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Verbal threat considered workplace violence

Lack of remorse or acknowledgment of death threat made termination appropriate discipline: Arbitrator

| BY RONALD MINKEN |

IT HAS been more than a year since the Ontario government established the amendments to the province's Occupational Health and Safety Act, which have commonly been referred to as the Bill 168 amendments. Since then there has been little, if any, case law to assist employers and employees with the interpretation and application of the Bill 168 amendments regarding violence and harassment in the workplace. However, on Aug. 18, 2011, the first Bill 168 arbitration decision was made in the matter of *Kingston (City) v. Canadian Union of Public Employees, Local 109,* which provided well needed insight into how the Bill 168 amendments are to function in the workplace and how they may be used to terminate an employee.

WORKPLACE VIOLENCE

The employee, Donna Hudson, began working for the City of Kingston, Ont., in 1983. Throughout her employment, Hudson received multiple non-disciplinary and disciplinary warnings for various reasons, including arguing and shouting at her supervisor, angrily confronting a co-worker and swearing at her co-workers.

In September 2009, the city conducted training for its employees in preparation for the Bill 168 amendments. Hudson attended one of the training sessions held on Sept. 11, 2009, during which she was informed of the concepts of harassment, verbal and physical violence and the need to be mindful of how one's words and actions affect other people in the workplace.

On July 28, 2010, two days after successfully completing a required anger management counselling course, Hudson made a verbal threat to her union representative, John Hale, at the workplace. The threat was made after Hale requested that Hudson not talk about a friend of his who was dead, to which Hudson responded by stating, "Yes, and you will be too."

In accordance with Bill 168, Hale reported the threat to the employer. In response, the city conducted an investigation into the matter, interviewing Hale and Hudson. During her interview, Hudson denied threatening Hale prior to any of the investigators informing her that there was even such an allegation. Additionally, Hudson did not apologize for having made the verbal threat.

Following the conclusion of the investigation, the city determined that, given Hudson's record of issues at the workplace, her having taken part in Bill 168 training and having completed anger management counselling just two days prior to the day she made the threat, the appropriate disciplinary response was to terminate her employment. Hudson grieved her termination

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In This Issue

Workers compensated for car accident injuries on way to job

SEVEN New Brunswick workers who were in an automobile accident on the way to a remote worksite are entitled to compensation for their injuries, the New Brunswick Court of Appeal has ruled.

Dennis Duguay, Florent McGraw, Paul Emile Robichaud, Aldério Rousselle, Billy Joe Rousselle, Jacques Roussel and Marc Rousselle worked for VSL Canada, a manufacturer and installer of concrete reinforcing steel based in Saint John, N.B. The seven employees were assigned to a wind farm project in a remote part of northern New Brunswick that required travel over a provincial highway used mainly by resource extraction companies. VSL provided a rented all-wheel drive vehicle to transport the workers and their tools, along with a driver. VSL didn't

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TECHNOLOGY: Employee making online posts about employer

Question: If we're unhappy with some of the things an employee is posting on Facebook and Twitter, what can we do? The employee identifies herself as working for our organization on both sites, though they are her personal accounts.

Answer: There are several factors which come into play when an employer is trying to determine how to deal with the effects of an employee's social networking activity on the workplace. These factors may include: Whether the employee is using the employer's computer for the networking purposes, whether they are networking during work hours and whether the networking activity has a clear connection to a negative effect on the workplace.

Before anything can be done about the activity, a discussion needs to take place about how the information about the postings was obtained. The context in this regard can be very important.

As the case law in this area currently stands, employees may have a reasonable expectation of privacy when it comes to Internet use for personal reasons and if the information was obtained though an action which invades this privacy, then the employer may not have the ability to use it to take action against the employee.

For example, if the information about the postings was collected by surreptitiously monitoring the employee's Internet use in the workplace, and she reasonably expected her Internet use would remain private, then action against the employee may not be permissible. The extent to which an employee may reasonably expect her Internet use and email messages will remain private will be determined by weighing the following factors:

- Whether the employer owns the hardware/software
- Whether the technology is being used during business hours
- Whether the employer has a firm policy in place regarding Internet use
- Whether the employee is aware of that policy, and the extent to which the policy is consistently enforced.

It is possible that the account information and postings are available to the public at large and the user has "friended" several other co-workers and supervisors. If this is the case, then the employee no longer has a reasonable expectation of privacy as she has freely made the information available.

