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Can smoking at work justify an automatic dismissal?

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In a recent arbitration award, an arbitrator assessed a company's internal policy which provided for the dismissal of any employee caught smoking at the employer's plant of on its property, even in the case of a first offence.[1]

THE DISPUTE
The plaintiff worked at ADM Milling Co.'s flourmill for nine years, a mill where grain is made into flour. On October 11th, 2012, he was dismissed after having been caught smoking in the cloakroom of the facilities. To justify its decision, the employer relied on its policy prohibiting any employee from smoking in the mill or on the employer's property, under penalty of automatic dismissal.

A grievance contesting the plaintiff's dismissal was filed. The union essentially attacked the severity of the penalty.

THE EVIDENCE
The impugned policy came into effect in 2009. In general, it is aimed at preventing the risk of fire, detonation and explosion which may result from flour dust if it comes into contact with sources of ignition such as a lit cigarette. In the fall of 2012, two other employees were dismissed after smoking on the premises.

The evidence showed that the safety rules, particularly as they related to the prohibition on smoking at the mill, had been explained to the employees and were posted at the time they were implemented in 2009. Moreover, the employees had received annual training as well as periodic reminders on the subject. It was also demonstrated that the main risk posed by the company's flour-milling operations is a risk of fire, detonation and explosion which may result from contact between flour dust and a source of ignition. Furthermore, the employer presented evidence of explosions which had occurred at some of its other establishments and at other similar facilities.

At the hearing, the plaintiff admitted that he had indeed smoked in the cloakroom on company's

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property, a fact that he previously denied when the employer's representatives met with him. He also acknowledged that the cloakroom was adjacent to a flour compressor and transfer room. According to his testimony, he knew about the employer's policy as well as the goal sought by the prohibition on smoking.

THE PARTIES' ARGUMENTS

The union claimed that a number of circumstances undermined the severity of the plaintiff's misconduct and, as a result, the penalty imposed was too severe. The union emphasized the plaintiff's seniority, his unproblematic behaviour, that the "zero tolerance" policy failed to take into consideration the circumstances surrounding the infraction, the gravity of the misconduct in proportion to the risk, and the fact that the employer's notion of danger is "applicable everywhere".

For its part, the employer argued that the policy adopted had been followed and applied in a uniform manner, that there was a risk of danger given the operations which were carried out in the part of the mill adjacent to the cloakroom, the fact that the plaintiff lied when he met with the employer's representatives, and furthermore that he had failed to present any justification for his conduct.

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[1] *Travailleuses et travailleurs unis de l'alimentation et du commerce, section locale 501 and ADM Milling Co.*, (T.A. Mtre Jean Barrette, 2013-04-09), AZ-50958802.

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