

Arbitration board sets aside dismissal of teacher charged with negligence in classroom accident

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The majority of an Ontario board of arbitration has ordered the reinstatement of a secondary school teacher whose student suffered a serious injury while operating a table saw. The award, in which the arbitration board substituted a ten-day suspension as a penalty, highlights the importance of employers "getting it right" when they evaluate a teacher's conduct and determine whether there is a case for dismissal.

Ontario Secondary School Teachers' Federation District 26 v. Upper Canada District School Board (April 30, 2004) was a grievance involving a construction technology teacher with 15 years of service who was dismissed after one of his students lost a finger in a classroom accident. The issue of the grievor's responsibility arose from allegations that he had allowed the student to operate a table saw without proper supervision. Specifically, it was alleged that a temporary wall obstructed his view of the student at the time and that he was marking report cards while students operated dangerous equipment. Beyond his failure to supervise on the day of the accident, it was also alleged that the grievor had failed to properly train the student and inculcate safety habits.

The grievor countered that he had always maintained high safety standards and that the employer's decision to terminate him had been, at worst, malicious and, at best, incompetent or negligent. The grievor demanded reinstatement as well as damages for mental distress resulting from the manner in which he had been treated before his dismissal.

EMPLOYER'S ASSERTIONS, BOARD'S FINDINGS

The employer alleged that the grievor had shown a lack of concern for safety at various points during the course of his employment. However, the arbitration board found that he "had a well-earned reputation" for being safety conscious and was a well-liked and approachable teacher. Although the employer asserted that the principal had directed teachers to assign students "seat work" – rather than having them work on projects – when report cards were being marked, the arbitration board found that the principal had not given this direction emphatically or in a manner that ensured that teachers would hear it.

There were other allegations made against the grievor that the arbitration board did not accept. For example, after the accident occurred, the employer's Superintendent of Education had formed the opinion that the grievor's reaction to the accident was "calm, casual, quite nonchalant". The board found that this was a misreading of the grievor's true state of mind, and that others knew that he was extremely concerned but was doing his best to keep a "stiff upper-lip".

Moreover, the board noted that the employer itself was not blameless in its safety practices and that a number of safety concerns had been raised with it about the room in which the accident had taken place. Among those issues was the absence of a panic switch on the table saw. The evidence indicated that such a device might well have saved the student's finger but that the employer had declined to install it for budgetary reasons.

TERMINATION PROCESS

These misperceptions and faulty assumptions by the employer plagued the process leading up to the grievor's termination. Specifically, the arbitration board pointed to the ignorance that characterized the decision to terminate the grievor:

"In deciding to recommend termination, they gauged the grievor's actions against what they expected teachers to be doing. They did not look at similar shop situations to see what other teachers do, nor did they consider how the Employer had previously dealt with teachers whose students had sustained injuries during class time. They did not know how long the grievor had been at his desk, nor how long the wall which was blocking his view had been there. They also did not know what material had been covered by the class up to the time of the accident, or what the grievor had taught the class about safety."

Furthermore, the letter that notified the grievor of the decision to recommend his termination contained two key errors, which were never corrected. It stated that there had been a meeting with the grievor to discuss the conclusions arrived at by the investigator into the accident, and that the person writing the letter had previously met with the grievor to personally express his concerns over the grievor's safety record. Neither meeting had taken place.

Reports and oral representations made to the employer's Board of Trustees also contained significant errors. The Board of Trustees was given the impression that the grievor had a previous safety record. He did not. Reference was made to a previous incident in which a student had been injured in the grievor's class, yet the grievor had not been disciplined for this incident nor had there been any suggestion that he had been at fault. Other non-disciplinary events were cast in a disciplinary context to give the impression that the grievor had safety-related disciplinary record. The allegation about the grievor's lack of concern for the injured student was repeated to the Board of Trustees, and the erroneous suggestion was made that he did not know the student's name. The arbitration board also found that the Board of Trustees had not been given adequate information about the grievor's safety program. All in all, the impression had been conveyed that the grievor was intransigent in his attitude to class room safety.

GRIEVOR'S NEGLIGENCE

Turning to the issue of whether the grievor had been negligent in his safety practices, the arbitration board found that his overall approach to safety did not demonstrate negligence. Some

employer witnesses had suggested that students not be permitted to work alone on the table saw until they had demonstrated their capability to do so to the teacher on an individual basis. However, the arbitration board found that such a requirement was not an established norm in either construction technology classrooms operated by the employer or other school boards across the province. It was open to the employer to mandate such an approach but it had not done so, and the grievor's practice of demonstrating the machine to the entire class had been and continued to be a common one.

Moreover, the arbitration board found that the primary cause of the student's accident had been his own failure to follow safety rules of which he was well aware. However, the board did hold that the grievor had shown negligence on the day of the accident by allowing students to operate dangerous machinery while he marked report cards, and while his view of the students was obstructed by a temporary wall that had recently been placed in the classroom. This negligence, which lasted for some 15 minutes, warranted some disciplinary response, but not termination.

REINSTATEMENT WARRANTED

The employer attempted to persuade the arbitration board that the grievor should not be reinstated, but this contention was rejected. While it agreed that teachers should not be reinstated if such a remedy would pose a risk to students and that arbitrators have the power to award damages instead of reinstatement, the board held that this was not an appropriate case to refuse reinstatement:

"This is not a case in which the grievor lacks the requisite skills and abilities of secondary school teacher. Nor is it a case of a grievor who is ... incapable of adjusting his behaviour and attitude to permit the continuation of the employment relationship free of previous behavioural problems. We are satisfied on the totality of the evidence that [the grievor] is a dedicated, capable, and well-liked teacher, who is willing and able to learn from mistakes and experience, and who is constantly seeking to improve his safety program and other aspects of his courses. Consequently, we do not believe that reinstating the grievor would put any of the

Board's students at risk."

Accordingly, the majority of the arbitration board substituted a penalty of a ten-day suspension for the dismissal.

In Our View

The standard of care owed by teachers to students has been held to be that of a "prudent parent".

Noting that the standard has changed in modern times because of the greater variety of activities conducted in schools, along with the fact that schools now have larger numbers of students and more dangerous equipment, the Supreme Court of Canada, in the case of *Myers (Next friend of) v. Peel County Board of Education*, has stated that

"[the standard cannot] be applied in the same manner and to the same extent in every case. Its application will vary from case to case and will depend upon the number of students being supervised at any given time, the nature of the exercise or activity in progress, the age and degree of skill and training which the students may have received in connection with such activity, the nature and condition of the equipment in use at the time, the competency and capacity of the students involved, and a host of other matters which may be widely varied but which, in a given case, may affect the application of the prudent parent standard to the conduct of the school authority in the circumstances".

This case demonstrates that even when the harm suffered by a student is extremely serious, arbitrators will take a contextual approach when assessing whether a teacher has been negligent and whether dismissal is warranted. For this reason, school boards should carefully consider whether the case for dismissal is made out when a student is partly at fault and a teacher's lapse is momentary.

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