

Is Falling Asleep Grounds to Terminate?



Winners & Losers: Is Sleeping on the Job Just Cause to Terminate?

Dozing off at work is like absenteeism on the job—only worse. In addition to impairing productivity and sapping morale, napping may endanger workers and the public if the employee who dozes off occupies a safety-sensitive position. But is one napping on the job one of those egregious offences that warrants automatic termination? The short answer: No. As with other forms of misconduct, sleeping on the job must be disciplined according to the particular circumstances involved. Here are 2 cases illustrating the factors courts and arbitrators use to determine whether to uphold firing an employee for nodding off at work.

FIRING IS JUSTIFIED

FACTS

An autistic patient requires around-the-clock care. And given her history of violence, nighttime grand-mal seizures and wandering off, it's imperative that nurses assigned to watch her stay awake for their entire shift. One night shift nurse doesn't get the memo. Not only does she nod off while watching the patient, but she does it on purpose, bringing a quilt and alarm clock to wake her up before the next nurse arrives. Unfortunately for her, the alarm clock doesn't go off and her replacement catches her sound asleep. She begs the replacement to keep mum but the employer finds out what she did and fires her.

DECISION

A BC arbitrator upholds the termination.

EXPLANATION

Firing was appropriate, said the arbitrator, because the nurse:

- Deliberately planned to nap on the job;
- Tried to cover up her offence by asking the other nurse to lie;
- Endangered the patient's safety; and
- Failed to accept responsibility or express remorse for her actions.

Pamel's Home Society v. Hospital Employees' Union (Nagi Grievance), [2006] B.C.C.A.A. No. 40, Feb. 27, 2006

FIRING NOT JUSTIFIED

FACTS

A lead hand on a construction site hides in a trailer after a scheduled break to buy himself some extra rest. He brings along a can of soda and bag of chips to enjoy during his “extended break.” A little while later, the manager finds him lying down with his eyes closed. He admits to resting and stretching his break but denies that he was asleep and claims he was caught up with all his work. But he’s fired for “malingering on the job.”

DECISION

A federal arbitrator cuts the penalty to a demotion and 3-month suspension.

EXPLANATION

In a mirror image of the *Nagi Grievance* case, the arbitrator reasons that the lead hand:

- Was just trying to get some extra rest and didn’t intend to fall asleep;
- Didn’t lie when he got caught—there was no hard evidence to contradict his assertion that he was just resting his eyes and not sleeping; and
- Didn’t put anybody’s safety at risk.

In re: Canpar and United Steelworkers of America (Local 1976), Canadian Railway Office of Arbitration, Case No. 3385, Dec. 13, 2003