

BCTF/ SD No. 83 (North Okanagan-Shuswap): Discipline

Issue: Is a three day suspension excessive where the grievor was alleged to have stored inappropriate images on his computer at work?

Is dismissal excessive where the grievor was alleged to have been dishonest and insubordinate, had made inappropriate remarks to students, and had inappropriately carried out his duties as a teacher?

Facts: In the first grievance, the grievor was investigated by the Ministry of Children and Families and the RCMP for an improper relationship with a student. No impropriety was found. The employer subsequently conducted its own investigation. That investigation found no impropriety. However, during the investigation, the employer reviewed the grievor's computer hard drive, and found inappropriate images. The grievor was suspended three days.

In the second grievance, an investigation was commenced as a result of two separate complaints from students in the grievor's English 11 class. The first investigation launched two subsequent investigations. The findings of all three investigations were included in a report to the Board of Trustees which then made the determination to terminate the grievor for misconduct. The major findings of the report included:

...repeated dishonest behaviour, making inappropriate remarks during the investigations, making inappropriate/subordinate remarks, inappropriately using sarcasm and making belittling comments to students, inappropriately carrying out his duties as a teacher, utilizing inappropriate assessment and evaluation practices.

Decision: Grievances dismissed. Arbitrator Christopher Sullivan stated:

Viewing all of the evidence in context, I find the grievor has engaged in significant culpable misconduct, and that his conduct gave rise to just cause for the imposition of some measure of discipline. Given the grievor's professional training and experience as a teacher, I am satisfied he knew that what he was doing was wrong in regards to a number of matters raised at these proceedings. He conducted himself inappropriately as a teacher, was insubordinate and untruthful. The next question to be answered is whether termination was an excessive sanction.

Given my findings regarding the totality of the grievor's conduct, together with my conclusions regarding his truthfulness, I am not persuaded that a lesser sanction than termination from employment with this employer is appropriate. The grievor at these proceedings had every opportunity to consider and reflect on certain of his practices and behavior, and he remained adamant he did nothing wrong, although it was clear he had in regards to a number of significant matters.

Arbitrator Sullivan further noted:

At the end of the day the grievor had opportunity before this Board to candidly acknowledge the truth as to what took place during a very difficult period in his life. He has done himself no favours by his testimony on the witness stand, and he has given me nothing upon which to base a conclusion that he would act appropriately in the future. Common sense and the authorities support a conclusion that teachers hold a position of trust in our society and, consequently, their work-related conduct will be reviewed at a relatively high standard, which the grievor did not meet.

Arbitrator Sullivan concluded by stating that the trust relationship between the employer and the grievor had been breached and was incapable of restoration. Dismissal upheld.

A significant finding of the decision was that despite allegations which involved teaching and grading issues, the employer was not required to proceed through the teacher evaluation process in the collective agreement. Arbitrator Sullivan held that the issues in this case went "well beyond" job performance/competency-type issues and related instead to blameworthy and intentional misconduct.

BCPSEA Reference No. A-05-2008

Questions

If you have any questions concerning these decisions, please contact your BCPSEA labour relations liaison. If you want a copy of the complete award, please contact **Nancy Hill at nancyhi@bcpsea.bc.ca** and identify the reference number found at the end of the summary.