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WORKPLACE INVESTIGATION INSIGHTS

Your Mouth Can Be a Weapon

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In a decision underscoring the impact of Bill 168 on the workplace landscape in Ontario, a labour arbitrator has ruled that a threat of violence now legally constitutes an act of violence. In Kingston v CUPE Local 109 CanLII 50313 (ON LA), the arbitrator upheld the decision by the City of Kingston to fire the grievor, a 28-year employee with an admitted history of problems with her anger after it was found she threatened a co-worker.

In an argument with a union colleague who was to represent her at a meeting held to discuss a return to work for her arising out of a previous incident involving an angry outburst, the grievor complained profanely to the union representative about how his predecessor had treated her. The union representative had been friends with this predecessor, and said to the employee “don’t talk about [the predecessor]. He’s dead.” The grievor replied “Yes, and you will be too”.

The employer decided that, in light of the employee’s long record of angry outbursts, this threat was sufficient cause for her to be terminated. The arbitrator agreed with the employer, finding that the threat itself constituted an act of workplace violence:

"The Bill 168 amendments… are intended for a very real and critical purpose. Based on the hindsight provided by inquests into the deaths of the victims of workplace violence in this province, the amendments are intended to require the workplace parties to heighten their awareness, to sharpen their antennae, and to refuse to ignore the warnings of violence that puts employees in peril…."

"The Amendments make it clear that language that is vexatious and unwelcome is harassment, and very serious in its own right. But language that is made in direct reference to the end of a person’s life or that suggests impending danger, falls into a category of its own. This is not just language, it is violence." The arbitrator said that it is the utterance of the words that constitutes workplace violence. "There need not be evidence of an immediate ability to do physical harm. There need not be evidence of intent to do harm. No employee is required, as the receiver of the words, to live or work in fear of attack…."

The arbitrator found that the grievor’s account of the threat incident was inconsistent and not credible. “First, she denied having said the words of which she is accused. Then, she said that [co-worker] took the words out of context.… Then, the grievor said that [the co-worker] may have misunderstood her words…. On another occasion,… she said that [the co-worker] did not hear her correctly. Finally, she repeats her clear and unequivocal denial of having uttered the words at all. The inconsistency of the grievor’s evidence casts doubt on her credibility.”

As well, the arbitrator cited the grievor’s failure to avail herself of help through the Employee Assistance Program. Finally, the arbitrator noted that the grievor never offered an apology to the co-worker for her remarks, and remained bitter toward him: “There is no acknowledgement of her threat… and no remorse for having allowed her anger to have reached the level of workplace violence.” The arbitrator noted that if the grievor had shown she had undertaken to do the “hard work” necessary to deal with her anger issues, she might have been entitled to “reinstatement on some ‘last chance’ arrangement.” However, the grievor did not do so, continuing to deny that she had threatened her co-worker. The grievor’s insufficient acknowledgement of the seriousness of

her encounter with her co-worker led the arbitrator, in the end, to conclude that termination was the proper course of action for the employer.

What makes this case important for employers is the finding of the arbitrator that the uttering of a threat in the workplace is to be considered an act of violence. Bill 168 thus changes the way in which employers must now respond to verbal threats. In short, because the uttering of a threat of violence now legally constitutes an act of violence, employers can no longer dismiss such behaviour as mere talk. Any threat (let alone a death threat), whether uttered with serious intent or not, and especially if not followed up by an apology and acknowledgement of its seriousness, can result in termination .

As the arbitrator noted, “the classification of threatening language as workplace violence” under Bill 168 represents a “clear and significant change” to the law in Ontario. The Occupational Health and Safety Act requires employer to take every reasonable precaution to protect workers. The arbitrator finds that, as a result of Bill 168, this obligation “now extend[s] beyond ensuring safety from hazardous substances and dangerous machinery and equipment…. [A]n employer must protect a worker from a hazardous person in the workplace.”

This case brings into sharp focus the reality that one’s words can have serious consequences in the workplace.

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