

Was Driver's Termination for Complaining about Unsafe Truck an Illegal Reprisal?



SITUATION

A truck driver tells a manager that the vehicle he's assigned to drive is unsafe to operate with the heavy steel cargo he'll be carrying. The driver explains that there's no engine brake, loose steering, broken side mirrors that can't be adjusted, exposed wires where a section of dashboard is missing and leaking fuel caps. So he refuses to drive the truck. Without conducting any investigation of these safety issues, the manager immediately fires the driver, who files a complaint with the labor relations board and presents photographs of the truck's deficiencies. The employer claims the probationary driver was fired for problems with his behaviour and use of vulgar language'not because he raised safety concerns. Plus, the employer claims that none of the cited deficiencies are really safety issues anyway.

QUESTION

Was the driver illegally fired'

- A) No, because refusing to drive the truck was insubordination that warranted termination.
- B) No, because his safety concerns were unreasonable.
- C) Yes, because he was fired within 24 hours of raising safety concerns.
- D) Yes, because his termination was motivated at least partly by his justified work refusal.

ANSWER

D. The driver's termination was at least in part related to the safety complaints and thus was illegal.

EXPLANATION

This hypothetical is based on an Ontario Labor Relations Board decision in which the Board found that a driver reasonably believed his truck was unsafe to operate and properly notified his employer of the safety concerns and his refusal to drive the truck because of them. When a worker initiates a work

refusal, the employer is required to investigate the safety complaint and address any hazards as appropriate. In this case, the employer didn't conduct any investigation of the obvious issues with the truck, instead immediately firing the driver. The Board ruled the firing was motivated at least partially by the work refusal given the employer's failure to investigate the driver's safety concerns, his photographic proof of these issues and the fact it fired him immediately after notice of the work refusal.

WHY THE WRONG ANSWERS ARE WRONG

A is wrong because although refusing to do your job is generally insubordination and may be grounds for termination, that isn't the case when the refusal is based on legitimate safety concerns. The OHS laws across Canada give workers the right to refuse to work if they reasonably believe the equipment or the work presents an undue safety hazard. And these laws bar employers from retaliating against workers who exercise this right, such as by demoting or firing them. The driver in this case had reason to be concerned for his safety given the various and obvious problems with the vehicle he was assigned to operate. He properly exercised his right to refuse unsafe work and was immediately fired for doing so. Therefore, his termination was an illegal reprisal. (For more information on this topic, go to the Discipline and Reprisals Compliance Centre.)

B is wrong because the driver had reasonable grounds for his work refusal and even photographic evidence of the safety issues. An employer can't summarily dismiss a work refusal without some investigation to determine whether a true safety hazard exists. The reasonableness of a safety concern can sometimes be difficult to determine, such as when a worker claims that the layout of his work station is hurting his back or wrist. But in some cases, such as this one, the safety hazards are obvious. Here, the driver had photographs of easily seen hazards, such as a missing engine brake and non-adjustable mirrors, which could affect his ability to see obstacles and safely drive the truck. So even a brief investigation by the employer would've confirmed his concerns.

C is wrong because there's no requirement that a worker be terminated within 24 hours of initiating a work refusal for the termination to be deemed an illegal reprisal. However, the proximity in time of the disciplinary action and the notice of the safety concerns may be evidence that the two are related. In this case, the driver was fired *immediately* after reporting safety concerns about the truck to a manager. So the timing was evidence the firing was motivated by the work refusal. But if the employer had waited several days or even weeks, other evidence could still be used to show the firing was motivated by the refusal.

Insider Says: For more information about how to address work refusals, see our Compliance Centre for articles and tools, such as Work Refusals: Answers to 10 Frequently Asked Questions, 8 Traps to Avoid in Responding to Work Refusals, Ensure Supervisors Properly Handle Work Refusals and a Model Right to Refuse Form.

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Barber v. LP Services, [2013] CanLII 9952 (ON LRB), Feb. 26, 2013