

BC Arbitrator Upholds Termination For Misconduct During Union Strike



Bottom Line

In the recent arbitration decision in *Lantic Inc. v. Public and Private Workers of Canada, Local 8*, the arbitrator upheld the termination of a long-service employee for sexually harassing a security guard during a strike. Key factors in the arbitrator's decision to uphold the termination included the Grievor's premeditation, his failure to fully grasp the seriousness of his transgressions, and the resulting low likelihood of future compliance with acceptable workplace standards.

Background Facts

Harminder Sandhu (the "Grievor"), was a lead hand and long-service employee at Lantic Inc., a sugar refinery in Vancouver, British Columbia (the "Employer"). He was a member of the bargaining unit represented by the Public and Private Workers of Canada, Local 8 (the "Union").

During a strike, the Grievor verbally harassed a truck driver crossing the picket line. He called the driver a vulgar Punjabi insult and accused him of taking food away from the strikers' tables (the "Truck Driver Incident").

A week later, while on the picket line the Grievor noticed a female security guard (the "Security Guard") who was stationed inside the Employer's office building, and then proceeded to tell a colleague that he planned to make the Security Guard smile, and asked the colleague to film the interaction. Despite differing evidence between witnesses, the arbitrator found that the Grievor spoke to the Security Guard through a megaphone and stated:

What's up. You are really good looking. Come on. Give us a little bit of a smile. Wow. You have become stone cold. Your face isn't moving. Come on. Give us a smile. Show me your dimples. Where are my dimples. Show me. Come on give me a smile. Please. I want it. I give you my respect.

Afterwards, the Grievor encouraged another colleague to try to make the Security Guard laugh. The colleague then mimicked being distressed because she had not smiled, while the Grievor filmed the interaction (the "Security Guard Incident").

Once the Employer became aware of these incidents, it issued a letter to the Grievor advising that an investigation into the Grievor's conduct would follow once the strike ended. After receiving the Employer's letter, the Grievor shared the video footage of the Security Guard Incident with his friends to gain their perspective, and then wrote apology letters to the truck driver, the security company that employed the Security Guard, and the Employer.

True to its word, once the strike ended the Employer suspended the Grievor pending an investigation. Following the investigation, the Grievor's employment was terminated for cause.

Analysis

Arbitrator Matthews upheld the termination based on the Security Guard Incident, which he concluded amounted to sexual harassment and "egregious workplace misconduct". The arbitrator found that the Grievor's conduct was deliberate and premeditated given that he asked for the encounter to be filmed, used a megaphone to amplify his remarks, and encouraged another colleague to join in the harassment. Despite accepting the Grievor's version of the words he used, the arbitrator found that his intention was to embarrass and demean the Security Guard in a sexualized manner for the amusement of his colleagues.

The arbitrator determined that the Grievor's behaviour fell far short of acceptable workplace standards, and emphasized that the Grievor failed to fully appreciate the nature and gravity of his actions. Despite having written an apology letter and accepted that his words embarrassed and demeaned the Security Guard, the arbitrator found that the Grievor did not fully understand the abusive nature of his conduct or its profound impact on the Security Guard's dignity.

The arbitrator concluded that the Grievor's superficial understanding of his misconduct made it impossible to be sure that he would not engage in similar misconduct if reinstated. The arbitrator upheld the decision to terminate his employment without the need for progressive discipline, and the grievance was denied.

Takeaways

Unionized employers should generally apply a progressive discipline approach. However, egregious misconduct – particularly involving sexual harassment – can justify summary dismissal, especially when coupled with a lack of genuine remorse and understanding of the misconduct. This decision reinforces that where there is little to no confidence in an employee's potential for improvement, employers may proceed with termination without progressive discipline.

Employers should handle workplace misconduct with caution, as each situation requires careful consideration. If considering summary dismissal without progressive discipline, unionized employers may wish to consult legal counsel.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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