Each of these factors would have to be assessed in light of the particular employment context. The test that is generally employed to assess whether an employee's right to privacy has been violated also involves a very contextual analysis. It is generally understood as follows:

- Was it reasonable to monitor or conduct the search?
- Was the search conducted in a reasonable manner?
- Were other alternatives open to the company to obtain the evidence it sought?

However, social networking sites such as Facebook and Twitter have very large audiences and, depending on the privacy settings of the individual user, it is possible that the account information and postings are available to the public at large — regardless of which computer was used to create them. It is also possible that the user has "friended" several other co-workers and supervisors in the same workplace. If this is the case, then the employee no longer has a reasonable expectation of privacy as she has freely made the information available to the employer.

For example, in a recent British Columbia case regarding the use of Facebook, *Lougheed Imports Ltd. v. U.F.C.W., Local 1518*, two employees were terminated for posting inappropriate and derogatory comments about their employer on their personal Facebook pages. They had more than 400 friends between them, including co-workers and supervisors. The employees made offensive remarks about their supervisors, accusations that the employer was out to "hose" people with their services, and even a suggestion that one way to relieve stress at work would be to go on a vigilante killing spree. The employer was made aware of these postings through the supervisors who had access to the page as "friends." An investigation ensued and the employees were terminated for just cause.

The terminations were upheld by the B.C. Labour Relations Board, which further determined there was no reasonable expectation of privacy in this context. Because so many co-workers were "friends" and had access to the employees' pages, the comments were akin to having been made directly on the shop floor, despite it actually happening after hours away from the workplace. The comments created a hostile work environment and damaged the reputation of the employer. Thus, there was a sufficient link between the off-duty conduct and the effect on the workplace to justify action from the employer.

This case demonstrates that where an employee is posting comments to her own private social networking account, using her own computer on her own time, the nature of the comments could turn it into a workplace

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Construction worker sacked after 'stupid' stunt

Crude workplace culture and encouragement of co-workers no excuse for employee's vulgar stunt at work: Board

| BY JEFFREY R. SMITH |

A SERIES of escalating pranks at an Ontario construction site has led to a worker being fired after video of him nailing his private parts to a board surfaced online.

ThyssenKrupp Elevator Canada, an industrial mechanical company with offices in Toronto and Calgary, was subcontracting elevator installation at a construction site in downtown Toronto, where a large office building was being built. All the workers on the site, including those of ThyssenKrupp and the main contractor of the site, PCL Construction, were male and the culture of the workplace was a "macho" environment during which pranks were played. There were reportedly pictures of women and provocative calendars hung on walls, as well as signs displaying vulgar humour. There was little concern over these as access to the building was restricted to people involved in the construction project.

JUST CAUSE

One of ThyssenKrupp's employees on the site was an elevator mechanic. He and several other employees engaged in what he called "picking on" each other and playing pranks in order to keep things light at work. They would also watch episodes of the television show *Jackass* and pornographic scenes on one worker's iPod.

Escalating stunts and pranks emulated TV show

Over a period of two weeks, the mechanic and some other employees performed a series of pranks on each other and began daring each other to do things, similar to *Jackass*, which featured individuals doing stupid activities on dares. One ThyssenKrupp employee was offered $60 — collected from other employees in the lunchroom, including three foremen — to eat spoiled food in the refrigerator. The employee did so and a few similar instances followed where employees performed stunts in the lunchroom in exchange for money collected from co-workers who were there. The lunchroom was in the basement level of the building where employees gathered for breaks, to meet and to change clothes.

A couple of weeks after the first dare, the mechanic was in the lunchroom on a break when he heard a foreman ask an employee if he was going to do something with the stapler the employee had. The foreman suggested "why don't you staple your nuts to something" and the mechanic jokingly said he'd do it "if you get enough money."

"If employees want to emulate the principals of *Jackass* by self abuse, they may be free to do so when they are not on the (employer's) premises and cannot be identified as being associated with (the employer)."

Though he claimed it was intended as a joke, word spread and $100 was raised among seven ThyssenKrupp and three PCL employees. Another four people were in the room watching and the mechanic decided to go through with the stunt. He then proceeded to drop his trousers and staple his scrotum to a wooden plank, which was met be "cheering and high fives," according to the mechanic.

Another employee recorded the stunt and told the mechanic it had been posted on the Internet on YouTube. The mechanic initially did nothing but later asked for it to be taken down. He searched for it, but went to the wrong website and assumed it had been removed. After the video was on the Internet for two weeks, it was finally taken down.

