

GREAT EMPLOYEE - BAD MANAGER



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A common problem facing human resource professionals is the conflict between a manager and an employee. The skill of managing is as much knowledge based as it based on the ability to relate to others on a personal level. Many managers have good skills on the knowledge side, but experience problems handling personal relationships with their subordinates.

One problem I frequently see is the long-term employee suddenly gone bad. Once a good, or even a star performer, the employee begins receiving poor performance evaluations, and showing a negative attitude toward improvement. The first question I ask is whether the employee has recently come under the supervision of a new manager. It often happens that nothing has changed with the employee's performance, but the new manager either has different expectations, or simply does not get along with the employee. This seems to have been the background in Prinzo v. Baycrest Centre for Geriatric Care, a case decided by the Ontario Court of Appeal in 2002.

Ms. Prinzo had worked for Baycrest for almost 18 years, dressing hair for the residents. She had also been responsible for accounting, finance, and employees and volunteers. Up until 1996, Ms. Prinzo had been considered a model employee. Her co-workers said she treated patients as though they were her own mother.

In 1996, Ms. Gates, Director of Food and Nutritional Services, was appointed Ms. Prinzo's supervisor. Her reviews of Ms. Prinzo's performance were not positive, and Ms. Prinzo refused to sign the first performance appraisal prepared by Ms. Gates.

In January 1997, Ms. Gates recommended that Ms. Prinzo's position be eliminated to cut costs. Ms. Prinzo was notified in October 1997 by a letter stating that the date of the layoff would be determined later, though it was not clear when that would be. Just prior to having received the layoff letter, Ms. Prinzo had fallen in the parking lot, injuring her arm. Though she worked light duties following the accident, her condition worsened and her doctor ordered her to stop working entirely.

As soon as she left work, Baycrest's occupational health nurse began calling to try and get her to return to work. In December 1997, Baycrest contacted Ms. Prinzo's doctor and advised that she must return to work, so she could be let go. A few days later, Baycrest sent a letter to Ms. Prinzo deliberately calculated to give her the false impression that her doctor had changed his mind and was now in agreement that she was able to return to work. After checking with her doctor, she learned he had not agreed she could return to work. Ms. Prinzo then phoned Ms. Gates and said she could not return to work until her doctor had cleared her to do so. Ms. Gates replied that, if she did not return to work immediately, this would be a work refusal, "... and we will address that".

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Ms. Prinzo found these calls very emotionally upsetting, and even though her lawyer informed Baycrest it should not contact his client directly, it continued to do so.

Ms. Prinzo finally returned to work on February 9 1998. As soon as she returned, a meeting was arranged between her and management. She asked to have a friend attend the meeting with her, but Baycrest told her friend to leave. Four people from Baycrest then met with Ms. Prinzo for more than two hours. During this meeting, Baycrest implied that Ms. Prinzo's conduct was harming the residents. Given her relationship with the residents, she found this particularly upsetting.

At trial, Baycrest argued that effective notice of dismissal was given by the October 1997 notice, and that it should receive credit for the 3 ½ months between then and the actual date of dismissal. It also argued that it was obligated by the relevant workers' compensation statute to contact Ms. Prinzo directly.

The court rejected these arguments. It clarified that notice of dismissal must be clear and unambiguous. It also stated that though some contact with Ms. Prinzo may have been necessary, this did not allow Baycrest to engage in a harassing and mentally distressing pattern of conduct. Though obviously hyperbolic, the trial judge stated that Ms. Gates and the occupational health nurse were well aware of the effect of their conduct on Ms. Prinzo, and yet "they persisted such harassment with almost sadistic resolve".

In addition to damages awarded for wrongful dismissal, the Court of Appeal allowed the trial judge's award granting Ms. Prinzo \$15,000 damages for the tort of intentional infliction of emotional distress. The court held that to establish this cause of action, Ms. Prinzo had to establish three things: (1) Baycrest engaged in conduct that was flagrant and outrageous, (2) calculated to produce harm, and which (3) resulted in a visible and provable injury. With regard to number (2), the court held that there was no requirement of malicious purpose to cause the harm or any motive of spite. It was sufficient if it was clearly foreseeable that Baycrest's actions would cause Ms. Prinzo harm.

The court held that the lack of clarity of the layoff notice also increased Ms. Prinzo's stress, as did the comment that her conduct was harming the residents.

Ms. Prinzo's doctor testified that Baycrest's conduct had caused her emotional upset and increased blood pressure. Her weight shot up, and her diabetes symptoms increased.

It should be obvious how conduct such as this is going to play out at trial. The conduct exhibited by Baycrest in this case may not have been sadistic, but it could be expected to anger a judge. Faced with a sympathetic plaintiff, and an employer who appeared callous and calculating, the outcome of this matter was entirely predictable. It is a dangerous practice to anger the court - a lesson worth remembering. If you anger the person deciding your fate, you should not expect a favourable result.

This case is a cautionary tale for human resource professionals regarding the danger of not becoming actively involved in disputes between managers and subordinates. Though a particular dispute may seem strictly a management issue, revolving around performance issues, human resource professionals need to get involved and make that decision for themselves, based on their objective findings. Managers and employees in these situations should be questioned to determine if the problem is with the employee or with the manager. Your employer, and its legal counsel, will thank you.

If you do not get involved, and accept the recommendations of a manager who may or may not be operating objectively, your employer faces extended notice periods, damage awards above wrongful dismissal costs, increased legal costs, and the horrible publicity a case like Baycrest brings.

In Baycrest, the employer suffered because it blindly sided with the manager. In so doing, it lost an employee who, by all accounts, was superb at her job, and now has to deal with commentators across the country holding it up as the example of how not to handle a human resource problem.

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