Case In Point

Court of Appeal Upholds Finding that One Health and Safety Violation Did Not Constitute Just Cause for Termination

Date: February 4, 2013

In its recent decision Plester v. PolyOne Canada Inc., the Court of Appeal for Ontario found that one violation of a health and safety rule did not constitute just cause for the termination of a long term supervisory employee.

The plaintiff was employed as a line supervisor and had worked for the employer for 17 years, with very limited discipline in his employment file.

The Court noted the employer's strong culture of health and safety and the fact that employees were provided with continuous safety training throughout their employment. One of the "Cardinal Rules" of the workplace was that employees must lock out and tag machinery prior to performing maintenance or other work on the machine.

One evening, the plaintiff failed to lock out and tag a machine prior to working on it. His subordinates noticed his mistake and locked out the machine. The plaintiff did not immediately contact the Health and Safety Co-ordinator to report his mistake, although he was aware of the requirement to do so pursuant to the employer's safety rules. The plaintiff left the workplace and before arriving for his next shift, his subordinates had already reported the mistake, pursuant to their reporting requirements under the safety rules.

The employer investigated the incident and the plaintiff's employment was terminated for cause.

The Court of Appeal confirmed the trial judge's decision that the employer did not have just cause to terminate the plaintiff. The "for cause" termination was not proportionate to the plaintiff's conduct: he was a long term employee, his conduct did not place other employees at risk, and he was planning to report the violation of the health and safety policy, albeit with some delay. The Court did not accept the employer's argument that the plaintiff's conduct undermined the trust required for the ongoing employment relationship.

This decision confirms that, in terms of employee performance management, health and safety violations must be treated in the same manner as other employee misconduct. To justify the "for cause" termination of an employee, the misconduct must be so grievous as to breach the "fundamental terms and conditions" of the employment relationship. The employee's employment history, remorse and planned course of action in response to the misconduct are relevant to the determination of discipline.