While the video was on the Internet, many people in the construction industry viewed it. ThyssenKrupp became aware of it after its HR department received an email with a link to the video and several people discussed it with an executive at a construction industry labour relations conference. Some specifically made comments that it was a ThyssenKrupp employee in the video and it was unbelievable that something like that could happen.

ThyssenKrupp management viewed the video and determined the mechanic had violated its workplace harassment policy, which prohibited "practical jokes of sexual nature which cause awkwardness or embarrassment." The mechanic was fired for "a flagrant violation" of ThyssenKrupp's harassment policy and risking the company's reputation.

Dares part of workplace culture: Employee

The mechanic filed a grievance, arguing the dismissal was too harsh, given the culture of the workplace that accepted that type of behaviour and he would not have done it if anyone present had expressed displeasure or offence. He also argued several other employees were involved in the incident and had done other stunts but he was the only one disciplined. He also said he had never seen the workplace harassment policy, though it was part of the employee orientation package.

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CASE IN POINT: IMMIGRATION

Foreign worker gets loss of earnings for work permit extension period

Employer laid off worker after work permit expired but worker was still able to work during application period

BACKGROUND

A grey area between permits

WHEN a foreign worker's work permit is due to expire, the worker can apply to Citizenship and Immigration Canada for an extension. If the original permit expires before an extension is approved — but is still being considered — the worker is generally given "implied status," which means the worker's eligibility to work in Canada is still good until he is outright rejected.

However, there can be a grey area if the worker's permit expires but the employer doesn't know there's an extension application ongoing. The worker may have thought he told someone, but sometimes the message doesn't get through and the workers can be left with a period of unemployment.

| BY SERGIO KARAS |

IN ANOTHER twist to the lengthy delays that foreign workers must endure when applying for extensions of their status at the Citizenship and Immigration Case Processing Center in Vegreville, Alta., a recent worker's compensation decision held that an employee performing modified work duties, acting in good faith in attempting to renew his work permit, was entitled to loss of earnings benefits for a period in which he was laid off because the employer thought his work permit was not valid.

The Ontario Workplace Safety and Insurance Appeal Tribunal allowed an appeal by a foreign worker employed as a labourer after a case manager denied loss of earnings benefits on the basis that the worker did not provide the employer with appropriate documentation of his renewed work permit during a layoff. The worker injured his right shoulder when he was pulling a hydro cable and the Worker's Safety and Insurance Board (WSIB) granted him compensation. He received the appropriate treatment and returned to modified work with his employer.

The employee was a foreign worker in Canada and was in the process of seeking permanent residence. He had a valid temporary work permit issued by Citizenship and Immigration Canada (CIC), which expired on July 27, 2009. On Aug. 13, 2009, the employer laid off the worker until he could provide a new work permit as it assumed he was no longer entitled to work in Canada.

The worker returned to work to modified duties on Sept. 17, the day after he received his new work permit. The worker requested that the WSIB grant him loss of earnings attributable to the period of his layoff, but the case manager denied the worker entitlement to benefits for the approximately four weeks of the layoff on the basis that the reason for his wage loss was not compensable, since the worker was not legally entitled to work in Canada. A reconsideration requested by the worker's representative also resulted in a negative decision, even though he indicated the worker had "implied status" during the time in question because he had filed a request for an extension of his work permit. Nevertheless, the request for reconsideration was denied on the basis that the worker did not provide the employer with appropriate documentation of his renewed work permit until after he returned to work. However, the Ontario Workplace Safety and Insurance Appeal Tribunal allowed the appeal.

The tribunal noted that there was no dispute that the worker required modified work due to his injury and the employer provided suitable modified work before and after the period of loss of earnings. The main question was whether the worker's legal status prevented him from performing the modified work, which the employer offered him during the period in question and which he confirmed in his testimony was suitable and he was able to do.

Employer didn't know worker filed for work permit renewal

The worker claimed that he applied for an extension of his work permit on May 28, 2009, before the expiration of his previous permit. He argued he had "implied status" that allowed him to continue working while his renewal application was being processed. It must be noted that it is CIC policy that applicants who file a work permit extension request prior to the expiry of their permit indeed have "implied status" until a decision is made by the case processing centre. On the other

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CASE IN POINT: IMMIGRATION

'Implied status' allowed worker to work while waiting

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hand, the employer argued that it stopped providing modified work and laid off the worker on Aug. 12, 2009, when it became aware the work permit had expired and the worker had not advised the employer he had applied for renewal. The worker agreed the employer acted in compliance with the law by not employing him while its managers understood that his status in Canada was in question. However, that was an incorrect interpretation from their part, argued. The worker provided the tribunal with a copy of his application to extend his Work Permit showing payment of the required filing fee on May 28, 2009, and testified that he told his foreman that he had applied to renew his permit two months before it expired.

