

# Who Should Be Fired for a Workplace Fight?



## SITUATION

At a courier company, a worker, Victor, goes to the first aid room for an injury to his hand. While there, he gets into a dispute with the first aid worker, Mary, who claims Victor tells her to 'f@&! off' when she says he can't take first aid ointment home. Mary tells her son Sam, also a worker, about the confrontation. Sam confronts Victor about what he said to Mary and they argue. A short time later, in the presence of Sam and Mary, Carl, who heard about the dispute, verbally confronts Victor, who drops his bag and jacket and engages in a verbal altercation with Carl. The altercation escalates and Carl physically attacks Victor, gets him to the ground and punches him. As various witnesses try to separate the two, Mary and Sam engage in the conflict and physically assault Victor. Witnesses say Mary kicked Victor with her steel toed boot. Mary alleges Victor punched her. Some witnesses saw Victor swing and say he may have hit Mary while trying to protect himself but no one saw Victor actually hit her. The police arrive but don't charge anyone with assault, deeming the altercation a consensual fight. Victor was previously suspended one day for arguing. Carl was previously sent home from work due to an altercation and Mary has no record of prior discipline. The company has a zero tolerance workplace violence policy, which indicates that any violent behaviour in the workplace can result in termination.

## QUESTION

**Which of the following statements is true'**

- A. Victor shouldn't be fired because he was the victim of the physical attack.
- B. Mary shouldn't be fired because she has no prior disciplinary record.
- C. Carl should be fired because of his prior disciplinary history.
- D. All four workers involved in the fight should be fired because the company has a zero tolerance policy.

## ANSWER

**A. Victor shouldn't be terminated because he was a victim in the fight and was just defending himself.**

#### **EXPLANATION**

This hypothetical is based on an Ontario Labour Arbitration decision. In that case, four workers were involved in a physical altercation, a mother and her son and two co-workers. All four were terminated. The worker who initiated the physical altercation didn't challenge his termination. But the union filed a grievance on behalf of the other three. The arbitrator noted that one worker participated in the verbal dispute when he should have walked away from the instigator. However, his only involvement in the physical altercation was defending himself from multiple attackers. And there was no evidence he actually made contact with any of them. So the arbitrator ruled that the victim of the fight shouldn't have been fired. But the arbitrator upheld the firings of the mother and son workers.

#### **WHY THE WRONG ANSWERS ARE WRONG**

**B is wrong** because Mary could be terminated for her involvement in the physical altercation even if she has no prior disciplinary record. A worker can be fired for a first violation of a safety policy. That's because a prior record is one factor but not the deciding factor in determining appropriate discipline. Mary's conduct in this incident must also be considered. Witnesses saw Mary kicking Victor with her steel toed boots, which could cause serious injuries. Mary intentionally physically assaulted Victor while he was being attacked by two other workers and on the ground, thus in a vulnerable position. That conduct is sufficient grounds for her termination under the company's workplace violence policy and considering the circumstances.

**Insider Says:** For more tips on dealing with workplace violence, see the Workplace Violence Compliance Centre.

**C is wrong** because just as having no record doesn't mean you can't be fired, having prior disciplinary action doesn't mean you should be fired. In deciding the validity of a worker's termination, courts and arbitrators will consider a worker's prior record as just one of several factors. Here, Carl had one prior disciplinary action: he was sent home from work after an altercation. So his prior disciplinary record is a relevant factor supporting but not mandating termination. But more relevant is Carl's clear role as the instigator of the physical attack on Victor, which could be enough under the company's policy to justify termination even without a prior disciplinary record.

**D is wrong** because violating a zero tolerance workplace violence policy doesn't automatically mean termination's appropriate for any incident involving physical contact or violence. All of the facts and circumstances must still be considered. For example, there could be mitigating factors, such as the worker was just horsing around and didn't intend to strike a co-worker, that make termination inappropriate. In this case, firing wouldn't be appropriate for Victor because he didn't start the physical fight—he just was trying to defend himself against three other workers.

#### **SHOW YOUR LAWYER**

*Purolator Courier Ltd. v. Teamsters Local Union, Local 938*, [2014] CanLII 34485

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