

Case Law Review:

Negative Behaviours in the Workplace

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Physical Touch and Comments

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Case #1 Hayes v. Alberta (2004)

- Hayes was hired in 1999 to fill in for an employee at the Public Trustee's Office who was on maternity leave. Ms. Hayes complained that between 1999 and 2001 she was sexually harassed by her direct supervisor, Gordon Cuff and by the Trust Officer, Richard Wylie. The employee whom Ms. Hayes was replacing died in 2001 and in a competition for three permanent positions, including the one Ms. Hayes was occupying, Ms. Hayes was an unsuccessful candidate and her employment was terminated.
- The Panel ruled that Ms. Hayes was sexually harassed. Her supervisor, Gordon Cuff, created an environment in which gender and sexually-based comments and actions were tolerated. He made comments to Ms. Hayes about her physical appearance, jokes with sexual innuendoes, rude hand gestures and touched her and invaded her physical space in ways that were upsetting and unwanted. Mr. Wylie, though less obtrusive in his conduct, made unwanted comments on Ms. Hayes' physical appearance.
- When Ms. Hayes spoke with Mr. Cuff and Mr. Wylie about their conduct and then informed the Public Trustee of her discomfort, the harassment lessened but did not stop, and she was also treated angrily.
- The Panel also found that the harassment and her reaction to it had a negative effect on her employment prospects. Mr. Cuff was one of the four people who were on the hiring team. Two other members of this team were aware that Ms. Hayes had complained of harassment.

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Case #1 Hayes v. Alberta (2004)

Key Points:

- Refrain from making comments on another person(s) physical characteristics or looks
 - I.E., clothing, figure, or body shape
- Keep conduct professional, avoid off-comments or innuendo
 - Limit unnecessary physical touching. STOP if mentioned.
 - In this case, a co-worker mentioned her boyfriend would be able to help fix the complainant's sore hip; to which the respondent made an off-joke or gesture (fondling rear end).
- Retaliation is prohibited / Recognize Where Conflicts Present
 - Complainant unsuccessful in job interview post-complaint.
 - Respondent was a member on the selection panel.

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Case #1 Hayes v. Alberta (2004)

Human Rights Panel:

- The Human Rights Panel concluded that the sexual harassment suffered by the complainant materially contributed to her inability to secure permanent employment with the Public Trustee's Office.
- The Panel ordered the respondent to pay Ms. Hayes \$4,000 as compensation for injury to her dignity. It also ordered the parties to make submissions regarding compensation for wage loss.

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Workplace Culture

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'Blue collar culture' no excuse for verbal abuse and harassment, arbitrator rules



Teck Resources was justified in firing worker for harassing and verbally abusing coworkers, arbitrator rules

Amy O'Brian · CBC News · Posted: Aug 07, 2018 5:00 AM PT | Last Updated: August 7, 2018



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Case #2 Blue Collar Culture

- The complainant reported being the target of “digs” and hurtful comments from his co-worker for years
- Both men had been employed at Teck’s Elkview Coal Mine for more than two decades
- The respondent had been sent to anger management counselling by the company and was given two last chance agreements
- Two final incidents led to the respondent's termination:
 1. He approached the complainant in front of their crew, put his finger in his face, swore at him and told him not to go to their foreman with a complaint against him
 2. The respondent swore and used explicit language towards another colleague suggesting they performed a sexual act on a supervisor
- At the hearing the respondent explained that this was “just guy talk” saying *“That’s what we do. We do it all the time. We are always giving it to each other. I mean you keep religion and family out of it. Those are the things you don’t touch, but the rest is okay”*.
- The worker’s union argued his behaviour was consistent with the “blue collar culture” at the mine and his comments were no more than “locker room talk”.

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Case #2 Blue Collar Culture

Arbitrator Decision:

However, the arbitrator upheld the termination stating that "no one is required to work in fear of his fellow employees, nor does any employee have to 'put up' with or accept harassment and bullying as the price of their employment."

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Workplace
Negativity



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Case #3 Union of Calgary Co-operative Employees v Calgary Co-operative Association Limited, 2017

In this case, a 3-day suspension was imposed to an employee for “Unacceptable” behaviour. The grievor is a 27 year employee of Co-op. She has been counselled and disciplined seven times in the last seven years for inappropriate and disrespectful conduct. Primarily for her negative attitude and behaviour in the workplace.

Comments like:

- “why is the Company doing this?”,
- “this Company will be bankrupt in 10 years” .
- “I fucking hate my job”
- Considering the investigative interviews “ridiculous”, calling discipline “bullshit”.
- Rationalizing her behaviour as “honesty”, “being blunt”, or “just my opinion”

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Case #3 Continued

She was directed by the Employer to attend a Workshop on “The Respectful Workplace”. While attending, she told the facilitator that she didn’t want to be there and considered the Workshop “pointless”. She did not participate during the all-day Workshop and was considered by the facilitator and several participants (who testified) to have been rude, disrespectful and disruptive.

The grievor, in the investigatory interview, and at the Arbitration Hearing, took a very strong position that she was not disrespectful or disruptive but was only expressing her honest opinions. She was defiant in the interview.

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Case #3 Arbitrator's Decision

Discipline Held: This grievance was dismissed.

The Arbitrator stated that the grievor has obviously not learned that she cannot continue to conduct herself in such a manner. She has shown no recognition that her conduct was inappropriate and unacceptable, has shown no remorse and has not apologized. It was also stated that the grievor's inability to recognize that she had done anything wrong was "troubling" and how unreasonable she was in remaining steadfast in her denial of events.

The overall lack of empathy that the Respect in the Workplace course, which she was assigned, could be beneficial to other participants was also of concern and her failure to acknowledge that her negative comments would detract from the experience of other participants was a factor.

The Arbitrator concluded that the three-day suspension was the appropriate progressive discipline response. The grievor must recognize that continuing inappropriate behavior will put her career in jeopardy.

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Thank you

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