The tribunal found it reasonable and sufficient that the worker would have advised his foreman of his renewal application with the expectation that he would have passed on the information to the company administration. Even if he had not advised the employer at the time, the tribunal said the employee's representative who filed the extension request faxed the employer a copy of the application on Aug. 12, 2009. The employer advised that it had no clear protocol for maintaining records for such information at the time and it appears that, therefore, the communication between the worker's representative and the employer was not handled appropriately. The worker also testified that he had applied for a previous extension without any difficulties, continuing to work while his application was pending on that occasion. The tribunal found that the worker complied with his obligations and took the necessary steps to keep the employer informed of his efforts to maintain his legal status in Canada and that he remained willing and able to perform the modified work.

The tribunal noted that the employer raised the issue that the worker's social insurance number (SIN) had expired with the work permit and therefore the worker was not legally able to work and should not be entitled to loss of earnings benefits. However, it found that the lack of a valid SIN was not an issue at the time and it lacked the capability of verifying whether a person can be paid after a SIN has expired.

The worker had applied for a previous extension without any difficulties, continuing to work while his application was pending on that occasion.

Based on the evidence, the tribunal held that the worker acted appropriately to keep the employer informed of his efforts to maintain his legal status and was therefore entitled to loss of earnings benefits for the period in question. However, the tribunal also held that the employer acted in good faith in suspending the worker's employment during that time as this was a novel situation and it appeared there was some confusion within the company about how to handle it. As a result, the employer should not be penalized with the cost of the claim, said the tribunal.

Tips for employers

This case highlights the importance for employers to have the appropriate protocol in place to track the status of foreign workers in their employ. Had the employer obtained legal counsel, it would have been advised that the worker had "implied status and could have continued to work while his application for a work permit extension was pending. This would have saved the employer considerable time, effort and cost in dealing with the situation. Employers must endeavor to maintain good records and make inquiries of the foreign workers as to the steps they have taken to maintain their status in Canada. Employers must be proactive in assisting their foreign workers to pursue their applications deliberately and well in advance of the expiry of their work permits to avoid unnecessary headaches and unpleasant situations.

For more information see:

- *Decision No. 822/11* [Names of Parties are Not Published], [2011] O.W.S.I.A.T.D. No. 1148.

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Verbal threat treated like violence under Bill 168

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before an arbitration board.

After concluding Hudson made the threat towards Hale, arbitrator Elaine Newman discussed the four ways in which the Bill 168 amendments have impacted the process used to determine the appropriate penalty for acts of workplace violence.

Newman indicated Bill 168 defined the type of unwanted language that constituted harassment, but any language, regardless of whether it fell within that definition, that directly referred to the end of someone's life or suggested danger was "not just language, it is violence." In addition, Bill 168 stipulated such language must be reported and addressed by the employer and required workplace safety to be a factor in determining discipline for such misconduct.

After applying the above listed factors, Newman found that the city was justified in terminating Hudson's employment.

"Having reviewed the evidence at length, it is with regret that I must conclude that the termination, in this case, is an appropriate and proportionate disciplinary response. This would not have been my conclusion if the grievor's actions or evidence had reflected an acceptance of responsibility for her misconduct, any appreciation of how serious her misconduct was, or what she herself is going to have to do in order to gain control over her angry impulses," said Newman.

Points of interest for employers

The initial response to the Bill 168 amendments by both employees and employers was one of confusion. There were many questions, such as how the amendments would be correctly applied in the workplace, how would they be correctly enforced, how does an employer ensure they have appropriately satisfied all of the new requirements regarding violence and harassment, and what type of discipline would be found to be a reasonable response to a breach of the Bill 168 requirements.

Bill 168 defined the type of unwanted language that constituted harassment, but any language that directly referred to the end of someone's life or suggested danger was not just language, it is violence.

Though the above Ontario arbitration decision is context specific — and many questions still remain unanswered — the Hudson grievance has defined what an appropriate response may be from an employer in regards to an act of workplace violence and has also shed light on what is expected of both employees and employers when an act of workplace violence has occurred.

