in workplace violence even though the assault occurred outside of its workplace.

#### **SHOW YOUR LAWYER**

*Warner v. Moore Brothers Transport Ltd.*, [2014] CanLII 54390 (ON LA), Sept. 19, 2014