Termination Incident Quiz



Can You Fire an Employee for a Single Incident of Making Sexually Explicit Language & Gestures?

A dealer and a pit boss at a casino get along very well, always laughing and joking. One night, the pit boss sees the dealer talking to another dealer at a dead table with his back to a live table. The pit boss tells the dealer to watch his table. The dealer starts making loud kissing noises at him. He asks the dealer to stop. The dealer asks the pit boss, "Whose **** are you sucking this week?" and continues to make loud kissing sounds. The pit boss again asks the dealer to stop. He refuses and starts to simulate oral sex in full view of other employees and gamblers. The pit boss complains to management about the dealer's conduct. The casino's code of conduct bars employees from using profane language or making obscene gestures. Casino policies also say that such acts constitute serious misconduct and may be grounds for immediate suspension or termination.

Question

What, if anything, should the casino do?

A. Fire the dealer for his inappropriate conduct.

B. Fire the pit boss for complaining about the dealer's conduct.

C. Warn the dealer that his conduct was inappropriate and that he could be fired if he continued to act that way.

D. Nothing. Based on the dealer's friendship with the pit boss, he couldn't have known that the pit boss would be offended by his conduct.

Answer

A. The casino should fire the dealer.

Explanation

This scenario is based on a case in Ontario in which a table games supervisor at a casino engaged in the conduct described above on the open casino floor in full view of casino employees and patrons. The pit manager reported the supervisor's conduct. The casino investigated the incident and, about a week later, fired the supervisor

for cause. He sued the casino for wrongful dismissal, arguing that the casino had overreacted.

The court dismissed the supervisor's lawsuit, ruling that the casino had just cause for firing him. The court said the supervisor's conduct was "rude, vulgar, sexually explicit and disrespectful. More importantly, this conduct was carried out on the open floor of the casino in full view of other [employees] and/or patrons and was inconsistent with the behaviour expected by a [casino] employee." The court added that the supervisor's conduct was not only unprofessional and serious, but also "sufficiently egregious to strike at the very heart of the employment relationship." Thus, this one serious incident was enough to justify a summary dismissal, it concluded.

Why Wrong Answers Are Wrong

B is wrong and might sound so obviously wrong that you might be wondering why we'd even include it. We did so because, believe it or not, in the real world employers do "pick this answer." They penalize the victim of harassment—not the perpetrator. That's what a furniture manufacturer in British Columbia did. A finisher repeatedly complained to her supervisor that a male co-worker constantly described his sexual exploits in her presence, often using highly explicit sexual language and innuendo. Her supervisor didn't do anything to address the situation. Instead, the manufacturer fired the finisher, claiming that it was overstaffed. But it later hired a number of employees who had less experience than the finisher. She sued the manufacturer for discrimination and won. The BC Human Rights Tribunal ruled that the finisher had been the victim of sexual harassment and the manufacturer should've done something to stop it. And her insistence that the manufacturer take action against the co-worker was held against her and one of the reasons she got fired [*Koblensky v. Westwood*].

C isn't really wrong but it's not the best answer. The casino could legally exercise progressive discipline and simply warn the dealer about his behavior. But doing so would undermine the casino's own policies, which consider such behavior serious misconduct warranting a suspension or termination. Also, it would set a bad example for other employees, who might get the impression the casino tolerates such behavior. And since the dealer's behavior could be considered sexual harassment, the casino should take a firmer stance on such behavior to avoid accusation of discrimination by other employees.

D is wrong because the dealer's friendship with the pit boss is irrelevant. As the court in the Ontario case said, "By no stretch of the imagination could the [supervisor's] conduct…be considered…just joking or bantering between two employees." And even if the pit boss wasn't offended by the dealer's conduct, other employees and gamblers who were present may very well have been offended.

Show Your Lawyer

Koblensky v. Westwood, [2006] B.C.H.R.T. No. 281, May 29, 2006

Robertson v. Complex Services Inc., [2006] CanLII 23956 (ON S.C.), July 17, 2006