

HILL ADVISORY NEWS

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Union Claims Harassment Investigation 'Snowballed' Against Employee Resulting in Discharge !!



*Did the Employer conduct an 'appropriate and thorough' Harassment Investigation ?
Would a slower, more cautious and judicious approach have resulted in a different outcome ?*

- * Martin worked at a hospital for 13 years as a porter in the Sterile Processing and Distribution department. He was also the department union steward and was responsible for coordinating the shift allocations and call-ins with management. Martin would often 'hassle' employees causing constant strife and controversy in the department. This resulted in numerous problems and complaints with staff members and management.
- * Barb was the assistant to the department manager and was responsible for negotiating the shift allocations and call-ins with Martin. She complained to management that Martin had a 'sense he was invincible' and that she disliked his attitude and offensive manner. Martin also accused two nurses of talking about him behind his back, and told them "You had better watch yourself. I have people watching you and telling me what you say!" Nellie was also a porter in the department and would sometimes invite Martin and his friend Karl to her home for social functions. She complained to Barb that for the past 2 years Martin "grabbed her buttocks whenever he ran into her at work" and also "stroked her groin with his foot." Barb told her to report this to the Human Resources department but Nellie refused to do so.
- * Barb then decided to file a personal harassment complaint against Martin. She also reported Nellie's accusation of sexual harassment. An investigation subsequently was held and Martin was immediately placed on suspension with pay. During the investigation, Nellie stated "Martin patted her buttocks every time he saw her even though she told him to stop." She also related several other incidents that had occurred but stated there were no witnesses. Nellie claimed that in addition to speaking to Barb about the 'physical touching' incidents, she had also mentioned it to Martin's friend Karl and the department manager.
- * Although Martin totally denied all allegations, he was not interviewed during the investigation. At the conclusion of the investigation, he received a letter stating he was "discharged for incidents of sexual and personal harassment committed by you and involving employees of the hospital." Martin filed a grievance and an arbitration followed.
- * At the arbitration hearing, Karl denied that Nellie had spoken to him about the alleged 'touching' incidents involving Martin. The department manager claimed Nellie had only complained to him about Martin's 'language.' The two nurses who Martin had threatened confirmed his 'aggressive and offensive' behaviour and his 'less than stellar' work habits. However, the arbitrator noted "Being a less than dedicated employee with a belligerent attitude and a loud mouth does not make one a sexual harasser." He further noted Nellie had conceded there were no witnesses to substantiate Martin's 'offensive physical actions' and that it stretched beyond belief that she would socialize with Martin during this period of alleged sexual harassment.
- * The arbitrator stated "I am not convinced the union was given sufficient particulars about the charges to mount an adequate defence of them while Martin was under suspension or at the time of discharge. It is a fundamental of due process that the accused must be confronted by his accuser(s). In this case, that was not until the matter came to arbitration. The employer is not entitled to surmise that Martin knew that Nellie was his accuser and should have told him so then having heard his side of the story - have tested his version against those of his accusers." He ended by stating "While I respect the sincerity of the investigation - one is left with the impression of a witch hunt against an unpopular target." *The arbitrator therefore determined sexual harassment was not proven and directed that Martin be re-instated.*
- * Regarding the personal harassment allegation, the arbitrator stated "Martin's whole attitude during his testimony was one of not only non-acceptance of fault - but also of non-acceptance that there might have been any fault and that some people, more sensitive to human feelings than he, might reasonably be offended by his boorishness and use of his physical presence to intimidate them." *The arbitrator therefore determined the employer had proven its case of personal harassment and substituted the discharge with a 25 day unpaid suspension.*

*** As this case points out - the importance of 'trained' Harassment Investigators conducting a 'thorough and appropriate' investigation is critical to the outcome It is also interesting to note the hospital was without a Director of Human Resources at the time the investigation began. The new Director joined the organization when the investigation was almost concluded.*



Promoting 'Technically Skilled' People



Who are your most skilled people? Who do you promote in your organization? Who are your future leaders? What skills do they possess that will enable them to guide your organization?

- * These are just a small sampling of the hard questions you and others like you have to ask and answer as you review the 'average age of your employees' and plan for the future.
- * We deal with innumerable situations in which this decision has not gone the way it should have. We see highly technically competent people receiving promotions based on their technical skills. Yet - if many of the decision-makers in the varied organizations that we deal with were asked which skills they valued most for their management, they would answer - 'people skills.' Nothing can accelerate problems in the workplace like a lack of these skills.
- * The problem then lies in the identification and acknowledgement of these skills. It is easy to identify technically competent people, but how do we identify and reward people with strong 'people skills' with the emotional intelligence so badly needed in organizations today?
- * The answer lies partly in realizing which way the decisions have gone in the past; conducting an honest analysis of your current talent pool; and committing to changes. That is not to say a total purge of the management structure but a commitment to identifying talented 'people' persons. *The answer to the problems facing organizations today, of course, lies in finding and/or developing a suitable blend of skills in our future managers.*
- * Many seem to think that when someone becomes a manager - a book of the 'rules' descends from the sky - which the manager may peruse at his/her leisure. We know that's impossible - but the expectation is there. We hear it over and over again. "She/he's a manager and should know better"
- * We also see that training on the so-called 'soft skills' is completely disregarded in some organizations as it is too difficult to determine how to accomplish this. Workplaces that value 'people skills' often do not know how to effectively develop those skills in their people.
- * So what happens? Managers get shuffled from leadership course to leadership course - often not gleaning much, if anything practical, from their experience. The essential need for organizations is to create an effective plan for the practical training of future leaders. The identification, training and ongoing development of employees with 'people skills' is of paramount importance and concern for every organization seeking to make that transition from an aging workforce.
- * *We see the lack of 'people skills' as one of the reasons that unresolved conflict in the workplace is increasing. Because of this, we are committed to helping clients develop in real terms and with proven results (through private consultation and coaching - to personalized training events) to get at that lowest level of 'intervention' to identify and provide training supports for those 'people skills.'*

*Effective training and planning will reduce the unresolved conflict in the workplace today
Are you moving in the 'most optimum direction' for your organization?*

*** From the desk of Dylan Hill, Vice-President - Hill Advisory Services ***



Thank



- * *We always enjoy our visits to the Government of Northwest Territories in Yellowknife. Thanks once again to Blair Chapman for sponsoring the Harassment Investigation workshops (Levels I & II) in May.*
- * *It was a pleasure to return to SaskWater (Moose Jaw) in June. We wish to extend our appreciation to Joe Maciag for organizing the management training sessions on Harassment Awareness and Prevention and Intervention Strategies.*
- * *Thank you to Dave Jennings at Agrium in Vanscoy, Saskatchewan for coordinating the management training sessions on Harassment Awareness and Prevention and Intervention Strategies. last May.*
- * *We look forward to visiting Manitoba Family Services (Winnipeg) in July. Special thanks to Marlene Bertrand for arranging the training sessions on Building a Respectful Workplace .*

Don't forget to send us your e-mail address to ensure quick delivery of our "Electronic" newsletter. Contact Donna (the Editor) at:

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