

Winners and Losers: Can You Fire Employees for Smoking Pot at Work?



Sure, drug testing is complicated. But if you catch an employee in the act of smoking marijuana at work, you clearly have just cause to terminate, especially if the employee getting high does a safety-sensitive job. Right? Unfortunately, it's not so simple. The fly in the ointment is the ban on disability discrimination. While *smoking pot* isn't a disability, *addiction* to pot is. Result: If the pot smoking employee is an addict, he's considered disabled and thus entitled to accommodations under human rights laws. Here are 2 cases in which arbitrators had to decide if an employee caught smoking pot at work had an addiction protected by disability discrimination laws.

TERMINATION IS OK

FACTS

A city employee is arrested on the job for possessing marijuana. During the city's investigation, he admits to smoking marijuana during work hours. "[I] smoked joints at work just like others smoked cigarettes," he tells the investigator. He also acknowledges driving a city truck for drug purchases. But he also claims he's addicted to marijuana and sues the city for disability discrimination after he's fired.

DECISION

An Ontario arbitrator rules that the firing was justified.

EXPLANATION

The employee didn't prove that he had a drug addiction, the arbitrator concluded. So he wasn't entitled to accommodations. And purchasing drugs while working, regularly using them on the job and operating the employer's equipment while apparently under the influence of marijuana—thus endangering both co-workers and the general public—were just cause for termination.

City of Ottawa v. Ottawa-Carleton Public Employees Union, Local 503 (Lavoie Grievance), [2011] O.L.A.A. No. 582, Dec. 7, 2011

TERMINATION NOT OK

FACTS

An aluminum smelting employee is caught smoking marijuana at work. Aluminum smelting is a safety-sensitive operation involving the use of heavy equipment and molten metals. So the employer fires the employee under its zero tolerance policy for drug use on the job. The union grieves, claiming that the employee is an addict.

DECISION

The BC arbitrator refuses to uphold the termination.

EXPLANATION

The arbitrator acknowledged that smoking marijuana during smelting operations was worthy of a "strong disciplinary response," especially since this was a repeat offence. But unlike the employee in *Lavoie*, the smelter in this case *was* addicted to marijuana. The employer was aware of his addiction but didn't attempt to accommodate his disability before firing him. So the arbitrator ruled that termination was too severe and knocked the penalty down to a long suspension.

Rio Tinto Alcan Primary Metal (Kitimat/Kemano Operations) v. National Automobile, Aerospace Transportation and General Workers of Canada (CAW-Canada), Local 2301 (Grant Grievance), [2008] B.C.C.A.A.A. No. 170, Dec. 16, 2008