

# HILL ADVISORY NEWS

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## Female Welder Rejects \$60,000 Termination Package ..... Alleging ‘Discrimination’ and ‘Wrongful Dismissal’



- \* Caitlin was employed as a welder with a power generating company for 10 years. Her work required her to visit different work sites on a regular basis. For the first 5 years Caitlin was very happy with her job, however as time went by she became discontent with her work situation. She felt her co-workers and management were ‘conspiring’ against her. One day she told her supervisor she suspected employees were stealing her work tools and vandalizing her car. Caitlin also considered herself a better welder than most of her peers and felt she was consequently harassed by her co-workers because of this. She blamed management for the continuous harassment but did not want to make a formal complaint.
- \* About a year later Caitlin wrote a letter of complaint alleging Trevor, a trades supervisor, had improperly taken her photograph without her permission. A meeting was subsequently held between Trevor and Caitlin. Trevor explained that he was taking photographs of Caitlin to use during computer training sessions. He apologized to Caitlin and they parted company with a handshake.
- \* A few months later Caitlin sent a memo to her supervisor entitled ‘Sexual Harassment’ which stated ‘I would like to give you the opportunity to investigate the Trevor incident yourself.’ The company conducted an internal investigation and discovered Trevor frequented ‘topless’ dancing clubs and also had pornographic material on his computer. Trevor was sent a letter of reprimand indicating ‘Any similar future conduct could result in severe disciplinary action including termination.’
- \* However, during this investigation employees revealed that Caitlin was seen by many as part of the problem. They indicated she was very critical of other co-workers and treated them poorly, complaining about them behind their backs. They stated Caitlin had a high opinion of herself, and most importantly, she never let issues die. The investigation report concluded ‘Even though most crews needed extra help, no crews were anxious to have Caitlin join them and many employees did not want to work with her for fear of having an incident.’ Caitlin subsequently filed a harassment complaint with the Human Rights Commission claiming ‘The employer did not conduct a proper investigation.’
- \* Problems continued to follow Caitlin at various locations. At one work site Caitlin complained her co-workers ‘were talking about her behind her back.’ At another site she accused some workers of making ‘rude and obscene gestures’ towards her. Co-workers from both sites denied the accusations and said they were hurt and embarrassed by the incidents. A meeting was held shortly thereafter with Caitlin, a human resources representative and the union. Caitlin identified a litany of problems which she blamed on her co-workers. The meeting concluded with management agreeing to try to restore Caitlin’s relationships with her co-workers.
- \* A month later Caitlin sent a memo to the company president stating that she ‘worked in a poisoned work environment where there was a conspiracy among her co-workers to intimidate her because she was a female.’ She stated both management and the union were ignoring the problems. As a result, an independent investigator was hired to undertake a formal investigation.
- \* Many female employees indicated in their interviews that Caitlin had not experienced ill treatment based on her ‘gender.’ In fact the consensus was that a majority of the men went out of their way to make the female employees feel accepted. The report stated ‘Caitlin’s co-workers felt she was very difficult to work with and it was difficult to believe that scores of people were deliberately engaging in a conspiracy to demean her.’ The report also noted management had expended a great deal of time and resources to address Caitlin’s many concerns. It was concluded that ‘It was extremely difficult for an impartial person to accept Caitlin’s version of events.’
- \* 3 months later Caitlin filed a sexual harassment complaint regarding male employees who were exposing themselves by wearing coveralls with ‘torn crotches.’ Management responded with a memo stating it was not uncommon for coveralls to become torn in the seam ..... and since they were worn over top of an employee’s trousers should not be a cause for concern. Shortly thereafter the company received a note from Caitlin’s doctor advising she would be off work for 8 to 12 weeks due to ‘medical problems arising directly from work stress and problems she had been experiencing as a result of her workplace.’

