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Arbitrator sets high bar for ‘malicious gossip’ in wrongful dismissal case

‘An employee expressing concern does not need concrete proof’: lawyer explains employer obligations in workplace impairment suspicions

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When an employee raises concerns about a manager’s possible impairment, Canadian employers must be ready with clear policies, fair procedures, and a commitment to thorough investigation.

That’s the key message from a recent Saskatchewan arbitration decision on a wrongful dismissal claim.

In the 2025 United Steelworkers, Local 1-184 v. Doepker Industries Ltd. arbitration, an employee was terminated after expressing concerns about his supervisor’s possible drug use, being accused of spreading “malicious gossip” by the employer.

Instead, the arbitrator found the employee sought advice privately from a health and safety representative and a trusted colleague and ultimately ordered his reinstatement with full compensation.

Gaps in policy coverage of manager impairment claims

Zack Lebane, a lawyer at Sherrard Kuzz, says the foundation for handling such situations is strong policy and communication.

“Best practice starts with a clear policy, procedures, and training,” he says.

“Every employee should be aware of the process to follow if they suspect a manager or colleague is impaired at work. If the person to whom the employee should report is the person suspected of being impaired, the policy should include an alternate person.”

This means it’s not enough to simply have a policy on paper, Lebane stresses – staff must know exactly what steps to take if they have concerns about a colleague or manager.

In the Doepker case, the lack of clarity around reporting procedures contributed to confusion and ultimately to the employer’s missteps.

Plus, once a concern is raised, employers must act quickly, he adds. This step is especially crucial in safety-sensitive environments, where the risk of harm can be significant.

“Once an employer receives a complaint or expression of concern, the first thing to consider is whether it is necessary to – discretely – take individual at issue out of a position where they could cause harm to themselves or others,” Lebane says.

“That might mean a paid leave pending investigation or removing them temporarily from a safety-sensitive position while an investigation takes place.”

Investigating impairment claims without proof

The Doepker decision also addressed the issue of evidence, with the arbitrator finding the employee did not have concrete proof of his supervisor’s impairment but had reasonable grounds for concern based on observed behaviour.

As Lebane outlines, the guidance is clear around when to investigate without evidence: every time. The Doepker case reinforces that the employer’s responsibility is to investigate, not to demand proof from employees.

“An employee expressing concern does not need concrete proof before bringing a concern forward,” he says.

“Once a bona fide concern is raised, it is up to the employer to investigate, determine the facts, and take appropriate steps.”

The risks of incomplete investigations

The arbitrator found that Doepker Industries failed to conduct a thorough investigation before terminating the employee. Instead, the employer relied on limited information and did not fully explore the context of the employee’s actions.

This oversight ultimately led to the arbitrator overturning the termination; Lebane explains that employers who make disciplinary decisions based on hearsay or incomplete investigations face significant legal risks.

“The risk is that an arbitrator could overturn the disciplinary decision,” he says.

“There could also be a potential human rights violation if the individual who was disciplined suffers from a substance use disorder which is a protected ground under human rights legislation.”

Defining ‘malicious gossip’ and employer response

The Doepker decision sets a high bar for proving malice, requiring clear evidence that the employee intended to cause harm.

The arbitrator in the Doepker case provided a clear definition of “malicious gossip,” stating that it involves “the deliberate spreading of false or harmful misleading rumors, criticisms or innuendos with the intention to cause harm or embarrassment to an individual”.

In this case, the arbitrator found that the employee’s actions were motivated by genuine concern, not malice. Lebane notes, “The arbitrator found the individual who raised the concern with the health and safety committee had a reasonable suspicion of potential drug use and no ill intent. This was a finding of fact based on the evidence.”

Although the Doepker decision arose in a unionized setting, the principles apply broadly. The arbitrator emphasized that occupational health and safety and human rights obligations exist in every workplace, regardless of union status.

“Occupational health and safety and human rights legislation apply to every workplace, regardless of whether employees are unionized,” Lebane says.

“Compliant, tailored, and consistently enforced policies and procedures are a must.”