# Trap to Avoid: Leniency Today May Bar Termination Tomorrow



### What's At Stake

Disciplining an employee is about as much fun as having a root canal without novocain. So, it may be tempting to let employees who commit serious violations off with a light penalty. But while leniency can seem humane, it may come back to haunt you the next time you try to discipline somebody for committing that same violation.

### How Inconsistent Discipline Can Box You In

An Ontario plastic pellet manufacturing company learned this lesson the hard way. The company prided itself on its strong safety program and culture that stressed what it called "Cardinal Rules" that all employees had to follow. So, it came as a "shock" to learn that a line supervisor with 17 years of solid service violated 2 of those Cardinal Rules by:

- Failing to lock out a machine that he and his crew were cleaning to eliminate the risk of its starting up during the cleaning operation; and
- Not reporting this serious safety violation because he was so embarrassed by his mistake.

The company acted swiftly, interviewing all of the witnesses and sending the supervisor home. A week later, he was fired for the incident.

The company was utterly convinced that it had just cause to dismiss. But the Ontario court begged to differ. Failing to lock out a machine before servicing was a highly serious violation that immediately endangered the safety of not only the supervisor but his co-workers, the court acknowledged. Not reporting the violation was perhaps even more significant given the supervisor's position and leadership role.

But there were at least 3 other incidents in which an employee violated the lockout Cardinal Rule, including one where the culprit was a manager who also violated the reporting Cardinal Rule. With one exception involving a very junior employee, none of the guilty employees got fired. So, the court ruled that terminating the supervisor was "disproportionate" and "out of line" and ordered the company to pay him damages for wrongful dismissal [*Plester v. Polyone Canada Inc*., 2011 ONSC 6068 (CanLII)].

### Takeaway: Current Discipline Becomes Precedent for Future Action

The validity of termination decisions depends not simply on the violation an employee commits but how you handled others who committed the same violation on previous occasions. The key word is consistent. The *Plester* case is a dramatic illustration of how affording lenient treatment to an employee who commits a serious violation can bar you from issuing sterner penalties to those who engage in the same offence later on.