



Overreaction to single act of insubordination costs employer 24 months' notice

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Employers in unionized settings are generally familiar with the principle of progressive discipline, the purpose of which is to give employees the opportunity to 'learn from their mistakes' before more severe penalties are imposed. A recent Ontario court case, however, suggests that employers in non-unionized workplaces would do well to keep this principle in mind before reacting to employee misconduct.

The plaintiff employee in *Veer v. Dover Corporation (Canada) Limited* (September 26, 1997) was dismissed from his position at age 61, allegedly for insubordination. Victor Veer had occupied the position of Vice-President of Business Development with Dover Corporation, and had some 43 years of service with the company.

Veer had played a key role in the launch of a joint venture between Dover and a Chinese company. Because of this, he assumed he would be named as a director of the joint venture. However, William Wilkinson, his superior, had other ideas and, after some wavering, decided that Veer was not the best choice for director.

Unfortunately, Wilkinson's decision was not clearly communicated to Veer, who proceeded to have Dover's Chinese partner draft a letter to Dover confirming that Veer was to be named a director. At trial, Wilkinson testified that he saw this as serious misconduct on Veer's part, but rather than indicating his displeasure to Veer at the time, he prepared a draft of the joint venture agreement in which Veer was assigned the role of Deputy Managing Director.

When Veer saw the draft, he sent a fax to Wilkinson and the Chinese partners, indicating his disagreement with the management structure of the joint venture. Then, against orders, he flew to Hong Kong. On arrival he was suspended and ordered to return to Toronto. Despite offering a memorandum of apology, Veer was terminated. He then sued for damages for wrongful dismissal.

SINGLE ERROR IN JUDGMENT NOT CAUSE FOR DISMISSAL

The court found that Veer's fax was inappropriate. Further, his trip to Hong Kong constituted insubordination and was a serious error in judgment, but it was not cause for dismissal. Despite Wilkinson's contention that Veer had engaged in a course of misconduct leading up to his final act of insubordination, he had not seen fit to issue any written warnings or reprimands to Veer, and had in fact appointed him Deputy Managing Director. The judge concluded that Wilkinson had not seen Veer's earlier actions as misconduct, but rather as further instances of his "idiosyncratic and difficult



personality". The judge held that, in view of Veer's apology, his long record of service in a senior position, and the fact that no harm had come to either the company or the joint venture, Veer should not have been dismissed. She awarded Veer 24 months' notice as damages. (For more recent developments, see "[Veer upheld by Court of Appeal](#)" on our Publications page; see also "[Stock option plans and damages for wrongful dismissal](#)" on our Publications page.)

THE IMPORTANCE OF A DISCIPLINE POLICY: A COMMENT

The employee in this case should have been given the opportunity, through the imposition of lesser measures, to realize that his insistence on becoming a director against the wishes of his superiors amounted to misconduct. In the absence of such clear signals, and given the other factors mentioned by the judge, his final act of insubordination did not justify termination.

Employers can save themselves hefty damages and legal fees by maintaining and adhering to disciplinary procedures that incorporate the principles of progressive discipline. Typical procedures include the following four-step sequence:

- Verbal reprimand

Used for first instances of behaviour such as lateness, horseplay, carelessness, taking long breaks, or attending to personal business during work hours.

- Written reprimand

Imposed for second occurrences of conduct for which a verbal reprimand has been given, or conduct such as unapproved absence, rudeness to customers or co-workers, misuse of company property, sleeping on the job, or continued and deliberate inefficient work habits.

- Suspension without pay

Again, used for repeat offences, and for serious offences such as substance abuse at work, gross insubordination, or violence.

- Termination

Generally should be preceded by an unpaid suspension pending investigation of the incident. Reserved for repeated offences where the employee has clearly not acted to correct the behaviour, and misconduct such as fraud, theft, assault, harassment, gross insubordination or immoral behaviour.

The above are examples only of the types of conduct that might attract the given penalty. Depending



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on the circumstances, an employer may be justified in skipping some or all of the stages. In this regard, see [“Dismissal for fraud not unduly harsh, arbitrator rules”](#) on our Publications page.

In Our View

It is important to remember that cause for discipline may not mean cause for dismissal. Our firm has developed training seminars for unionized and non-unionized employers on disciplinary procedures to help minimize costly litigation and spare employers the difficulties associated with avoidable staff turnover. We have also drafted sample policies which can be modified to suit clients' particular needs.

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