

WINNERS & LOSERS: When Can You Fire a Worker for Breaking a Cardinal Rule?



Most workplaces have safety rules. Some go a step further and designate certain rules as 'cardinal rules,' that is, safety rules that are so important that violations of them won't be tolerated. Can an employer automatically fire a worker who violates a cardinal rule? Courts and arbitrators tend to frown on so-called 'zero tolerance' policies that don't consider the worker's history or the circumstances of the specific violation even if it was of a cardinal rule. So when *can* an employer fire a worker for breaking a cardinal rule? Here's a look at two cases involving appropriate discipline for violations of cardinal rules related to lockout/tagout (LOTO). (For more information on properly disciplining workers, go to the Discipline and Reprisals Compliance Centre.)

TERMINATION APPROPRIATE

FACTS

An engineer on a cargo vessel installed a lockout device to interrupt the flow of electrical current to a general service pump motor while it was being installed. The device was secured in place on a circuit breaker with a padlock, which could only be opened with a key. An electrician cut the padlock and removed the lockout device in violation of the cardinal rule that, in the interest of safety, the crew member who installed a lockout device and only that crew member will be the one who removes it. The day before this incident, the crew was shown a video on the use and application of this lockout device and its significance in terms of safety. Because this infraction was an offence warranting immediate dismissal under the employer's disciplinary code, it fired the electrician.

DECISION

A federal arbitrator ruled that the electrician's termination was appropriate.

EXPLANATION

The electrician deliberately and forcibly removed a lockout device from a circuit breaker that had been placed there by another crew member as a safety measure. He made no real effort to get help from the engineer who'd installed

the device or from the Chief Engineer, who would've had authority to remove it under certain circumstances, observed the arbitrator. Instead, he took matters into his own hands and ignored a cardinal practice concerning safety standards for lockout devices that had long been in place and was well known. In so doing, the electrician showed 'a wanton disregard' for his duties and responsibilities. In short, he deliberately chose to circumvent a process specifically designed to safeguard fellow crew members and himself. As such, his conduct was unacceptable. In addition, he'd been disciplined twice before, once for another safety infraction. So the arbitrator upheld his termination.

Canada Steamship Lines Inc. and Seafarers' International Union of Canada (Mikedis Grievance), [1997] C.L.A.D. No. 426, Aug. 5, 1997

TERMINATION INAPPROPRIATE

FACTS

A millwright was assigned to change a flow valve at a manufacturing plant. The employer's safety rules require a worker doing such a task to shut off the electrical current to the valve, lock out the switch that controls the power and tag the lock with his name so that it can't be turned back on while he's performing the work. This LOTO procedure was one of five 'Cardinal Rules' by the employer—that is, safety rules that must *always* be followed. But the millwright didn't follow the LOTO procedure. Instead, wanting to get the procedure done quickly, he simply disconnected the electrical wires from the valve. The wires touched, causing sparks and an electrical short. The employer fired him because it was his second violation of the cardinal LOTO rule within three months and he'd only been an employee for five months.

DECISION

An Ontario arbitrator reinstated the millwright.

EXPLANATION

The arbitrator noted that the Cardinal Rules go to 'the heart of safety in the workplace.' The millwright was aware of and had been trained on these rules. And he'd followed the LOTO procedure on hundreds of other occasions. However, the millwright admitted his error and said it wouldn't happen again. No one was hurt and no damage was caused by his infraction. In short, he'd exercised poor judgment to get the work done in a timely manner. Thus, the arbitrator concluded that termination for his albeit serious safety infraction was excessive. So the arbitrator suspended him without pay for about six months and ordered the employer to provide him with additional LOTO training. But the arbitrator added that, if the millwright committed another safety infraction within a year of reinstatement, the employer *would* have just cause to fire him.

Dufferin Concrete v. Teamsters Local No. 230, [2013] CanLII 61486 (ON LA), Oct. 1, 2013