

When Is a Worker Guilty of an OHS Violation?



Workers have not only OHS rights but also OHS duties.

Under the Internal Responsibility System (IRS) theory on which Canadian OHS laws are based, all persons that have a stake in workplace health and safety have duties. That includes not just employers and supervisors but workers themselves. And with duty comes the potential for liability. Here's a Quiz illustrating how these principles play out in real life.

Situation

A lumber company has a dubious safety culture. It provides no safety training. It has workers use dangerous practices to chop down trees. A worker following company work procedures'let's call him Bob'causes a tree to fall the wrong way into an electrical wire. The wire falls on a supervisor fatally electrocuting him. The exact same accident occurs at another lumber company. But this company has an active safety program and requires its workers to follow safe work procedures. The accident happened because the worker who cut down the tree'let's call her Gail'took a shortcut and didn't follow the required safety procedures.

Question

Which, if either, of the workers would be guilty of an OHS violation'

1. Just Bob
2. Just Gail
3. Both
4. Neither, since a worker can't be guilty of an OHS violation

Answer

1. Both workers would be liable for a safety violation, although Jim would be subject to a more severe penalty.

Explanation

In a moral sense, Gail's offense is worse than Bob's. That's because deliberately violating a company safety procedure is more deserving of punishment than simply following an unsafe procedure established by the employer. But the fact of the matter is that both Bob and Gail followed unsafe work practices and a supervisor died as a result. So, both could be potentially guilty of an OHS violation.

Why Wrong Answers Are Wrong

A is wrong because if just one of the workers were guilty of an offence, it would likely be Gail and not Bob.

B is wrong because, as noted above, it's a violation for a worker to follow an unsafe work practice even if that practice was set by the employer. The scenario of Bob's being punished for following a company unsafe work practice is based on the facts of an actual case that took place in Ontario, in which a forestry worker following unsafe work practices set by the company was found guilty of 2 OHS violations:

- Not clearing the area where a tree was being cut down; and
- Not using ropes to guide the falling tree.

The worker claimed the incident was entirely the company's fault. The company did, in fact, plead guilty to not providing safety training and not requiring workers to use safe work practices. It's not fair to charge me with a violation, the worker argued, when all I did was follow company practice. The court acknowledged that the worker had a point. But it pointed out that the worker had still endangered a co-worker and deserved to be punished. So, it sentenced him to 18 months' probation [*R. v. Campbell*, [2004] O.J. No. 1144].

D is wrong because, although it happens less often than prosecutions of employers, a worker can be prosecuted for an OHS violation, especially if somebody gets hurt as a result of the violation.