However, employers should take note of Arbitrator Newman's concluding remarks regarding the possibility of an alternative finding if the employee had accepted responsibility, appreciated the seriousness of her misconduct or had known what she would do to gain control over her angry impulses. It appears that termination may not be an appropriate response to a verbal threat in the above context if any of the above factors applied to Hudson's circumstances, as it is assumed the above considerations are mitigating factors that may reduce the likelihood of future violence in the workplace by the same employee. Given this potential alternative result, employers should consider whether any of these mitigating factors apply as they may result in termination of the employee not being an appropriate response, despite the employee's violence in the workplace. CELT

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ASK AN EXPERT

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issue. If so, the employer could be justified in taking action if the statements can legitimately be linked to a negative effect on the workplace. In the present case, it is important to note that the fact that the employee has identified herself as working for the employer makes it more likely that comments made will have a negative effect on the employer, depending on their content.

It is possible, however, that the employee has set her privacy settings so that her "friend" group is not sufficiently "public" in this context. In that case, employers should be aware of the restrictions on monitoring an employee's Internet use. To address these restrictions, employers should make sure they develop, and consistently implement, a clear policy on the use of the Internet and social networking in the workplace and ensure all employees are fully aware of the policy and its implications. CELT

For more information see:

■*Lougheed Imports Ltd. v. U.F.C.W., Local 1518*, 2010 CarswellBC 3021 (B.C. Lab. Rel. Bd.).

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MORE CASES

COMPILED BY JEFFREY R. SMITH

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require its workers to travel to the job site in the vehicle, but they were expected to for logistics purposes due to the distance and poor quality of some of the roads to get there.

However, the weather was snowy and the road was slippery and the vehicle slid off the road. All seven men were injured in the accident and filed workers' compensation claims. VSL indicated the accident didn't occur at the job site but rather on the way on a public highway.

The New Brunswick Workplace Health, Safety and Compensation Commission (WHSCC) accept the claims based on its policy that an injury must happen at a time consistent with the worker's normal working hours, it arose out of the employment and was in the course of employment. VSL appealed the decision, arguing that it happened on a public road, their job did not expressly include travelling to job sites and the vehicle was not under its control at the time of the accident.

The WHSCC appeals tribunal dismissed the appeal, finding the workers were exposed to risk on the slippery road because of their employment, the time it occurred was within their normal working hours and the travelling on the road to the work site was in the course of employment. VSL appealed once again, this time to the province's Court of Appeal.

The court noted that New Brunswick's Workers' Compensation Act required injuries to be both "out of" and "in the course of" employment, which were not the same. However, if an accident arose out of the employment, it is assumed to have occurred in the course of employment without evidence to the contrary, said the court.

VSL argued the employees' work didn't begin until they arrived at the job site, they were not required to travel in the vehicle and it occurred on a public highway, which all constituted "evidence to the contrary" that the accident occurred in the course of employment. However, the court found "travel to the job site may not have formed part of the claimants' formal contractual duties, but it indisputably was an activity reasonably incidental to their performance." The court pointed to previous court decisions that established a worker "may well be in the course of his or her employment while on the way to work." The WHSCC policy also specified workers are considered to be in the course of employment while being transported to and from a job site in a vehicle under the "care and control" of the employer. Since the vehicle was rented and insured by VSL and the driver was designated by VSL, it qualified as under its care and control, said the court.

The court upheld the appeals tribunal's finding that the original claims of the workers be allowed as their injuries were the result of an accident that arose out of and occurred in the course of employment. See V*SL Canada Ltd. v. New Brunswick (Workplace Health Safety & Compensation Commission)*, 2011 CarswellNB 437 (N.B. C.A.).

Company's image for employees and customers important

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The Ontario Labour Relations Board found the mechanic's misconduct on the employer's premises and his permission to have it recorded was "patently unacceptable in almost any workplace," particularly since he and his employer were easily identified in the video. This misconduct was serious enough that it didn't matter whether the mechanic knew about the policy, because he should have known better, said the board.

The board also found it wasn't important whether anyone present was offended or that it took place on a break and not during work hours, but rather that ThyssenKrupp had an interest in preventing its employees from engaging in horseplay and stunts in the workplace. The company installed elevators, which is a safety sensitive industry, both for employees and customers and its reputation was jeopardized by such misconduct by an employee, said the board.

