

Arbitrator upholds dismissal of teacher who sent sexually explicit emails to students

In a recent case, an arbitrator has upheld the termination of a Catholic high school teacher who admitted to sending 11 sexually explicit emails to two male students, aged 15 and 17. These emails were shared with other students, including a 13 year-old boy. The termination was upheld even though the grievor had 12 years of service and a clean disciplinary record.

The issue in *Catholic District School Board of Eastern Ontario v. Ontario English Catholic Teachers' Association* (January 8, 2004) was whether termination was the appropriate penalty. The union conceded that some form of discipline was warranted, as the grievor had admitted to sending sexually graphic pictures of nude women to the two students over a period of five months. The grievor's teaching certificate had been suspended for seven months by the College of Teachers. No charges had been laid because the pictures did not involve child pornography and could not be considered obscene under the *Criminal Code*.

PSYCHIATRIC EVIDENCE

Two psychiatrists offered evidence that the grievor had shown no signs of sexual deviance that required treatment, and one expressed the view that he was unlikely to repeat his actions. However, testimony at the hearing revealed that the psychiatrists' reports had been based on information provided by the grievor that he had sent only one email that was shared by two students. The psychiatrists agreed that the tests the grievor had taken were highly dependent on the honesty of the persons taking them and that, therefore, the results were of limited reliability.

GRIEVOR'S EXPLANATION

The grievor expressed regret for having sent the material to the two students. He stated that he had not been acting as a teacher but as a "friend" to the two boys, and that he had not been thinking about their vulnerability. When challenged as to why he had inappropriately used a student's email address to send him the material, the grievor responded:

"We each had the other's email address. Once they are on the computer, it is there. From that point yes things were exchanged back and forth. ... When we exchanged email addresses, we exchanged emails, and there was nothing more to it than that."

The grievor had asked the younger boy at school whether he had received the emails and liked the pictures. When asked at the hearing about his motivation for these questions, he said:

"No real motivation. I sent them, he received them, I asked him about them."
When asked how he could send these emails, knowing that doing so placed his job in jeopardy, he responded:

"I don't know if even I understand. I know now I made a mistake and that I had not considered the implications of my action. I don't have a reason for why I sent them, other than I sent them."

PARTIES' ARGUMENTS

In justifying the grievor's termination, the School Board pointed out that the grievor's actions had not been taken on the spur of the moment, but had occurred over the course of five months. He had compounded his actions by asking one of the boys how he liked the emails. The fact that there was no evidence of a treatable disorder only served to make the behaviour more bizarre and a greater cause for concern. The Board also pointed to the grievor's inability to explain his conduct and his apparent indifference to the impact it had had on the students.

The union argued that this was an appropriate case for progressive discipline, given the grievor's years of service and previous good employment record. It agreed that, although the grievor's conduct had crossed the boundary of the student-teacher relationship, there was no evidence of ulterior sexual motive.

TERMINATION UPHELD

In upholding the grievor's termination, the arbitrator focused on the psychiatric evidence and the grievor's own testimony. He noted that the psychiatrists' opinions had been based on misleading accounts provided by the grievor: details regarding the number of emails sent, the period of time over which the incidents had occurred, the number of students involved, and the fact that the grievor had asked one of the students whether he liked the emails had all been withheld by the grievor. The arbitrator concluded that there was limited value in evidence that had been tainted by "the grievor's apparent avoidance of full disclosure of the facts and deliberate attempts to mislead".

With respect to the grievor's evidence, the arbitrator stated that it appeared that the grievor did not fully grasp the seriousness of his behaviour and its impact on students. He also took a dim view of the grievor's belief that, in sending the students the material, he had been acting as a friend:

"It is also disturbing that the grievor suggested that his actions could in some way be explained or understood as an act of friendship outside of the teacher/student relationship. ... The community has reason to be concerned when an adult sends sexually explicit material to children, even more so when the adult is a teacher and the children are students in his school."

Nor was it comforting that the grievor was unable to explain the reason for his conduct:

"[I]t is troubling that when the grievor was asked about why he would send such emails, knowing that doing so placed his job in jeopardy, he responded, "I don't know if I even understand. ... I don't have a reason why I sent them, other than I sent them." If the grievor does not understand his actions, how much comfort can the school board, students and parents take from his assertions that he has learned from this incident and that he will not engage in similar actions in the future?"

In concluding, the arbitrator noted that the mitigating factors cited by the union - the grievor's years of service and otherwise clear disciplinary record - could not be applied in this case, given his failure to supply a reasonable explanation for his actions. Without such an explanation, the arbitrator stated, there was "no logical context within which to assess the offensive conduct against past performance or future risk". Accordingly, the grievance was dismissed.

In Our View

The arbitrator distinguished his award from the penalty imposed by the Ontario College of Teachers - a seven-month suspension of the grievor's teaching certificate - stating that one difference was the question being addressed in each process: the College was concerned with whether the grievor should be prohibited from teaching altogether, while the issue before the arbitrator was whether the grievor had the right to work for this particular board. However, it may be that the arbitrator in this case was concerned that, given the grievor's lack of any comprehensible explanation for his actions, there was no basis for concluding that his conduct would improve following his return from a suspension.

For further information, please contact [Lynn Harnden](#), who presented the case on behalf of the School Board, at (613) 940-2731.

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