

EMPLOYERS' ALERT

February 2007

An employee who demeans and mistreats other employees can be terminated for cause!

Neen v. Cobble Hill Grocery Ltd

A recent case from British Columbia illustrates the importance of healthy and respectful workplaces, and the steps employers may take if an employee's behaviour is disruptive. Here, the employee in question was a thirty four year old co-assistant manager of a grocery store, where he had worked for four years. By all accounts, he was an exceptional employee.

However, his employer began to notice that there was low morale and high turnover of employees in the store the employee managed. To get to the bottom of the problem, the employer gave a voluntary confidential questionnaire to its employees. The results of this questionnaire were surprising: employees reported that the store manager gave them little, if any, positive feedback; spoke to them in a negative and belittling manner (for example, telling them repeatedly that they could easily be replaced); used vulgar language directed at them; fraternized, or attempted to fraternize, with female employees; and made inappropriate remarks about the anatomy of some of the female employees.

The employer met with the store manager to outline the employees' complaints and to discuss its Harassment Policy. The store manager was also given a memo that outlined the improvement required in his behaviour and that dismissal would occur if his inappropriate behaviour continued.

About two years later, the employer received a letter from an employee who outlined highly inappropriate and vulgar behaviour by the store manager, including: making racial slurs; using vulgar language; and forcing employees to clean the bathroom after he defecated in it because they would "like the smell". A formal investigation was undertaken, after which the store manager was terminated for cause. He then sued for wrongful dismissal, and the trial judge had to determine whether his behaviour was sufficiently serious as to warrant a termination for just cause.

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WHAT'S NEW AT RUBIN THOMLINSON LLP

On January 31, 2007 Christine M. Thomlinson spoke to a standing room only crowd at the Annual HRPAAO Conference on "Respect In The Workplace - Not Just An HR Policy". Christine discussed how Rubin Thomlinson LLP partnered with AEGON Canada to develop Respect at Work training sessions. AEGON found that these sessions were extremely well-received by staff and achieved significant documented results when AEGON measured their internal return on investment.

We work with employer clients to provide optimal legal solutions to their challenging workplace issues. If you would like to know more about our practice, please do not hesitate to contact us at (416) 847-1814 or via e-mail at contact@rt-law.ca

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Upcoming Events at Rubin Thomlinson LLP:

Each of our upcoming training sessions is designed to raise awareness of relevant employment law issues and trends, and strengthen participants' skill at applying this knowledge to their own workplaces:

- NEW "Help I've Got to Hire Someone" May 30, 2007 – To register, please call us or e-mail us at (416) 847-1814 or seminars@rt-law.ca

Website Makeover

Our website has had a makeover!

Please visit our newly refurbished website at:
www.rubinthomlinson.com

Please contact us at 416.847.1814 or by email at contact@rt-law.ca for additional information on any of our workshops or other events.

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The Court noted that the employer's Harassment Policy clearly prohibited the store manager's behaviour, and that two years before his termination, after the employer's survey, he had been warned that further breaches would be cause for dismissal. The Court held that "the evidence showed that the belittling and demeaning manner with which the store manager supervised employees resulted in a negative and tense working environment and in an atmosphere in which many of the employees felt humiliated and demoralized."

In dismissing the store manager's wrongful dismissal claim, the Court stated, "to summarize, given that developing and maintaining a positive work environment for the employees under his supervision was an essential requirement of the store manager's employment, the nature and the degree of his misconduct went to the root of that employment and constituted a permanent fracture in that relationship. Consequently, dismissal is an appropriate sanction."

What this means for employers:

- Employers are responsible for the workplace
Employers are responsible to provide a workplace that is free from discrimination, harassment and abuse. Employers will be permitted to terminate employees, even those who perform their assigned tasks well, if they make the workplace intolerable for others. This is particularly true when the employee in question is a manager.
- Always document negative employee conduct
In this case, a crucial element to the employer's success in making out its case for cause was that it had clearly warned the store manager that his behaviour was unacceptable and it put his employment at risk. The lesson here is that:

When disciplining employees:

- put it in writing;
- describe in detail the inappropriate conduct
- clearly stipulate the ramifications of continued inappropriate acts (i.e. from discipline through to termination).