

HILL ADVISORY

NEWSLETTER

Upcoming

*Back by popular demand:
CALGARY, May 25th-30th
Investigation Level One & Two*

Special Thanks To

*Memorial University of New-
foundland, Investigation Level
One, October 2008*

Upcoming

*HALIFAX
April 20th to 25th, 2009
Investigation Level One & Two*

Special Thanks To

*All participants of the
Winnipeg & St. John's ses-
sions, thanks for making the
workshops a success!*

'RIDE YOU UNTIL YOU QUIT'

How frustrated comments instead of employee discipline can amount to harassment.

The Company is in the business of manufacturing in British Columbia. Mr Dunphy is employed as a Production Worker and is posted to a particular unit of the Plant. Mr Dunphy has mid level seniority and is the most junior in his unit. Mr Dunphy filed two grievances, one following certain events regarding Mr Mira and the other against the Employer for 'Failure to provide a harassment free workplace.'

Mr Dunphy said he got along well with Mr Mira initially and agreed that they had no incidents between them prior to the events he filed his grievance about. Four employees are normally used in the unit Mr Dunphy was in, however, due to lowered demand and a change to the manufacturing process, there was not sufficient work for all four at all times. Consequently, Mr Dunphy was moved from unit to unit depending on the needs of the workplace.

The Union attempted to demonstrate a longstanding pattern of supervisory harassment against Mr Dunphy. Evidence was examined and the conclusion reached was that Mr Dunphy offered his conclusions and perceptions, but no substantive descriptive evidence of the background or factual circumstances was presented. There was no corroborative evidence that Mr Dunphy was being singled out.

Mr Smylie supervises an area of the plant and approached Mr Dunphy to ask him to help out in a different unit. Mr Dunphy refused. He had problems there in the past with the Foreman and Lead Hand but did not provide an explanation to Mr Smylie. Mr Smylie explained that they needed help there but Mr Dunphy continued to refuse. Mr Smylie reported back to Mr Mira. Mr Mira said he would take care of it, and on the way, he collected two Shop Stewards.



Halifax

*We are pleased to return to
Halifax for another session
of Harassment Investigation
workshops:*

*Level One: April 20-22 / 09
One & Two: April 20-25 /09
Reduced pricing in effect until
January 15th, 2009*

*Already taken Level One?
Consider attending Level Two.
For more information, contact
Sheri sswain@hilladvisory.com,
or phone 204-831-7661*

*Visa, Mastercard and American Express all
accepted.*

HILL ADVISORY NEWS

Mr Mira and the two Shop Stewards approached the area of the Plant Mr Dunphy was in for a conversation. Mr Mira began the discussion by telling Mr Dunphy that he was needed in the other unit. Mr Dunphy replied that he would not go there because he had a history there. He said he told Mr Mira, 'I've had problems out there. You've just set me up for failure.'

Mr Mira repeated what would have been understood by all to be instructions to Mr Dunphy to go work in the other unit. Each time, Mr Dunphy refused.

Mr Mira began the conversation calmly but with Mr Dunphy's insubordination to him in the presence of others, he became louder. He began to use profanity, although it was not directed at Mr Dunphy as a personal attack. At some point Mr Dunphy told Mr Mira there was no reason they could not speak civilly with each other. Mr Dunphy's voice became louder too but he did not use profanity. During the discussion, Mr Mira told Mr Dunphy that he had to go where he was told. The witnesses to the conversation relayed that Mr Mira told Mr Dunphy that if he did not go to the other unit, "I'll ride you till you quit." Mr Dunphy looked at the two Shop Stewards and said, 'Did you hear that, he just threatened my job?' Mr Mira suddenly turned and left.

Mr Dunphy went back to work for fifteen minutes, but being upset he left and went home. Mr Mira assumed the Shop Stewards would have talked Mr Dunphy into reporting to the requested unit and had no idea that Mr Dunphy had left the building until about an hour later.

Mr Dunphy reported for work the next day and there were no further incidents. He filed a grievance against Mr Mira.

Two days later, Mr Dunphy was again advised the unit he had refused to go to needed help. Not wanting another conflict, Mr Mira asked two Shop Stewards to go speak to Mr Dunphy about it. The Stewards did so and advised Mr Dunphy that he would be fired if he did not report to the requested unit. Mr Dunphy went to the unit but thought being asked to report to the unit was further harassment by Mr Mira because Mr Mira knew he had past problems with the Foreman and Lead Hand. Mr Dunphy felt that Mr Mira was doing what he threatened, 'riding him until he quit'.

Mr Dunphy went to work and there were no conflicts or issues with the Foreman or Lead Hand. He worked for about an hour then left. He went to see the Human Resources Manager and then left the building. Mr Dunphy was never disciplined for walking off the job.

Mr Dunphy asserted that Mr Mira knew of his problems with the Foreman and Lead Hand of the unit, however, it was not evident from the evidence provided that Mr Mira had that knowledge.

Mr Dunphy filed a second grievance for 'failure to provide a harassment free workplace'.

The Union advised they were seeking an apology from Mr Mira, a cease and desist order against future harassment and abusive behavior, an order that the Company follow its policies related to its Code of Conduct and that the Company, "let the Union know what we can expect if this type of behavior is repeated." They also requested formal Harassment Training from an outside party.

Mr Mira testified that he did not clearly recall the incident. He did concede that he was swearing and louder than Mr Dunphy. He denied having made the

comment about 'riding' Mr Dunphy. Mr Mira asserted, "I'd never say that. It's not my personality. I'd never say that no matter how heated."

The Arbitrator preferred the testimony of the witnesses as to the actual statement made. He accepted Mr Mira's assertion that such a statement was out of character for him. He concluded that Mr Mira lost his composure, and in frustration and anger "...did say such a thing." He further concluded that Mr Mira understood the error of his words immediately after he uttered them, and that was why he suddenly turned away and left.

Mr Mira had apologized to Mr Dunphy but Mr Dunphy did not accept the apology. The Arbitrator concluded that Mr Mira's apology amounted to an acknowledgement that he had injured Mr Dunphy's feelings. He felt Mr Mira's apology was sincere.

The Company paid Mr Dunphy for the time lost after walking off the job on the two occasions. They also agreed that Mr Dunphy's home unit would be away from the disputed unit.

The grievances remained unresolved because the Company did not actually accept that Mr Dunphy was harassed, because the Union was seeking broad remedies and because Mr Dunphy would not accept the apology given.

The Arbitrator concluded the events where Mr Mira threatened Mr Dunphy by saying he would 'ride him' until he quit amounted to harassment. He concluded that the outbursts represented a one time, out of character act on the part of Mr Mira. He believed Mr Mira's apology to Mr Dunphy was sincere and did not order anything further. The second grievance was denied due to a lack of objective evidence.