Is Termination Excessive for First, Inadvertent Lockout Violation?



SITUATION

A millwright in a lumber mill comes to the aid of a machine operator, who needs help dealing with a problem. The millwright enters a restricted area and approaches the line from a ‘helper side’ opposite the operator. He locks out power to the three lockout boxes on the helper side and steps over live chains to cross the line and reach the operator. On reaching the operator’s side, he realizes there are four more lockout boxes on this side and one isn’t locked out. So he locks out that box. His supervisor had watched him cross the live chains without locking out all the boxes first and confronts him, saying he violated lockout policy. The millwright admits violating policy and takes full responsibility, but says it was just a mistake and asks if there was really any harm done because no one was injured. He explains that he usually enters only on the operator side and didn’t carefully read the instructions on the lockout boxes on the helper side. Although he has been with the company for 27 years, he has just two prior infractions’a suspension for smoking in a prohibited area and another for failing to report to work. Believing he didn’t take the violation seriously and was indifferent to safety, the mill fires him. The millwright argues firing is excessive because other workers failing to lockout weren’t terminated.

QUESTION

Is termination of the millwright for this lockout violation excessive’

A. No, because it’s a serious safety violation with grave potential consequences.

B. No, because he had two prior suspensions.

C. Yes, because it was a mistake rather than an intentional violation, his prior discipline was for unrelated infractions and others weren’t fired for the same violation.

D. Yes, because no one was injured by his violation.

ANSWER

C. The millwright’s termination was excessive because he’d just made a mistake, which he admitted, his prior suspensions were for unrelated issues and his termination wasn’t in keeping with discipline of others for the same violation.

EXPLANATION

This hypothetical is based on an Alberta arbitration decision, ruling that a millwright’s termination for one lockout violation was excessive because he’d made a careless error, which he admitted. Although his misconduct was serious, it wasn’t intentional. In addition, there was no evidence he was indifferent to safety and, in fact, other than two unrelated prior suspensions, he had a record of 27 years on the job without injury or incident. The arbitrator said the employer’s conclusion that the millwright acted intentionally or had a disregard for safety because he expressed the opinion that no harm was done was ‘speculative’ and ‘didn’t necessarily reflect his state of mind when he crossed the live chains.’ The millwright was honest in the subsequent investigation and accepted responsibility. Also, most other workers who committed lockout violations received either a written warning

or suspension. Only three were fired and they were short-term employees with multiple disciplinary matters all within one year. Finding the millwright's violation was due to 'a momentary lapse in judgment,' the arbitrator concluded that termination was excessive, finding that an eight-day suspension was more appropriate.

WHY THE WRONG ANSWERS ARE WRONG

A is wrong because the nature of the violation and potential consequences are just one factor to consider when imposing discipline for a safety violation. Although a life-threatening error can be serious enough to justify termination for just one violation'even when no harm actually results'such potential consequences don't mandate termination. Other factors may mitigate against the most severe form of discipline, such as the worker's response to the incident, his taking responsibility for his conduct and a clean prior record. In this case, the millwright had a 27-year history with the mill and just two unrelated infractions, he admitted his mistake and accepted responsibility, and he provided a reasonable explanation for why it occurred. So the employer has no reasonable cause to believe he has no regard for safety and will commit similar violations in the future. Thus, termination is excessive.

***Insider* Says:** For more information about determining appropriate discipline, visit the Discipline & Reprisals Compliance Centre.

B is wrong because although progressive discipline does call for increasingly significant disciplinary action for successive infractions, it doesn't mean termination must always follow prior suspensions. *All* relevant facts and circumstances must be considered any time discipline is imposed. Here, the millwright's prior suspensions were for reasons unrelated to lockout or machine safety. And he only committed two infractions in the course of an otherwise clean

27-year employment history. Thus, the prior violations are outweighed by other mitigating factors that justify discipline short of termination.

D is wrong because a worker *could* be fired for a serious violation even if no one is hurt or killed as a result. The lack of injury or property damage due to a worker's infraction may be considered a mitigating factor in imposing discipline. But in cases where the potential consequence of an infraction could've been serious injury or death, one violation may justify termination. *Bottom line*: All the circumstances must be considered, including not only the nature of the violation and the potential harm but also whether the worker's conduct was deliberate or intentional, whether he admitted the error or lied about it, and the likelihood of future violations. In this case, although no one was injured, there could've been a very serious injury, such as an amputation or electrocution, as a result of the lockout violation. However, the millwright took responsibility, admitted the violation and explained it was a mistake due to his unfamiliarity with the lockout boxes on that side of the line'not an intentional disregard for safety because he wanted to take a shortcut. So under these circumstances, the lack of an injury was one of several mitigating factors that weighed in favour of discipline less severe than termination.

SHOW YOUR LAWYER

United Steelworkers Local 1 ' 207 v. Weyerhaeuser Company Ltd., [2016] CanLII 13703 (AB GAA), March 9, 2016