Trap to Avoid: Tolerating Safety Violations Today May Bar Cracking Down Later



What's At Stake

Using discipline to enforce OHS rules can be difficult for many supervisors, especially when they have a good relationship with the worker who commits the infraction. Even if the violation is extremely dangerous, the temptation to 'cut the worker some slack' may be too powerful to resist. But while leniency can seem humane, it can also come back to haunt you the next time you try to discipline somebody else for committing the same violation.

How Inconsistent Discipline Boxes You In

An Ontario plastic pellet manufacturing company learned this lesson the hard way. The company prided itself on its strong OHS program and culture that stressed what it called 'Cardinal Rules' that all employees had to follow. So, it came as a 'shock' to learn that a line supervisor with 17 years of solid service violated 2 of those Cardinal Rules by:

- Failing to lock out a machine that he and his crew were cleaning to eliminate the risk of its starting up during the cleaning operation; and
- Not reporting this serious safety violation because he was so embarrassed by his mistake.

The company acted swiftly, interviewing all of the witnesses and sending the supervisor home. A week later, he was fired for the incident.

Although it was painful, the company was no doubt convinced that it was the right thing to do and that it had just cause to dismiss. But the Ontario court begged to differ. Failing to lock out a machine before servicing was a highly serious violation that immediately endangered the safety of not only the supervisor but his co-workers, the court acknowledged. Not reporting the violation was perhaps even more significant given the supervisor's position and leadership role.

But the court cited at least 3 other incidents in which a worker violated the lockout Cardinal Rule, including one where the culprit was a manager who also violated the reporting Cardinal Rule. With one exception involving a very junior employee, none of the guilty workers got fired. So, the court ruled that terminating the supervisor was 'disproportionate' and 'out of line' and ordered the company to pay him damages for wrongful dismissal [*Plester v. Polyone Canada Inc*., 2011 ONSC 6068 (CanLII)].

Takeaway: Current Discipline Becomes Precedent for Future Action

The validity of termination decisions depends not simply on the violation a worker commits but how you handled others who committed the same violation on previous occasions. The key word is consistent. The *Plester* case is a dramatic illustration of how affording lenient treatment to a worker who commits a serious violation can bar you from issuing sterner penalties to those who engage in the same offence later on.