- \* The company subsequently arranged for Caitlin to have a comprehensive medical and psychological assessment conducted. The assessment concluded *'There was significant evidence of both paranoid and obsessive-compulsive personality traits in Caitlin and she would not be able to return to work in the near future.'*
- \* Caitlin was subsequently placed on paid leave of absence for several months. Her employment was later terminated based on the fact that *'The employment relationship had been irreparably damaged and it was the company's belief she could not be successfully reintegrated into the workplace.'* Caitlin was offered a severance package of \$60,000 which she refused. Caitlin immediately filed 2 grievances. The first grievance alleged *'The employer had discriminated against her because she had previously filed an internal harassment complaint ..... and a complaint with the Human Rights Commission.'* The second grievance alleged *'Her termination violated the Human Rights Code and Labour Relations Act.'* An arbitration hearing followed .....
- \* During the hearing, the arbitrator noted the case was a difficult one since Caitlin stated *'She was just a witness, the grievances were not hers and the arbitration forum was not the appropriate place for the issues in dispute.'* She also claimed the proper avenue for the redress of her complaints was through the Human Rights Commission. After 4 days she left the proceedings and did not return.
- \* The company argued that Caitlin had become a completely dysfunctional employee. They claimed she suffered from distorted perceptions of reality and believed managers and employees were involved in *'conspiracies'* against her. They felt *'Caitlin's personality problems had destroyed the employment relationship beyond repair and her mental and emotional condition did not allow her to remain in the workforce.'* They added they had demonstrated patience over a substantial period of years and went to great lengths to investigate and facilitate resolution of a great number of Caitlin's complaints. However, the company indicated they were *'still willing to pay Caitlin a severance package of \$60,000 which she had previously refused upon her termination.'*
- \* The union argued Caitlin was never disciplined and therefore not given the opportunity to alter her behaviour. They requested *'She be reinstated under conditions recommended by the arbitrator and supervised by a doctor ..... without payment of any compensation.'*
- \* The arbitrator noted Caitlin was someone who could best be described as a *'troubled employee.'* He stated *'She had the perception that she was superior to all of her peers and felt managers, co-workers and union officers were plotting against her.'* He added that over a long period of time, in a number of different workplaces, and with different crews and supervisors, Caitlin *'made life unpleasant for those working with her and those responsible for her supervision.'* The arbitrator also stated the incident with the *'unwanted photographs'* indicated Caitlin chose to perpetuate the problem rather than resolve it and the *'torn crotch'* problem showed no real intent of sexual harassment.
- \* The arbitrator next considered Caitlin's grievance that she was discriminated against because she had previously filed an internal and external harassment complaint. He stated that since Caitlin *'refused to testify at the hearing'* and *'without any other witnesses to support her allegations,'* he could only base his decision solely on the facts before him. He noted the company had dealt with all of Caitlin's complaints and even hired an independent investigator. He stated *'Human beings remain free to like or dislike others for reasons entirely unrelated to gender'* and her co-workers came to dislike her ..... not because she was a female ..... but because of her inability to avoid conflict when dealing with other co-workers. *He felt there was no evidence of any incident which could be classified as discrimination or harassment.*
- \* The arbitrator then dealt with the question of whether the employer had *'just cause'* to terminate Caitlin's employment. He stated the employer was correct in not utilizing discipline in dealing with Caitlin as it would likely have been seen by her as still more efforts to punish and harass her .... and may have worsened the situation. The arbitrator noted *'Caitlin suffered from a profound personality disorder which would not have been correctable by disciplinary measures'* and consequently the employer had no alternative but to terminate her.
- \* The arbitrator noted there was little doubt that in her own mind Caitlin felt she was discriminated against amongst a mainly male dominated workforce ..... but in the end her personality problems made her so *'dysfunctional'* that she became virtually unemployable. Since Caitlin did not appear to recognize her personality disorder, the arbitrator felt it would constitute *'undue hardship'* to require the employer to restore Caitlin to any form of employment. *The arbitrator subsequently dismissed both grievances.*

**\*\* The arbitrator concluded "Bearing in mind the employer has done nothing wrong, and has spent substantial sums over the years fruitlessly dealing with Caitlin's complaints, as well as this arbitration ..... paying her an 'ex gratia' sum of \$60,000 would be without any responsible foundation."**

★ ★ *Thanks* ★ ★

We wish to extend our appreciation to Wanda Harbin at Marine Atlantic in Sydney. You did a great job of coordinating the Harassment Investigation workshop (Level 1) held in March. We enjoyed our visit and had a lot of fun!

Also ..... special thanks go out to all our workshop participants who helped to make our training sessions held over the last few months such a success!

' IN-HOUSE '  WORKSHOPS

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