

Workplace Violence Doesn't Include Only Physical Assaults, Says ON Arbitrator



The recognition that workplace violence is a safety hazard from which employers must protect workers is now the norm. When workers engage in a fistfight or attack each other with weapons, clearly such actions would violate an employer's workplace violence policy as well as any bans on workplace violence in the applicable OHS laws. But what if a worker merely threatens a co-worker verbally or acts aggressively 'does that behaviour count as violence' A recent case from Ontario addressed this very issue. Here's a look at the case and the arbitrator's reasoning.

THE CASE

What Happened: Two workers worked on a production line. When the line went down, they blamed each other for the shutdown. The workers got into a heated argument involving yelling, swearing, threats and abusive language. For example, Worker A called Worker B a 'fat ass' and a 'fag.' When it looked like they were about to hit each other both removed their hardhats a third worker intervened and separated the men. But Worker A continued to act aggressively toward Worker B and 'egg him on.' Both workers reported the incident. After the employer conducted an investigation, it fired Worker A for violating its workplace violence and harassment policy. The union argued that although discipline was warranted,

termination was excessive.

What the Arbitrator Decided: An Ontario arbitrator ruled that the employer had just cause to fire Worker A.

The Arbitrator's Reasoning: The arbitrator noted that all employees, including Worker A, had been trained on the employer's workplace violence and harassment policies and shown a DVD on the Bill 168 amendments to Ontario's *OHS Act* on workplace violence and harassment, which includes threatening language in its definition of 'workplace violence.' In fact, Worker A signed a document certifying that he'd viewed the DVD and understood the workplace violence policy. The incident between the workers violated this policy. The arbitrator acknowledged that there was no physical contact between Worker A and Worker B and no weapons were used. But based on the circumstances, there would've been physical contact between them had a third worker not intervened. Worker A also used 'hurtful, derogatory terms' targeting Worker B's appearance and sexual orientation, which is more serious than the use of garden-variety profanities, said the arbitrator. And when given an opportunity to de-escalate the situation, Worker A continued to egg on Worker B. In addition, Worker A didn't take responsibility for his actions, downplayed his role in the incident and didn't apologize until the hearing on his termination, which doesn't speak highly of his rehabilitative potential. In contrast, Worker B was candid about his own involvement in the incident. The arbitrator concluded that due to the nature of Worker A's conduct and his lack of insight into his own behaviour, dismissal was justified [[*Unifor Local 80-0 v. Certainteed Insulation Canada*](#), [2015] CanLII 600 (ON LA), Jan. 7, 2015].

ANALYSIS

This case was decided based, in part, on the definition of 'workplace violence' in Ontario's *OHS Act*, which includes 'a statement or behaviour that it is reasonable for a worker to

interpret as a threat to exercise physical force against the worker, in a workplace, that could cause physical injury to the worker.’ But Ontario isn’t the only jurisdiction with a broad definition of workplace violence. For example, Manitoba’s OHS regulations define violence to include ‘any threatening statement or behavior that gives a person reasonable cause to believe that physical force will be used against the person.’ So check your jurisdiction’s definition of workplace violence, if it has one, to see its exact scope and ensure that your workplace violence policies are consistent with that definition. In addition, when training workers on your policy, make sure they understand that violence may include not only actual physical conduct but also threatening language and behaviour. (For model workplace violence policies and more information and resources, go to our [Workplace Violence Compliance Centre](#).)