THE FINAL STRAW WAS AGAIN A BATTLE OVER A SEATING PLAN. WHEN THE MANAGER ANNOUNCED THE NEW ARRANGEMENT, HART LOUDLY AND AGGRESSIVELY MADE IT CLEAR THAT HE WAS NOT MOVING. HART LATER ACCUSED THAT EMPLOYEE OF ATTEMPTING TO STEAL HIS JOB.

COMMENT

Managing misconduct in the office

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Do unto others as you would have them to do unto you" isn't a mere moral exhortation but a core obligation of employees. As Mark Hart recently learned, the courts show little patience when it's violated.

Hart was a merchandising manager for Manitoba-based grain handler Parrish & Heimbecker. By all accounts, Hart performed competently over his 15 years of association, with one notable exception: his behaviour toward fellow employees.

In the first recorded incident, Hart had a confrontation with a colleague about the office's seating arrangement. Pointing his finger, he stood over her, raising his voice and threatening her. He then stormed out of the room, slamming the door.

The employer's response was conciliatory: the chief financial officer took Hart out for lunch. He was gently reminded of the importance of respect and temper control and that he had to correct his behaviour, as it would damage his career if he were terminated.

Some years later, Hart had a dispute with one of his managers over the hiring of a freight analyst. Not liking the way his report had approached the issue, Hart pushed an email across the table and accused her of breaking the chain of command. He proceeded to pound the boardroom table with his finger and shouted at her.

The manager responded by lodging a written complaint under the employer's Workplace Violence and Harassment Policy. She further accused him of obliquely criticizing her without providing any guidance or solution, and continuously belittling her in front of staff. When Hart was asked to answer to the complaint, he apologized for acting unprofessionally. Hart was again informed that his conduct was inappropriate and was directed to undertake coaching.

But that appeared to have little effect. Another employee came forward and complained that Hart had angrily screamed at him and berated him on a daily basis. This time, Hart did not acknowledge that he had done anything wrong, nor did he apologize. The employer once again met with Hart and went through the complaint with him. He was told that proactive action was required to address this complaint, including completing the coaching process that he had started.

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It's not enough for employers to simply have a workplace harassment policy without proper training and refreshers.

The final straw was again a battle over a seating plan. When the manager announced the new arrangement, Hart loudly and aggressively made it clear that he was not moving. Hart later accused that employee of attempting to steal his job.

This was the end of the line for Hart. Because the staff complaints were that his conduct was causing havoc in the office, affecting morale and creating stress, Hart was fired for cause. He responded with a suit for wrongful dismissal.

At trial, Hart argued that there was no cause because he had never received an explicit warning that his continued employment was in jeopardy if his conduct persisted. But Mr. Justice James Edmond of the Manitoba Court of Queen's Bench sided with the employer. It was not legally necessary to specifically warn an employee, particularly when a reasonable person would know or ought to know that their conduct is inappropriate. Hart's lawsuit was dismissed.

This case is a profound lesson to employers in managing interactions in the workplace. Ensure you do the following:

- Institute a policy: The court gave a particular weight to the fact that the employer had a Workplace Violence and Harassment Policy, which set out the expectations of the appropriate conduct.
- Investigate each incident: The employer was able to produce notes in most of the instances to support its position that the plaintiff has misconducted himself. The court relied on those notes in upholding cause.
- Train staff on the policy: It is insufficient to simply have a policy but regular training and refreshers must be conducted to ensure staff are familiar with its contents.
- Deliver written warnings: The employer, in this case, succeeded despite the absence of an explicit warning that Hart's employment was in jeopardy. It would have been easier for the employer to demonstrate cause had written warnings been delivered.
- Weigh your words: Senior management was accused of having made statements that suggested they had condoned Hart's conduct. While the court ultimately rejected that, the employer's message should be unambiguous that the employee's behaviour is unacceptable and will not be tolerated.
- On surreptitious recording: Hart surreptitiously recorded his employer's conversations with him using the company-supplied phone. The company argued that this was a breach of trust. While the court felt that it did not have to make a finding on that issue, it took a dim view of this behaviour. Employers may now have a new ground for cause if they learn that discussions are being recorded by employees without the knowledge of management. As I have noted before, although such recordings are not criminal, they may still be cause for termination.

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