

2-week suspension for excessive breach of safety procedure

Ontario worker had good intentions and no disciplinary history

By [Jeffrey R. Smith](#)

Jan 17, 2022

Good work and good intentions can lessen the discipline an employee deserves for misconduct — especially if the employer hasn't covered everything in its policies, according to one Ontario arbitration decision.

“An employee’s intentions are relevant because they are an indication of whether the employee is likely to commit similar misconduct in the future,” says Arash Farzam-Kia, an employment and labour lawyer at Sherrard Kuzz in Toronto, in talking to *Canadian HR Reporter*.

The worker was employed at a sawmill in Cochrane, Ont., operated by lumber company GreenFirst Forest Products. He worked as a log load operator in which he used a large, mobile machine called a Liebherr. The worker had 45 years of service with GreenFirst with no discipline on his record.

On Jan. 8, 2001, the worker decided at the beginning of his early-morning shift to use a spare Liebherr due to an issue with his regular machine. As he drove it out of the garage, the boom hit the doorframe.

The worker didn't immediately report the damage because his supervisor wasn't scheduled to arrive for another 30 minutes. A mechanic later noticed the damage and informed the supervisor, who determined that it wasn't safe to close the door. Repairs to the door cost almost \$5,000.

GreenFirst had a mobile equipment policy that required Liebherr operators to “immediately report to a supervisor whenever an incident occurs.” The supervisor had also sent safety alerts reminding employees to contact their supervisor after an incident and equipment was not to be moved from the scene until cleared by a supervisor.

The worker quickly acknowledged the incident and explained that he had intended to report it when the supervisor arrived for work. He co-operated fully with the investigation.

Two-week suspension

GreenFirst determined that the worker's lengthy service meant that he should have known better. The company suspended the worker for one week for moving the Liebherr after the incident and a second week for leaving the scene.

The union grieved the two-week suspension as too excessive.

The arbitrator found that the worker accepted responsibility and co-operated during the investigation. This, combined with his lengthy good service, meant that a repeat was unlikely and the primary purpose of the suspension should be correction rather than deterrence, said the arbitrator.

"As the employee's conduct wasn't deliberate, deterrence was a factor but not a significant consideration in assessing the appropriate degree of discipline," says Farzam-Kia.

The arbitrator also found that GreenFirst's policy required only reporting incidents to supervisors — it was the safety alerts that told employees not to move equipment or leave the scene. In addition, the arbitrator noted that the company didn't develop an early-morning safety reporting process after a similar incident happened months earlier.

While employers have an obligation to have policies that address workplace issues such as health and safety, policies should be amended as necessary or else it could affect an employee's culpability, says Farzam-Kia.

"The evidence suggested that the employer had reason to know an early morning safety reporting system was necessary because of an earlier incident."

The arbitrator found that the worker breached the reporting requirement, but the worker showed good faith and candour throughout. The arbitrator reduced the suspension to one week.

The decision emphasizes the need for employers to consider all relevant factors when disciplining employees, says Farzam-Kia.

"An employer should not discipline in a mechanical or formulaic way," he says. "Arbitrators will generally not approve of discipline that is punitive if the employee's actions weren't deliberate and they accepted responsibility and co-operated in remedying the situation."

See *USW, Local 1-2010 and GreenFirst Forest Products Inc. (Blackburn), Re*, 2021 CarswellOnt 18980.

<https://www.hrreporter.com/employment-law/news/2-week-suspension-excessive-for-breach-of-safety-procedure/363222>