The seriousness of the mechanic's misconduct also superseded any other factors, such as his lack of previous discipline and the culture of the workplace. There was no evidence the company was aware of other pranks and his role as the principal offender wasn't diminished by the culture of the workplace, said the board.

In dismissing the mechanic's grievance, the board found ThyssenKrupp's decision to terminate the mechanic's employment demonstrated that it would not tolerate the kind of behaviour he exhibited, which was necessary given the pattern of escalating pranks and horseplay at the construction site.

"If (ThyssenKrupp's) employees want to emulate the principals of *Jackass* by self abuse, they may be free to do so when they are not on the (employer's) premises and cannot be identified as being associated with (ThyssenKrupp)," said the board.

For more information see:

■*I.U.E.C., Local 50 v. ThyssenKrupp Elevator (Canada) Ltd.*, 2011 CarswellOnt 7404 (Ont. Lab. Rel. Bd.).

MORE CASES

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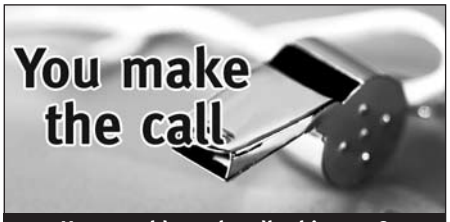
Dozing in the control room

THIS INSTALMENT of You Make the Call features an employee who was fired for being caught dozing while on duty.

Craig Huskinson, 52, worked for Invista, later Dupont Canada, for 20 years as an operator in the company's refrigerants for cooling and air conditioning products department.

On Jan. 9, 2010, Huskinson was working as a control room operator while coworkers worked outside. His job was to monitor the temperature and pressure readings during the production of refrigerants, which was a hazardous process due to the high temperature, pressure and toxicity of the chemicals. He was permitted short breaks in the cafeteria, which was beside the control room and where he could keep an eye on things.



How would you handle this case? Read the facts and see if the judge agrees

The manager on call came by to check on things and when he looked in the control room, he saw Huskinson lying across three chairs with some clothes or other material as a pillow, facing away from the control panel, apparently asleep. When the manager made a noise, Huskinson moved into an upright position and the manager said it wasn't a good situation to be running the process in, to which Huskinson said nothing.

The manager asked Huskinson if he was feeling okay, to which Huskinson replied in the affirmative. The manager left him in the control room and instructed another worker to keep an eye on things. The manager also told the health and safety person on duty to keep an eye on the refrigerant operations and occasionally patrol the department.

Over the next couple of weeks, management discussed the situation and the manager checked to see if Huskinson had any medical limitations, which he did not. Invista was concerned Huskinson was setting a bad example and about the seriousness of the misconduct because of the hazardous process he was supposed to have been monitoring. It also took into account his employment record, which included a 2008 performance review that noted he needed improvement.

Huskinson told management he took the matter seriously and was sorry for what happened. He explained he had had a busy holiday season and was tired, but denied intentionally making a bed for himself nor did he lie flat out. Invista asked him to write a list of reasons why he shouldn't be asleep on the job, to which Huskinson agreed.

It was decided Huskinson didn't have the right qualities for the job and he could no longer be trusted to work unsupervised. On Jan. 19, 2010, Invista terminated Huskinson's employment.

You make the call

- ☑ Did Invista have just cause for dismissal?
  OR
- ☑ Should the employee have been given another chance?

IF YOU SAID the employee should be given another chance, you're right. The arbitrator acknowledged that sleeping on the job, particularly in this workplace, should not be tolerated by the employer. The arbitrator also found Huskinson was not upfront about his sleeping and it was obvious he did not just inadvertently fall asleep, said the arbitrator. Though Huskinson admitted falling asleep, he continued to deny it was planned. It also created a safety risk for his co-workers and the environment if something happened.

However, the arbitrator considered his 20 years of service, as well as the fact the manager left him on duty in the control room after finding him asleep, even though others were instructed to keep an eye on things. Huskinson also worked more shifts before his termination, which indicated Invista still had trust in him to do the job.

The arbitrator also pointed out the request for Huskinson to write out the reasons not to fall asleep on the job and his discussions with management made it appear he would get another chance if he acknowledged his misconduct.

The arbitrator found a suspension dating back to his dismissal would serve the purpose of impressing upon Huskinson the seriousness of his misconduct, given his length of service and his agreement to do what was required of him to keep his job. See *Dupont Canada v. C.E.P., Local 28-0*, 2011 CarswellOnt 3408 (Ont. Arb. Bd.).

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