

How Far Must You Go to Accommodate an Employee's Drug Addiction?



Employees must cooperate in their own rehabilitation and accommodation.

Drug and alcohol dependencies are considered disabilities under human rights laws. Consequently, disciplining or firing an employee who's addicted to drugs for getting or being high at work may be considered disability discrimination. Your duty is to accommodate disabled employees to the point of undue hardship. But accommodation works both ways. Employees also have a duty to cooperate with your accommodation efforts; if they don't, your duty to accommodate ends. Here are 2 cases showing how these principles work. Although the cases were decided on the very same day in the very same province by the very same court, the outcomes were completely different.

EMPLOYER DIDN'T MEET ITS DUTY TO ACCOMMODATE

Situation

A mining operator knows that smoking pot on the job could cost him his job but does it anyway. Sure enough, he gets caught and he gets fired. The union grieves, claiming the operator has an addiction that the mining company failed to accommodate. The operator should have sought help under the company's employee assistance program (EAP), the company argues. His failure to do so effectively ended our duty to accommodate. An arbitrator disagrees and cuts the penalty to a 10-month suspension.

Ruling

The BC Court of Appeal upholds reinstatement.

Reasoning

The Court makes the following points:

Operator Didn't Know He Was Addicted. The Court acknowledges that addicted employees have a duty to "facilitate accommodation through rehabilitation." But the operator **didn't know** he was addicted until after he got terminated. And by then, it was too late to sign up for the EAP.

Employer Didn't Inquire about Addiction. Instead of firing him on the spot, the company should have made an effort to determine whether the operator had an addiction

and, if so, how it should accommodate him. Knee jerk discipline without such an inquiry violated its duty to accommodate.

[*Kemess Mines Ltd. v. International Union of Operating Engineers, Local 115*](#), 2006 BCCA 58 (CanLII)

EMPLOYER MET ITS DUTY TO ACCOMMODATE

Situation

A regional hospital with a zero-tolerance drug use policy hires a nurse with a history of using drugs at work. The hospital requires the nurse to attend monthly meetings so it can monitor his rehabilitation. But the meetings don't do much good and the hospital catches the nurse stealing opioid drugs and getting high. When confronted, the nurse lies about what he did. After getting fired, he sues for disability discrimination. The hospital acknowledges that it had to accommodate the nurse's drug addiction but argues that its duty effectively ended when the nurse wouldn't cooperate. An arbitrator disagrees, ruling that the hospital should have given the nurse a job where he wouldn't have access to drugs.

Ruling

The BC Court of Appeal overturns the arbitrator's decision and upholds termination.

Reasoning

The Court gives 2 reasons for its decision:

Hospital Sought to Accommodate Nurse. The hospital and nurse knew he was addicted to drugs. The recovery program was an attempt to accommodate him. But the nurse didn't stick with the program and relapsed. He should have shown more interest in his own recovery, the Court said.

Nurse's Lack of Cooperation Ends Duty to Accommodate. The Court said the hospital did everything required of it. It hired the nurse knowing of his addiction; and it set up special meetings to track his rehabilitation. The nurse had to take some responsibility for his own rehabilitation. When he quit his recovery program and started taking drugs again, the hospital's duty to accommodate ended.

[*Health Employers Assn. of B.C. \(Kootenay Boundary Regional Hospital\) v. B.C. Nurses' Union*](#), 2006 BCCA 57 (CanLII)