

When Can an Employer Fire a Worker for Recklessness?



SITUATION

A worker is operating a locomotive pulling 12 railcars filled with heavy loads of scrap metal. After the cars are weighed and before moving them to the railyard, he fails to complete the required safety checklist and inspect the cars to ensure, among other things, that the brakes work. He also doesn't communicate with the switchman about whether any extra brakes were in place. So the worker doesn't know that the switchman had removed extra handbrakes on some of the cars as he was trained to do. Upon moving through the switch, the cars don't stop as expected and increase in speed because of a downward slope and their heavy load. The worker's unable to stop the scrap metal cars, which collide with empty rail cars parked in the storage yard. Several cars derail, causing about \$600,000 in damage. No one's injured, though the worker must jump from the train. He passes a post-incident drug and alcohol test. During the subsequent investigation, he doesn't take responsibility for his conduct, says he shouldn't be responsible for knowing what's in the safety checklist and blames the switchman who'd removed the extra handbrakes.

QUESTION

Can the employer fire the worker'

A. Yes, because he caused more than \$500,000 in property damage.

B. Yes, because he recklessly ignored safety protocols and took no responsibility for this serious safety incident.

C. No, because no one was injured in the incident.

D. No, because he passed a post-incident drug and alcohol test.

ANSWER

B. The employer can fire the worker because he recklessly failed to follow safety checklists, didn't communicate with the switchman or inspect the cars before moving them and didn't take responsibility for the incident.

EXPLANATION

This scenario is based on a Saskatchewan labour arbitration decision, which upheld an employer's termination of a worker following a railway incident that caused \$600,000 in damage when several cars derailed. The arbitrator found that the worker's misconduct was more than simply negligent or careless. He recklessly disregarded safety protocol, not completing the required checklist, failing to check the rail cars and their brakes, and not communicating with the switchman before moving the cars. The arbitrator said he'd consciously disregarded risks and protocols in a safety sensitive workplace with serious consequences. 'His actions reflect his attitude toward safety and his lack of concern,' noted the arbitrator. Additionally, his failure to take responsibility for the incident and blaming the switchman instead didn't give the employer any assurance that he wouldn't cause any future incidents.

WHY THE WRONG ANSWERS ARE WRONG

A is wrong because there's no set threshold amount of damage that automatically justifies termination or any other level of discipline. Instead, the cost of any damages caused by a

worker is just one factor to be considered in determining appropriate discipline following a safety-related incident. All the facts and circumstances must be taken into account. However, an incident involving hundreds of thousands of dollars in damage is more likely to warrant termination than one that resulted in little or no property damage. In this case, the worker failed to follow safety protocols, disregarded safety risks and took no responsibility for his actions, supporting a conclusion that he could cause a similar incident in the future. The fact his recklessness caused \$600,000 in damage is just one more nail in the coffin, so to speak, and further justification for his termination.

Insider Says: For more information on properly disciplining workers, go to the [Discipline and Reprisals Compliance Centre](#).

C is wrong because a worker can be terminated for a safety violation even if no injuries occur as a result. A safety violation that results in a personal injury or fatality is more likely to justify termination or other severe discipline than a case involving no injury or death. However, when a worker's safety violation results in a *potentially* life-threatening incident, he may still be subject to termination even if no one is actually injured or killed. In this case, the worker or others in the railyard could've been seriously injured or even killed in the derailment. In fact, the worker himself had to jump from the train and could've been hurt doing so. Thus, simply because the worker was fortunate to not injure or kill himself or others in this incident doesn't mean that termination should be taken off the table in terms of disciplinary options.

D is wrong because although passing a drug and alcohol test is a factor for consideration and may weigh in favour of lesser discipline, it doesn't prevent the employer from firing a worker for a serious safety incident. In fact, failing the drug and alcohol test wouldn't automatically *support* termination, either. That's because if the worker had a drug

addiction, which is a disability, the employer may instead have [to accommodate him to the point of undue hardship](#), such as by reassigning him to a non safety-sensitive position. In short, passing or failing a drug/alcohol test isn't determinative but rather just one factor to consider in disciplining a worker for a safety violation. Here, the worker's termination was justified for the reasons previously discussed and despite his lack of impairment.

Insider Says: For more on how addiction may affect an employer's imposition of discipline, see '[Discipline & Drug Addiction](#).'

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United Steel Workers, Local 5890 v. Evraz Regina Steel, a Division of Evraz Inc. NA Canada (Stice Grievance), [2016] S.L.A.A. No. 14, Sept. 16, 2016