

Termination Appropriate For Employee Who Ignored Self-Isolation Rule



In the recent decision of *LIUNA, Ontario Provincial District Council and Aecon Industrial (Wynne), Re*, 2020 CarswellOnt 17235, an Ontario arbitrator upheld the termination of a grievor who attended the employer's workplace after being instructed to stay home as a result of experiencing COVID-19 symptoms.

On April 9, 2020, the grievor informed his employer that he was experiencing COVID-19 symptoms. At that time, and on two other occasions, the employer instructed the grievor not to report to work until he was cleared by the employer's nurse.

The grievor attended work for his next scheduled shift on April 14, 2020, despite not hearing back from the employer's nurse. As part of the employer's response to COVID-19, the organization implemented a COVID-19 screening questionnaire and employees were required to fill it out prior to entering the workplace each day. When he arrived at the office, the grievor denied having any COVID-19 symptoms on the questionnaire.

The grievor explained that he did not wait to hear from the employer as he was concerned that the employer had overlooked him and thought he would be subject to discipline if he did not show up to work. The arbitrator held that this suggestion was unacceptable and concluded, instead, that the grievor's conduct was a "deliberate attempt to circumvent his instructions with total disregard to the risks he posed," which created a "dangerous situation" for everyone involved.

The arbitrator found that the grievor's actions were completely unacceptable, noting ".the grievor's deliberate and cavalier attitude toward the COVID safety risks he represented both to his co-workers and in turn to the company's obligations to protect the workplace was unconscionable, unreasonable and totally unacceptable."

In upholding the termination, the arbitrator noted the grievor's recent disciplinary record which similarly related to issues of safety. In March of 2020, the grievor was disciplined for failing to return, on multiple occasions, a safety sensor that records his exposure to radiation during the workday. Three weeks later the grievor was disciplined for sleeping on the job when he was supposed to be cleaning washrooms, a significant element in limiting possible spread and exposure to the virus.

These prior and recent safety issues, coupled with the grievor's choice to put his own interests in returning to work ahead of the risks posed to his co-workers, led the arbitrator to conclude that the grievor "could not be trusted to avoid engaging in unsafe conduct in the future."

This decision highlights the importance of employees adhering to COVID-19 safety measures in the workplace. It is also the second recent arbitration finding termination was justified for a violation of COVID-19 policies. This decision further reinforces employers' right to discipline employees who are aware of employer expectations yet breach policies that protect worker health and safety.

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