Workplace Culture As An Excuse: Can A "Racist Culture" Be A Mitigating Factor?

A recent Alberta arbitration decision puts renewed focus on a familiar argument in workplace harassment cases: that conduct must be understood in light of the surrounding workplace culture.

In *Building Products of Canada Corp. v Unifor Union of Canada, Local 777*, 2026 CanLII 2711 (AB GAA) ("*Lidher* Grievance"), an employee (the "grievor") was terminated for using racial slurs in the workplace. At arbitration, the union argued that racial slurs were often used in the workplace in a joking way, and that there was a broader workplace culture of using racist language which should soften both the assessment of the conduct and the consequences that followed.

The arbitrator did not dispute that informal and inappropriate language occurred in the workplace. Several witnesses described joking across ethnic lines, reciprocal teasing, and a general culture of "salty language." However, the arbitrator noted that the legal issue was whether the grievor's specific conduct toward specific co-workers crossed into racist and degrading behaviour, and whether that conduct could be treated as less serious because similar language sometimes occurred in the workplace.

The arbitrator separated the analysis into two distinct questions: whether the grievor engaged in the alleged misconduct warranting discipline (these are the findings of fact about the alleged events and whether the substantiated conduct was a breach of the collective agreement and the employer's harassment policy), and if he did, whether termination was too severe.

On the facts, the arbitrator found that the grievor had used racist language toward Black coworkers, had referred to one employee in degrading racial terms, and had later attempted to intimidate colleagues he believed were involved in the complaint. The arbitrator found that this was discrimination and harassment. Those findings and conclusions were made even though there was evidence that joking and ethnic teasing occurred in the workplace; therefore, culture did not convert racial slurs into harmless jokes, nor did it neutralize the seriousness of the conduct when it was directed at identifiable individuals.

The decision serves as a reminder that workplace culture will not generally excuse poor behaviour, particularly when those who were the targets of the behaviour did not participate in this culture. Also, the fact that the person who was subjected to the

conduct also participated in, or contributed to, the culture, does not excuse the respondent's conduct, where that conduct exceeds the bounds of what the culture generally entailed (e.g., inserting sexual jokes in banter between colleagues that had not previously been sexual). The culture could, however, narrowly be used as a "defense" by a respondent where they say that the complainant participated in a culture of similar behaviour – such that the respondent could not have "reasonably known" the conduct to be unwelcome (e.g., co-workers engaging in mutual "gentle" banter with one another). In *Lidher*, the arbitrator accepted evidence that at least one affected employee told the grievor that the language was unacceptable, and that others viewed the language as inappropriate in all circumstances; therefore, the existence of workplace banter did not undermine the conclusion that the conduct crossed the line.

Intent was also raised as a mitigating consideration. The union argued that the grievor did not intend to offend and that he viewed the comments as joking. However, harassment standards focus less on subjective intent and more on the effect of conduct and its objective reasonableness. Indeed, the arbitrator gave little weight to the lack of intent, particularly where the language used carried well-known racial overtones and where the grievor minimized or denied his conduct during the investigation.

Where culture became relevant was in the disciplinary analysis. After making findings of serious misconduct, the arbitrator considered whether termination was excessive. The union relied on long service, lack of prior discipline, lack of training, inconsistent enforcement, and workplace culture as mitigating factors.

After reviewing the union's reliance on workplace culture, the arbitrator in his analysis provided a reminder that the prevalence or use of offensive language at work is no longer considered to be much of a mitigating factor, stating (para. 193):

> Caution is necessary with respect to the argument that workplace culture is a significant mitigating factor. I fear that placing too much weight on the past use of racist language in the workplace as a mitigating factor can serve to excuse racist conduct and unintentionally create conditions that support the continued use of racist language in the workplace. As a result of these concerns, there is a trend to place less weight on workplace culture as a significant mitigating factor [in cases involving racist or discriminatory comments] […]

Therefore, while acknowledging that surrounding circumstances must be considered, the arbitrator rejected the proposition that workplace culture meaningfully reduces the seriousness of racist slurs aimed at specific co-workers and upheld the termination as proportionate. Moreover, there was no reliable evidence that the use of racial slurs was generally considered acceptable or that management condoned their use.

For investigators and employers, the distinction between culture and misconduct remains important. Evidence of workplace culture may be relevant to understanding systemic risk, leadership failures, and the need for organizational remedies such as training or supervision. It is, however, often less persuasive when advanced as a basis for concluding that conduct does not meet the definition of harassment or discrimination.

It is also important to remember that, even where the conduct does not amount to harassment or discrimination, the employer may still take issue within it if it undermines the organization's values and expectations like those set out in its code of conduct.

Takeaways

1. **Culture does not necessarily negate a harassment or discrimination finding**
   Facts and context are crucial in cases where the culture is raised, but even in workplaces where joking or crude language is common, conduct aimed at specific co-workers can still meet the definition of harassment or discrimination, especially where it is degrading or racialized. When culture is raised as a "defense," investigators must be careful to determine whether the complainant contributed to the culture in such a way that the respondent could not have "reasonably known" that the conduct was unwelcome to the complainant.
2. **Culture belongs mainly in the penalty analysis**
   Workplace culture may be considered when deciding whether a disciplinary measure is appropriate, but it is not necessarily a significant factor.
3. **Serious, degrading conduct attracts little leniency**
   Where conduct engages dignity, race, or safety, arbitrators and courts are increasingly reluctant to treat normalized behaviour or informal workplace norms as meaningful mitigation.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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