Marijuana Possession And Use At Work Justified Dismissal, Despite Employee's "Drug Problem"

A mining company employee was properly dismissed for possessing and using marijuana at work, a labour arbitrator has held. And the employee had not proven that he had a drug problem that required the employer to accommodate.

The employee worked as a Plating Tankman at Vale's refinery in Thompson, Manitoba. The company had alcohol and drug policies aimed at safety in the workplace. The policies prohibited use and possession of illicit drugs at work. The arbitrator decided that the evidence was clear that despite the company's efforts, there was a drug problem in the workplace.

The employee admitted that he had worked under the influence. He argued, though, that under human rights legislation, the employer was required to accommodate his "drug problem". According to the arbitrator, the employee "described a pattern of marijuana use and abuse that was certainly consistent with an addiction illness." The employee claimed that he had been a heavy marijuana user since about age fifteen. He also claimed that the Addictions Foundation of Manitoba, where he had taken treatment, confirmed that he had an addiction diagnosis.

However, the arbitrator decided that the employee's failure to produce, at arbitration, a formal written diagnosis of addiction from the Addictions Foundation of Manitoba led to an "adverse inference" that the report would not support the employee's claim that he was addicted. Further, the employee's testimony about his pattern of marijuana use was questionable due to the problems with the employee's credibility; he had been dishonest with the company when he was initially confronted about his marijuana use at work.

As a result, the arbitrator decided that the employee "had a problem with marijuana use but a dependency or addiction was not established on the evidence." As such, he was not entitled to accommodation under human rights legislation.

The arbitrator decided that the drug use in this case was "especially egregious in that there was ongoing and frequent use with a hidden drug cache on the premises." The company had just cause to dismiss the employee.

Vale (Manitoba Operations) v. United Steel, Paper and Forestry, Rubber,

Manufacturing, Energy, Allied Industrial and Service Workers International Union, Local 6166 (Arne Peltz, Labour Arbitrator, August 2, 2013)

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