



Plester v. PolyOne Canada Inc. Update: Serious safety violation is still not cause for termination

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In a [previous post](#), we discussed a [decision](#) which held that, PolyOne Canada Inc. (PolyOne), did not have just cause for terminating a senior employee who committed a safety violation and failed to report it, despite finding that the incident was very serious and could have resulted in harm to the employee. The Court of Appeal [upheld](#) this decision, although it disagreed, in part, with the basis for the lower court's decision.

The safety violation, which you may recall from our [previous post](#), was that a supervisor, John Plester, failed to lock-out a machine before attempting to fix it and then failed to report the violation, both of which were in breach of the employer's safety policies. Even worse, Mr. Plester allegedly tried to convince his subordinates not to report the incident to his superiors.

Both the trial judge and the Court of Appeal agreed that, although the policy violation was very serious and a supervisor was subject to a higher standard than a line worker, Mr. Plester's conduct did not amount to just cause for termination. This conclusion was based on the employee's long-standing clean work record and the fact that the safety violation did not put other employees at risk. The Courts both rejected PolyOne's argument that Mr. Plester's behaviour amounted to a violation of the employer's trust which was sufficiently serious to render a continued employment relationship impossible.

Where the trial judge and the Court of Appeal differed was on the significance of PolyOne's response to a previous incident where an employee breached the same safety rule as the Mr. Plester but was not terminated by the employer (the Glassford Incident). Mr. Plester attempted to use the Glassford Incident to argue that the response in his case was disproportionate. The Court of Appeal stated that the Glassford Incident "cannot be used as a comparator and the trial judge erred in treating it as such". The basis for this conclusion appeared to be that the employer only became aware of the Glassford Incident as a result of Mr. Plester's action against PolyOne, although the Court of Appeal did not elaborate on this point.

Our Views

This case is a good reminder for employers to ask themselves two questions before terminating an employee for just cause. First, in view of the proportionality test, employers should ask what the employee's track record looks like. The longer an employee has served without incident, the more egregious a single incident must be in order to justify a for-cause termination.

Second, employers should consider how they have dealt with other incidents of a similar nature in the past. Although in *Plester v. PolyOne*, the Court of Appeal decided that the Glassford Incident could not be used to support the employee's argument that the termination was not justified, the trial judge and other cases relied on by the trial judge came to different conclusions, emphasizing the importance of past enforcement in cases such as these. Accordingly, it is important for employers not only to have clear written policies, those policies must be enforced on a consistent basis. Absent consistent enforcement, it will be difficult to rely on such policies in order to terminate an employee's employment for just cause.

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