

## **WORKPLACE THREATS = WORKPLACE VIOLENCE**

Threatening a co-worker was cause for dismissal in a recent Ontario arbitration award. The grievor in *The Corporation of the City of Kingston and C.U.P.E., Loc. 109*, 2011 CanLII 50313, struggled with issues of anger management at various points of her 28 years of service. After several explosive outbursts directed at co-workers and supervisors she was required to attend an employer-funded anger management program. Just two days after completing the program, she threatened the life of a colleague who also served as president of the local union. Relying on its obligations under the Bill 168 amendments to Ontario's *Occupational Health and Safety Act* (the "OHS"), the employer investigated the incident and dismissed the grievor.

Under the dramatic changes introduced to the *OHS* through Bill 168, employers now have an explicit duty to protect their employees from workplace violence and harassment. The broad language of the new provisions left many employers, human resources professionals, and those in the legal community guessing as to how these obligations would be interpreted. Arbitrator Elaine Newman's analysis in the *City of Kingston* decision provides fresh insight on how employers should apply these provisions in their policies and in the disciplinary process.

In upholding the dismissal of the grievor, Arbitrator Newman found that workplace threats to a person's life, or suggestions of impending danger, must now be considered instances of workplace violence. This interpretation is based on the new definition of workplace violence in the *OHS*, which includes any statement or behaviour that another worker reasonably interprets as a threat. To be considered violence, such language was found not to require evidence of an immediate ability to do harm, or evidence of the incitement of actual fear.

The *City of Kingston* decision also recognized that employers are now required by law to take steps to protect workers from violent persons in the workplace. Arbitrators will consider this responsibility when assessing the appropriate level of discipline for an employee who has threatened a co-worker, or who has committed similar acts of workplace violence. The enactment of specific provisions against workplace violence was found to increase the perceived seriousness of this form of misconduct for the purpose of discipline. Therefore, in light of the amendments, arbitrators may grant employers more latitude when assessing the appropriateness of discipline for incidents of workplace violence.

However, employers should not interpret the obligation to respond to allegations of violence as a licence to be rash in the imposition of discipline. The Bill 168 amendments do not permit the automatic termination of employees accused of acts of workplace violence. The decision is clear that discipline must still be proportionate to the offence and implemented reasonably. Furthermore, despite the requirements of the *OHS*, Arbitrator Newman held that a sincere apology by the grievor will be a significant consideration in the determination of the appropriate penalty in instances of workplace threats.

The decision confirms that the Bill 168 amendments to the *OHS* have strengthened the ability of employers to respond to threats, and other forms of violence in the workplace. To ensure

compliance with the changes to the *OHSA*, employers must ensure that the use of threatening language in the workplace is treated with the seriousness it deserves. However, employers must be cautious not to wield these provisions with a heavy hand in the name of ensuring workplace safety.

For further information, please contact Russell Groves at 416-408-5563, or your regular lawyer at the firm.

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