

HILL ADVISORY

NEWSLETTER

<p>Upcoming <i>Winnipeg Public Workshop</i></p> <p><i>Harassment Investigation Level</i> <i>One and Two</i></p> <p>September 8-13, 2008</p>	<p>External Investigations</p> <p>Please contact Dylan 204.470.7111 (c) dhill@hilladvisory.com</p>	<p>Upcoming <i>Newfoundland Public Workshop</i></p> <p><i>Harassment Investigation Level</i> <i>One and Two</i></p> <p>November 3-8, 2008</p>	<p>Special Thanks To <i>SAHRP Conference Attendees</i> <i>for joining us in</i></p> <p><i>A discussion of Tips for Hiring</i> <i>External Harassment Investigators</i></p>
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'PATTERN OF ABUSE'

Termination and Appeal in a Care Home

Summary - Gina worked as a Nurses Aide in a Care Home for 14 years. She had a prior discipline record for abusive and confrontational conduct toward co-workers. Gina was discharged for harassing and intimidating staff members following the latest complaint.

The Details - Gina was, by all accounts, an excellent service provider. She had a strong commitment to the residents and an excellent work ethic. Some of her co-workers said her high standards of care may have created conflict with other staff members on occasion.

A year ago, Gina was informally coached, received a reprimand, a written reprimand and a five day suspension over the course of 4 months. The discipline resulted from abusive and confrontational conduct toward co-workers.

Gina's father became a resident of the facility that year and the Union observed that she appeared to be under substantial stress during that period of time.

The matter that gave rise to the termination was a complaint by Sue, a Nurses Aide. Sue wrote a letter to management alleging a pattern of abusive treatment by Gina. Sue said she had raised her concerns informally with her supervisors on a number of occasions prior to making her formal complaint. Sue speculated, from the timing of the treatment, that it related to the fact that she had reported a staff member to management for abusing a patient (who was terminated).

After receiving the complaint, the Manager, Paul, suspended Gina pending an investigation. Paul interviewed Sue and kept notes of their meeting. The remedy that Sue wanted from the investigation was that Gina, "quit calling me names and bullying me and swearing and using foul language." Sue identified others that had issues with Gina's behaviour. Paul interviewed

Sheri who confirmed that she heard Gina call Sue a b***h. Sheri also confirmed that Gina's behaviour made people scared of her. Paul received another complaint about Gina before he was able to talk to her about the complaints. Kathy complained of abusive conduct directed towards her shortly after she had reported a staff member for patient abuse. Kathy told Paul to talk to Helen whom she said could confirm the conduct - which he did. Neither Kathy nor Helen reported the incident at the time as Kathy said she was scared of Gina and Helen said she worked extensively with Gina and noted that she was very good with residents but had an intimidating attitude with staff. Paul also received a complaint from Lisa who described Gina as a verbally abusive bully.

Before Paul's interview with Gina, he received a hand delivered letter from her which apologized for her conduct and indicated she would do what was necessary to get her job back including, "a 100% turnaround apologizing verbally or written to each and every per-

son I have hurt even those who have hurt me.” Paul was sufficiently impressed with the letter that he had discussions with upper management about the possibility of a ‘last chance agreement’ with Gina. Ultimately nothing came out of those discussions as both management and Gina did not wish to proceed.

Gina denied the allegations and said that people were “saying things about me that I know are not true but I don’t have any proof to support my side of the story.”

As a result of information gathered Paul interviewed Ashley who described Gina as rude and demeaning to her. Ashley said she tried to avoid confrontations with Gina in the hopes she would be left alone. Ashley also said Gina had called her at home on two occasions and described the calls as abusive and said they had frightened her. Part of one call was witnessed by her husband. The gist of the call was Gina complaining about her interview with Paul.

Gina was interviewed again and asked about the calls. She denied making one of them and said the other one was a joke. She said Ashley had no reason to fear her.

The Conclusion - As a result of the information gathered, the Employer decided to terminate Gina with cause. The conclusion was that Gina was harassing and intimidating staff members and they had no confidence she would change. It was noted that 17 staff members would not work with Gina and declined or switched shifts if they had to work with her, which created operational difficulties.

Appeal - The Union pointed to a number of discrepancies and weaknesses in the Employer’s evidence which it submitted made that evidence unreli-

able. Some of the interview notes were typed and some were not. Some were signed and some were not. The Union indicated Ashley had signed a letter of support for Gina and as such her evidence must be viewed with suspicion. The Union argued that the Employer’s Standards of Conduct did not set out any means to deal with harassment. The Union argued that the people who complained about Gina were not long serving employees and presumed that long term employees did not have a problem with Gina. The Union argued there was a lack of detail in the allegations against Gina and as such they were near impossible to reply to. They argued that a number of witnesses were not called to give evidence during the investigation and should have been. The Union argued that as the calls to Ashley occurred outside the workplace, they should not be considered in the investigation or give rise to discipline.

Decision - The arbitration panel concluded the discipline was warranted and upheld the Employer’s position. The panel concluded that it was not necessary for the employer to interview every person who might have relevant information but rather its obligation was to call enough evidence to satisfy the burden upon it. They were satisfied the Employer did so. Direct evidence provided by the witnesses at the arbitration confirmed the evidence they provided the Employer during the investigation. The panel concluded that the Union could have called witnesses to support its presumption that long standing employees did not have a problem with Gina but did not do so.

The panel concluded that the Employer’s Standards of Conduct (which had been crafted with the aid of the Union) prohibited harassment inside

and outside of the workplace and so ruled that the calls to Ashley were properly considered in the investigation. They also noted “This type of intimidation cannot be tolerated as it could have the effect of discouraging reporting of inappropriate behaviour.”

In assessing Gina’s evidence (denial of allegations for the most part) the panel concluded that her evidence was “not in harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in the place and in those conditions”. Further they found that the written apology Gina provided to Paul conflicted with the denial of behaviour she tendered at the hearing.

The panel concluded the witnesses described a pattern of abusive conduct which was not dissimilar from conduct which had resulted in previous discipline. They concluded it was therefore not out of character for Gina and arose out of being reported to management for her conduct. The panel noted that Gina had been disciplined on 3 prior occasions but had not been convinced to change her conduct in the workplace.

Finally, the panel concluded that although Gina was an employee with 14 years of service, who had excellent skills in the care of residents, it did not mitigate against the “continuing pattern of abuse and harassment of her colleagues in a setting requiring teamwork...” They concluded there was no remorse, or acknowledgment of wrongdoing on Gina’s part and they were doubtful of her candor at the hearing and as such they saw no basis upon which they could reinstate Gina to the workplace.