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ALERT
WORKPLACE INVESTIGATION • Issue 37 January 2017

In this case, the Grievor was dismissed for cause for making discriminatory and threatening comments to a female firefighter (called "Firefighter A") at a workplace Christmas party. The Grievor admitted to making inappropriate comments but argued that termination was too harsh a penalty for the circumstances.

Boys will not be Boys: Lessons learned from *City of Brampton v. Brampton Professional Firefighters' Association, Local 1068*

The allegations against the Grievor stemmed from the following "inside joke" at Firefighter A's station - Station 209.

Earlier that year, a firefighter from Station 206 had "made an ass of himself" by "hitting on" Firefighter A at a golf tournament without realizing that she was also a firefighter. Following the tournament, Firefighter A and her crewmates joked about the incident and how embarrassed the firefighter must have been.

At Christmas time, the incident came up again. In anticipation of the annual holiday party, the crew at Station 209 joked that it would be funny if the firefighter who had "hit on" Firefighter A heard that she was being transferred to his station – Station 206. Ergo, when Firefighter A saw the Grievor, who is Captain of Station 206, at the holiday party, she took the opportunity to inform him of her impending transfer to his station.

The allegations against the Grievor related to the

Boys will not be Boys: Lessons learned from *City of Brampton v. Brampton Professional Firefighters' Association, Local 1068*

inappropriate comments that he made in response to the prospect of Firefighter A's transfer to his station. Among other things, the Grievor was alleged to have said that she would be impregnated within 9 months of arriving at Station 206 and that, if she came to Station 206, she would be raped.

The following day, Firefighter A relayed the Grievor's comments to her crewmates at Station 209. Upon hearing the comments, her own captain spoke to the District Chief about the Grievor's conduct. At around the same time, human resources also received an anonymous tip to this effect.

In response to this information, the employer launched an internal investigation. Through this investigation, the allegations – including the most egregious allegation involving the threat of rape – were substantiated and, further to the recommendations set out in the report, the Grievor was terminated citing cause.

Upon review of the evidence, Arbitrator John Stout agreed that the Grievor had made discriminatory comments about Firefighter A's sexual involvement with other firefighters which were, indeed, serious and warranting of discipline. In contrast with the investigation, however, the Arbitrator found that the Grievor had not threatened Firefighter A with rape.

Because the initial penalty (i.e. termination with cause) had been based on the investigation's finding that the Grievor had threatened rape, the Arbitrator concluded that, in light of his own finding on this subject, and other aggravating and mitigating factors, termination was no longer appropriate under the circumstances.

As a result, the Grievor's termination was replaced by a three month-long unpaid suspension. He was also demoted from his rank as Captain and required to participate in anti-harassment training.

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Boys will not be Boys: Lessons learned from *City of Brampton v. Brampton Professional Firefighters' Association, Local 1068*

In writing his decision, Arbitrator Stout provided us with some valuable lessons on how expectations with respect to responding to sexual harassment in a modern workplace have evolved.

1. Sexual harassment is no laughing matter

This case is representative of a broader shift in how employers respond to sexual harassment, as well as how seriously legal decision-makers view this workplace behaviour in the current climate. Whereas in the past, the Grievor's drunken, non-persistent type of behaviour might have been written off as "boys will be boys", by imposing such a stiff penalty on the employee, this case illustrates an evolved understanding by both the employer and the arbitrator of the inherent damage caused by workplace sexual harassment and a decreasing tolerance for those who engage in it.

Of the penalty imposed, the Arbitrator writes:

> "[I]n my opinion, such a lengthy suspension is necessary to send the message that such conduct is extremely unacceptable and those who engage in such misconduct will pay a very high price."

2. Leaders may be held to a higher standard

In considering which penalty should be imposed on the Grievor, the Arbitrator considered the fact that he held a leadership position with the Fire Service. He writes:

> "[...] [T]he City is entitled to have persons in leadership positions conduct themselves in a professional manner and set a good example for those they lead by deterring sexist behaviour. It is an abuse of power for someone in a leadership position to participate in such conduct. A

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> Captain that permits a sexist or misogynistic environment to exist and then participates in misconduct of a sexist or misogynistic nature is failing in their duties as a Captain."

3. Employers need to investigate properly

In this case, the Arbitrator cited several flaws with the investigation process, including the fact that the investigation was delayed, the fact that specific allegations were not put to the Grievor, and the fact that a key witness was not interviewed.

Arbitrator Stout also expressed concern about the respondent's initial attempt to resolve the allegations "old school" (i.e. by having the Grievor contact Firefighter A to talk things out). He described this kind of approach as having "no place in the modern workplace".

4. Culture change may be necessary

In writing his decision, the Arbitrator also took note of the problematic dynamics that exist within fire services and which allow the type of sexist attitudes displayed by the Grievor to persist:

> "Quite frankly, the existing culture must change and firefighters must appreciate that mistreating female firefighters by engaging in sexist and misogynistic behaviour will no longer be tolerated in the Fire Service."

If this case is any indication, the "game-change" which began with Bill 132 is carrying over to the courts and legal decision makers in general: workplace sexual harassment is a serious problem that can command serious discipline. Employers and employees that want to avoid liability and potentially harsh penalties should take heed of the lessons highlighted by this case and approach workplace sexual harassment with the attention and urgency it warrants.