

OLRB Upholds Termination for Shoving Co-Worker Backwards on Raised Platform



By Shane Todd, Heenan Blaikie

Violence in the workplace is a prominent concern for employers and most jurisdictions have enacted legislation that details specific employer obligations to protect workers against violence. These enhanced obligations have contributed to a stricter approach towards incidents of workplace violence by judges, arbitrators and other decision-makers. This approach is evident in a recent case where the Ontario Labour Relations Board held that an employer had just cause to dismiss an employee for pushing a co-worker backwards and forcing him down five stairs on a raised platform during an argument instigated by the co-worker.

In *Canadian Union of Skilled Workers v. Hydro One Inc.*, Mr. Tsironis, a sub-foreperson of a construction crew, allowed his crew to stop work early due to bad weather and he went to a restaurant across the street with another sub-foreperson. He did not check with Mr. Bultje, the foreperson of the project. While at the restaurant, Mr. Tsironis received but did not answer two phone calls from Mr. Bultje. Mr. Tsironis sent Mr. Bultje a text message that read '[a]re you stalking me". Mr. Bultje responded with a profanity-laden text message.

Mr. Bultje avoided Mr. Tsironis at work the next day and Mr. Tsironis decided to send a copy of Mr. Bultje's profanity-laden text message back to him. Mr. Bultje confronted Mr. Tsironis at the entrance to one of the trailers on the site. The trailer was raised off the ground and accessible by five stairs that lead to a platform outside the trailer's door. While standing on the raised platform, Mr. Bultje yelled at Mr. Tsironis, raised his hands, and tapped Mr. Bultje's hard hat. Mr. Tsironis responded by pushing Mr. Bultje backward, causing him to lose his balance, and forcing him down the stairs.

Mr. Tsironis' employment was terminated the next day for violating the employer's workplace violence policy. The termination letter stated that Mr. Tsironis would not be eligible for reemployment with Hydro One Inc. in any capacity at any work location in Ontario. Mr. Bultje was suspended for two days for violating the employer's code of conduct and workplace violence policy by being involved in the altercation, failing to report the incident, and sending

inappropriate text messages.

Mr. Tsironis filed a grievance challenging his dismissal. The Board found that Mr. Tsironis' actions were an unplanned reaction to the aggressive confrontation instigated by Mr. Bultje in an inherently dangerous location, but noted that it was equally open to both employees to stop the confrontation or wait until they reached the ground. The Board found that Mr. Tsironis' actions called for severe discipline because he made physical contact with Mr. Bultje at the top of the stairs where the consequence of the backwards push could have been much worse. Summary dismissal was appropriate because Mr. Tsironis did not apologize. In the absence of an apology and any evidence showing that the Mr. Tsironis and Mr. Bultje had or could reconcile, the Board found that reinstatement would create an undue burden on Hydro One Inc. to keep the two apart to avoid further hostilities. However, the Board found that the permanent prohibition on reemployment was excessive for an altercation that was over quickly, and could be characterized equally as poor management by Mr. Bultje and a lack of judgment by Mr. Tsironis. The Board held that the Mr. Tsironis could be reemployed in the future where he would not be required to work with Mr. Bultje.

Workplace violence is a multifaceted problem and employers have a complex set of often overlapping legal obligations that they must manage. One of the common requirements is that employers must take workplace violence incidents seriously, conduct a full and fair investigation of the incident, and take a considered and proportionate disciplinary response to the incident where warranted.

This piece first appeared on Workplace Wire.

See the OHS Insider's Workplace Violence Compliance Centre for more information and resources to help you address workplace violence.