

Is Termination Warranted for One Knife Fight with Minor Injury?



SITUATION

A 57-year-old custodian with no disciplinary history and 36 years employment becomes annoyed at a co-worker banging loudly on his Tupperware container at lunch. The custodian takes out two box cutters and starts swinging one of them at the co-worker. Defending himself, the co-worker tries to grab the custodian's arm but the blade slices the co-worker's arm, causing a shallow cut. An hour later, the custodian passes the co-worker and says 'You're lucky I didn't stab you in the heart.' During an investigation of the incident, the custodian tells human resources that he was provoked by the co-worker, who taunted him by saying, 'You can't cut me, you're too slow.' However, a surveillance camera reveals that the custodian's lying. He also claims his red blood cell count was very low, which caused him to be tired and subject to angry outbursts. The custodian, who has a limited education, voluntarily seeks anger management counseling, where he cites work as a trigger for his anger and blames the co-worker for the incident. But the employer fires him.

QUESTION

Was the employer justified in terminating the custodian'

- A. Yes, because of the seriousness of the co-worker's injury.
- B. Yes, because the employer can't be sure the custodian won't be violent again.
- C. No, because the custodian voluntarily attended anger management counseling.
- D. No, because the custodian had a long unblemished employment record and limited prospects for reemployment.

ANSWER

B. Given the custodian's lack of remorse and the unexplainable nature of his conduct, the employer can't be sure he won't become violent again and thus was

justified in firing him.

EXPLANATION

This hypothetical is based on an Ontario labour arbitration decision that upheld an employer's termination of a custodian who, in an angry outburst, sliced a co-worker with a box cutter because he was annoyed by the loud noise the co-worker made. The arbitrator found that the seriousness of the conduct, lack of justification and irrational nature of the outburst meant it was 'questionable whether he would engage in similar misconduct if he were returned to work.' The arbitrator also pointed out that the custodian made threatening remarks an hour after the incident, lied during the investigation and didn't express remorse. The mitigating factors that he was a long-time employee, attended anger management counseling and had a hard time finding work afterwards didn't outweigh these aggravating factors, concluded the arbitrator.

WHY THE WRONG ANSWERS ARE WRONG

A is wrong because although the incident was serious, the injury to the co-worker's arm was minor. However, the co-worker could've been quite seriously injured if the custodian had cut a major artery or nerve. But the potential seriousness of the injury alone isn't what justifies termination. For example, a worker could seriously injure a co-worker inadvertently and without any intent to harm and so his termination might not be warranted. Here, it's the custodian's irrational behavior, sudden unprovoked outburst and continued threats even an hour after the incident that are cause for his termination.

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

C is wrong because simply attending anger management counseling voluntarily doesn't mean the custodian's termination isn't warranted. Yes, it's admirable that the custodian sought help for his anger issues on his own. But in counseling, he indicated work was a trigger for his anger and continued to blame the injured co-worker. These comments don't provide assurance that the threat of future violence has been removed but rather indicate that returning the custodian to the workplace provides a potential trigger for future outbursts. Thus, his participation in anger management actually supports the conclusion that his firing, was, in fact, warranted.

D is wrong because although a worker's future employability and his prior disciplinary record are factors and might be mitigating factors to be considered in determining whether termination was justified, a court or arbitrator will consider both mitigating *and* aggravating factors. Here, the aggravating factors, such as the unprovoked nature of the attack, the custodian's subsequent continued threats and comments during the investigation and counseling that reflect his refusal to accept full responsibility, demonstrate a continued risk of violence, which outweighs the mitigating factors, such as any hardship experienced by the custodian.

SHOW YOUR LAWYER

Firestone Textiles Co. v. United Food and Commercial Workers Canada, Local 175, [2014] CanLII 76772 (ONLA), Sept. 12, 2014