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Dismissal due to a breach of the occupational health and safety rules related to lockout

November 16, 2017

In a decision rendered on August 14, 2017,[1] Arbitrator François Blais dismissed a grievance contesting a dismissal, holding that a breach of occupational health and safety rules constitutes an objectively serious fault which must be dealt with severely regardless of whether or not the breach caused an accident or imminent danger for the company's employees.

The facts

An employee was dismissed for unblocking the conveyor of the rip saw he was working on without applying the lockout procedure[2] put in place by the employer, Produits Forestiers Résolu. The employer's internal policy, which was posted on company grounds, provided that the employee could be dismissed after three violations of the occupational health and safety rules. In fact, the employee had already been suspended twice before for breaching the lockout policy during the nine-month period of the amnesty clause in the collective agreement.

At the time of his dismissal, the employee had more than 20 years of service and had been mainly assigned to cleaning the sawmill facilities as a day labourer.

The employee knew the lockout procedure and acknowledged that employees had to follow it when trying to unblock any machine with a "mandatory lockout" sign, as was the case here. However, he was stated that he had not seen the sign and had unblocked the machine using a five-foot driving pike, not with his hands.

Decision

According to the Arbitrator, the use of the employee's hands or the driving pike to unblock the machine was not a determining factor in deciding whether the employee committed a fault has no impact on the outcome of the case given that use of the lockout procedure was mandatory in any event, it is unlikely that the employee did not see the sign. In the case under review, the Arbitrator did not believe that the actions of the employee were the result of a lack of information or training on the part of the employer.

The violation of rules relating to occupational health and safety is considered to be objectively serious. Moreover, the serious responsibilities imposed on the employer, who must exercise the greatest care in occupational health and safety matters, is a very important aspect of such cases,

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which must be taken into consideration in the analysis of the disciplinary measure imposed by the employer

In the context of his duty of care, the employer also has a duty of authority with regards to occupational health and safety rules, such that employers cannot tolerate hazardous conduct and must take appropriate measures against employees who breach safety rules. In this respect, the policy, which was known to the employee, provided that a failure to apply the lockout procedure constituted a serious breach and that a third violation would result in his dismissal.

The Arbitrator indicated that such a policy, unilaterally put in place by the employer, is not binding on him when evaluating the appropriateness of the measure imparted on the employee, but it is nonetheless valid insofar as it does not violate the collective agreement. Such a policy is also reasonable, given the hazards associated with the industry in which the employer operates. Relying on the reasons of another arbitrator, he indicated that the disciplinary policy of the employer as it pertains to occupational health and safety [translation] “demonstrates, by the measures it imposes, which are known to the employees, what a worker can expect if he breaches the safety rules in question”.[3]

Therefore, given the disciplinary record of the employee, his attitude, the aggravating factor of his poor work habits despite his 20 years of seniority, as well as the disciplinary policy of the employer and the absence of any mitigating factors, the Arbitrator concluded that dismissal was warranted.

Conclusion

Employers would be well advised to adopt a disciplinary policy setting out the rules regarding occupational health and safety. Even if such policies are not binding on arbitrators, once the reasonableness of the policy and its compliance with the collective agreement are established, arbitrators are more likely to conclude that an employee’s awareness of the potential penalties in the event of a violation will justify the disciplinary measure imposed by the employer, whether or not the possible danger to the other workers actually materialized.

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1. *Produits forestiers Résolu (usine Girardville) et Unifor, section locale 497 (Éloi Thiffault),* , 2017 QCTA 591.
2. Lockout generally consists in installing a padlock on a machine to prevent it from being turned on while an employee performs maintenance on the machine.
3. Paragraph 174 of the decision.

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