

HILL ADVISORY NEWS

“Working with the human side of business”



School Principal not Trained to Conduct 'effective' Harassment Investigation



- * Krista was a part time custodian at a public school and reported to Leo, the chief custodian. Leo was responsible for monitoring the staff regarding their job performance. He reported to Joy, the school principal, who provided overall supervision to the entire custodial staff. This created a problem for Leo as he was expected to lead and coordinate his co-workers, but since he was a union member, he had no authority to reprimand them for their misconduct. He could only report staff problems to Joy and risk being branded a 'squealer' by other union members. Leo was also known to be 'hot tempered' and management was aware that he had previously been served with a trespass notice by his estranged wife for making numerous threats.
- * One day Krista told Joy, the principal, that she was not happy with the way Leo treated her. She said that Leo often got angry with her and made her feel uncomfortable. She mentioned a recent incident when Leo was giving her instructions about laying down a carpet. When asked if she felt threatened, Krista replied his 'tone of voice' bothered her. Joy did not mention that Leo had already spoken to her about this same incident and had accused Krista of using foul language. He had asked Joy not to pursue the matter further as he felt it would only make matters worse. Joy later met with Leo who admitted he had been frustrated with Krista but had not threatened her. Joy told Leo to remain calm and to let her know if there were any further problems.
- * A few days later Krista put up a drawing in the custodial office with a picture of a person and the caption "When I woke up this morning I had one nerve left and you're getting on it." Leo felt the drawing referred to him and told Joy about it. Joy took the drawing down. The following day Leo noticed Krista taking 2 extended breaks after Joy had left for the day. As Leo walked past the lunchroom he said to Krista "I guess you have a lot of free time on your hands, so don't complain to me that you don't have enough time to get your work done." Krista replied "Get away from me, I don't trust you and I'm afraid of you." Leo then yelled "Who in the h - - - do you think you are?" Krista became very upset, left the lunchroom and went home for the day.
- * The next day when Krista returned to work, she provided the union with a detailed statement of the lunchroom incident and *subsequently filed a harassment complaint against Leo.*
- * A week later a meeting was held with Krista, Joy, the union and a human resource representative regarding the incident involving Leo. Joy told the union she would conduct an investigation and asked Krista if she was willing to continue working with Leo. Krista replied that she was. After the meeting Joy spoke to several staff members and asked them if they had seen any incidents between Leo and Krista. One person told her she had heard Krista use foul language and make rude remarks to Leo, after he asked to borrow her mop. Other than that, no one had seen or heard anything. A couple of weeks later Joy interviewed Krista and the union representative to get a complete account of what had occurred.
- * A couple of days later Joy concluded her investigation and provided a written report to the superintendent. The report indicated that Joy felt Leo's remarks to Krista "constituted filling his supervisory responsibilities." She stated "If Krista had been truly fearful, I believe she would have left immediately. I have never had any problem with Leo being completely open and honest with me. He has always taken full responsibility for his actions. Krista on the other hand, has given the impression of being secretive and vindictive. In conclusion, I do not believe that Krista was in any danger, nor that the situation truly constituted harassment. Leo admits to losing his temper and has been disciplined accordingly."
- * 2 weeks later Krista and the union received a letter from the school principal stating that the harassment investigation had been completed and "Appropriate actions have been taken to resolve the situation." 5 days later the union filed a grievance claiming "The School Board had violated its own policy on personal and sexual harassment by failing to follow procedures that accompany this policy" and sought an award of \$5000. An arbitration hearing followed

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- * The union argued that Joy's letter regarding the investigation was a 'brush off' and they had the right to find out in detail what was done to investigate Krista's complaint.
- * Based on the evidence and testimony presented at the hearing, the arbitrator noted the following:
 1. Both the employer and the union agreed there was an on-going and bitter dispute between Leo and Krista. Under those circumstances, Joy was not the right person to do the investigation since both people were 'direct reports' to her.
 2. Even though Leo's sarcastic remarks to Krista about her breaks did not constitute harassment, Joy's investigation regarding the incident was still 'inadequate.'
 3. Joy had no specific training or coaching in how to conduct a harassment investigation. She was not, nor did she claim to be, a 'qualified investigator.'
 4. Joy's report was as much a critique of Krista's work performance as it was a testimonial to the diligence and dedication of Leo's work performance. That impaired her ability to make an 'objective assessment.'
 5. The investigation was not done in the right place or at the right time. Serious allegations of harassment needed to be investigated 'off site and in a calmer environment.'
 6. The investigation got entangled in the performance/discipline problems Joy was having with Krista. It was almost inevitable that her 'judgment was going to be influenced by Krista's behaviour.'
 7. Procedural fairness was not a priority for the employer. Harassment is a very serious charge and must be treated that way. Attempting to conclude an investigation by simply stating that "Appropriate actions have been taken" is just not good enough.

* The arbitrator stated "In short, the investigation was flawed in both its design and execution." The arbitrator noted the School Board was aware of Leo's temper and should have taken a more pro-active approach to the charges of 'harassment' made against him and not have delegated the tasks of investigation and reconciliation to Joy, the principal. The situation warranted more than a warning about his hot temper. *It should have been obvious that Leo required some behavioural counselling as to how to deal with difficult co-workers.*

* The arbitrator went on to say that Joy was given 'an impossible task with inadequate training.' He noted that adopting a policy stating 'Someone who is not in the chain of command will be the investigator - when an employee harassment complaint is made' would go a long way to prevent this sort of thing from happening again.

* The arbitrator added the investigator must, however, be an individual who is: 'sensitive to employee feelings; trained in the methodology of effective investigation; and objective enough to be able to sort out fact from fiction and exaggeration.' He concluded by stating "In short, the investigator must have the necessary skill, maturity and perspective to be able to ask the right questions and perceive wrong answers."

* The arbitrator therefore upheld the grievance that the union and complainant (Krista) were entitled to be informed of the employer's investigation including its findings. However, the award for damages to Krista for mental anguish was denied.

**** As this case points out it is critical the employer take prudent action and separate the primary parties during a complaint investigation to eliminate further reactions during the difficult and emotional period of the investigation. ****

★ ★ **Public Workshops** ★ ★
★ ★ **to be held in Halifax NS** ★ ★
★ ★ **(2005)** ★ ★

"Harassment Investigation"
Level 1 & Level 2

Level 1 January 10, 11, 12
Level 2 January 13, 14, 15

Seating is limited!
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For more information contact Sheri:
Phone/fax: (204) 831 - 7661
E-mail: sswain@hilladvisory.com
Website: www.hilladvisory.com



'Tips' on Motivating Your Staff in Changing Times



In today's turbulent, often chaotic environment, commercial success depends on employees using their full talents. Staff want a sense of direction. People don't mind being in a rocking boat so much - as long as they know where it's headed. As a manager, your 'morale' infects others

DO:

- * recognize that you don't have all the answers
- * take time to find out what makes others tick and show genuine concern
- * lead, encourage and guide staff - don't force them
- * ensure staff members responsible for implementing change
- * share in the problem solving and decision making

DON'T:

- * make assumptions about what drives others
- * assume others are like you
- * force people into things that are supposedly good for them
- * neglect the need for inspiration

Don't delegate work delegate responsibility !!