

## Current Workplace Issues

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Incidents of violent and bullying behaviour in schools, travel, and work are much in the news these days. In the workplace, violence and threats of violence are the “stuff” of nightmares for employers and employees alike. Apart from the concerns about preventing such conduct or reporting a threat or incident to the police, an employer must contend with what to do about the ultimate employment status of the employee who gets into trouble for uttering threats or for engaging in physical altercations. One might assume that any violent or threatening activity would be cause for dismissal of the offending employee, but it is not so. At what point is termination of employment for workplace violence or threats warranted and in what circumstances?

In literally hundreds of cases, arbitrators and courts have considered this question. The answers vary widely, depending on the facts. Consider, for example, two Ontario arbitration awards issued in the year 2000. In the one situation, the employee was *reinstated* after actually choking a co-worker, even though he had already been suspended for a previous similar offence. By contrast, in the other case, the arbitrator upheld *termination* for an employee who had posted on a workplace bulletin board a news item concerning a worker employed elsewhere who had shot a number of fellow employees and stated: “I can see something like that happening here.”

What factors led to the seemingly abnormally harsh result in the case of the verbal threat but diminished the discipline meted out where there was actual physical violence in the workplace? In the first case, the employee had an exemplary record for 11 years, with no absences and frequent overtime on which the company depended. Importantly, he had apologized and taken steps, such as enrolling in an anger management course, to deal with his problem. The two employees were and remained friends, and the choked employee testified he would not be afraid to continue to work alongside his co-worker. There was also some evidence of provocation. As a result of these mitigating factors, the arbitrator substituted immediate reinstatement after a 9-month suspension without pay, conditional upon good behaviour.

The termination of the employee who issued the “copycat” threat was upheld because (a) he had a short employment record marred by carelessness in discharging his job as a forklift operator and by a previous angry outburst which resulted in minor injury to a co-worker; (b) there was no provocation; (c) the employee expressed no remorse; and (d) other employees considered him to have a violent and aggressive personality and remained afraid of him.

As arbitrary as these disparate disciplinary responses may seem, there are certain guiding principles which emerge from these cases which explain why dismissal is the appropriate response in some cases and no or lesser discipline is appropriate in others.

*1. What is the nature of the workplace?* A physical altercation between teachers in close proximity to their students has been found by a Manitoba arbitrator to

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be more unacceptable than between co-workers whose relationship is more physical and rough.

2. *Is the threat or incident meant seriously?* In contrast to the "copycat" threat described above, a senior clerk-administrator's threat to kill himself and the boss with whom he had long had a troubled relationship did not amount to just cause for dismissal. The threat was retracted hours later and was made in the context of an attempt to manipulate the employee's doctors to extend his sick leave rather than to convey a genuine threat to commit harm.

3. *Was it a momentary flare-up, or a deliberate and vigorous flouting of authority?* A suspension was substituted for dismissal in the case of an employee who threatened to bring a gun to shoot his supervisor. The incident was an isolated one and occurred in the heat of passions aroused during difficult contract negotiations. Whereas an employee who tended to react to people in and outside his workplace with anger and abusiveness was terminated for cause for simply suggesting to a co-worker that they go behind the shop and settle their problems by fighting it out.

4. *Did the employer (and co-workers) take the matter seriously? Were the police called in?* A radio broadcaster, whose outrageous bullying was his trademark, was found to have been unjustly terminated for issuing a death threat to a rival announcer not only because his employer had condoned previous behaviour of that sort, but because neither the employer nor the target of the threat investigated the incident or followed through with a complaint to the police.

5. *Does the employee recognize the nature of his or her conduct and express remorse for it? Has there been an apology?* Recognition of an anger management problem for which treatment was warranted resulted in reinstatement for an employee who had threatened to "get" his supervisor. Failure to show remorse or in extreme cases to understand that one's behaviour is threatening to others is one of the most important reasons why the ultimate penalty of discharge is upheld.

6. *Is there a history of poor performance or prior similar incidents, or is the employee's record instead unblemished and lengthy? Is the employee's evidence credible?*

These are merely some of the factors which arbitrators and courts bring to bear on the complex issues surrounding workplace violence or threats of violence.

No one factor predominates, and the employer must engage in an objective, measured response, punctuated by careful and prompt investigation and reporting to the police in extreme cases, with due concern for the safety of everyone in the workplace. It is recommended that both employer and employee obtain advice from a lawyer at the earliest possible opportunity, particularly in serious cases.

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