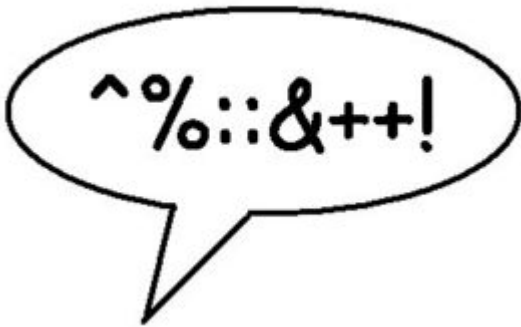


# WINNERS & LOSERS: Can You Fire a Worker for Swearing on the Job?



Various kinds of inappropriate conduct by workers can establish “just cause” for their termination, such as poor job performance, harassment, violence, theft of company property, etc. But can an employer fire a worker for swearing on the job? Here are two cases in which arbitrators had to decide if termination was appropriate for a worker who cursed at work.

## TERMINATION WAS APPROPRIATE

### FACTS

A lead hand for a road maintenance contractor was conducting rolling road closures of a highway that had debris strewn on it. As he parked at the bottom of an onramp, a couple backed their van down the ramp and into his vicinity. He approached the open passenger window, struck the side of the van several times and started yelling and swearing at the couple, telling them to get back on the “f\*\*king highway.” In fact, he used the word “f\*\*k” or “f\*\*king” several times. The contractor fired him for unprofessional behaviour toward members of the general public. The union argued that termination was excessive, although both the union and the lead hand acknowledged that calling a member of the public a “f\*\*ing a\*\*hole” was inappropriate.

### DECISION

An Ontario arbitrator ruled that the contractor was justified in firing the lead hand.

### EXPLANATION

The arbitrator, noting that the lead hand’s contract required him to act professionally and courteously toward the general public, found that his language and conduct were unprovoked. He never apologized or showed remorse. In fact, when he was told at the termination meeting that he was being fired for using “abusive language,” he replied, “They f\*\*king well deserved it.” He argued that swearing and profane language were common in the workplace. But the arbitrator said that even if that was true, it doesn’t take a lot of common sense to know that you should avoid swearing at a stranger, especially when your

conduct reflects upon your employer. Plus, the lead hand had been disciplined for abusing a member of the public seven months before this incident.

*TWD Roads Management Inc. v. International Union of Operating Engineers, Local 793*, [2011] CanLII 80857 (ON LA), Dec. 14, 2011

## **TERMINATION WASN'T APPROPRIATE**

### **FACTS**

A worker for an auto parts company brought a starter into the office. The owner's son yelled at him, claiming he'd asked for an alternator, not a starter. They got into an argument, during which the worker said, "I don't need this f\*\*king sh\*t!" Both a customer and a female worker were present. Two days later, the worker was fired for swearing in front of a customer and a "lady" in the office.

### **DECISION**

The Ontario Labour Relations Board ruled that termination was excessive.

### **EXPLANATION**

The company claimed that it was justified in firing the worker given his use of profanity and disciplinary record. But the Board noted that the prior discipline had been imposed on the worker for his job performance, not his use of profanity. There was no evidence as to whether profanity was common in the workplace or whether the company had a policy barring the use of profanity. And it appears that this incident was an isolated one. So the Board concluded that although the worker's swearing in front of a customer warranted discipline, it didn't justify termination.

*Queensway Auto Parts (403491 Ontario Inc.) v. Copeland*, [2009] CanLII 3350 (ON LRB), Jan. 22, 2009