

EMPLOYMENT ALERT

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Browns Ferry Contract Worker Wins Nuclear Whistleblower Case

Can a craft worker who tells a supervisor to take a procedure and “shove it up your ass” be fired? A case decided last week by the DOL’s Administrative Review Board (ARB) posed that question. The ARB’s decision demonstrates how critical it is for management to be consistent in imposing discipline and to be precise in articulating the reason for terminating an employee.

Background

The events in the case date back to May 2004, when Stone & Webster (S&W) painting crews were repairing protective coatings at Browns Ferry Unit 1. S&W decided to use apprentices for the work, in addition to the journeyman painters already on the job. At S&W’s request, TVA modified an engineering specification (“G-55”) to clarify that apprentices were qualified to do the work.

Speegle, a crew foreman, believed that using apprentices presented a nuclear safety risk due to their lack of experience. He said so to his general foreman, Childers, and a superintendent, Gero. Matters came to a head during a meeting in which Childers introduced the proposed modification to the painters. Speegle’s response? He loudly told Childers that “management can take that G-55 and shove it up their ass.”

Management viewed this as insubordination, but also as a labor issue, in that Speegle did not want apprentices to take work away from journeyman painters. (At the trial, Speegle conceded that he may also have told Childers that he “gave all these people’s jobs away” at the meeting.) S&W took the expected actions: it suspended Speegle, obtained statements from witnesses, and consulted with its human resources department, which concurred in Gero’s decision to fire Speegle. Speegle responded with a whistleblower suit under Section 211 of the Energy Reorganization Act.

Employers in safety-sensitive industries may be interested in two workforce publications designed to promote effective resolution of employee safety concerns. ***Safety Conscious Work Environment: The Practical Guide for Leaders*** identifies key ways in which supervisors, managers, and site executives can foster a work environment that encourages employees to participate in raising and resolving concerns. ***Safety Conscious Work Environment: Practical Pointers for the Individual Contributor*** advises non-supervisory workers, including contract workers, how they can contribute to the desired work environment. [More information.](#)

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The ALJ's Decision

In 2006, an administrative law judge ruled for S&W. (TVA was not involved in the case.) The judge held that while Speegle's statement to Childers was impulsive and related to a protected concern about the quality of safety-related coatings, S&W's right to discipline a worker for insubordination outweighed any leeway Speegle had to engage in impulsive behavior. "Speegle made this comment in the presence of a room full of subordinates, in a manner that was clearly vulgar and disrespectful." His vulgar statement to Childers therefore was not protected and was a legitimate reason to terminate him. Speegle appealed to the ARB.

The ARB's Decision

Last week, the ARB reversed the ALJ's decision. The ARB found that Speegle proved retaliation for two reasons: first, the trial evidence showed that two other workers had "vulgarily lashed out" at supervision but were given warnings instead of being fired. Second — and perhaps in an effort to distinguish those other workers — S&W argued (and Gero and Childers testified) that Speegle needed to be fired because his vulgar comment indicated that he was not going to follow procedures (i.e., the revised G-55). According to the ARB, however, Speegle "never said anything about not following or obeying procedures" and his vulgar comment "does not indicate that he was not going to abide by the new policy." Moreover, Gero and Childers had never known Speegle to disobey procedures in the past.

The ARB viewed this concern-that-Speegle-would-not-follow-procedures to be a false reason for his termination. Combined with the preferable treatment the two other workers received, this evidence sufficed as proof by Speegle of "pretext" on S&W's part, and thus was sufficient evidence that protected activity contributed to Speegle's termination.

Conclusion

The ARB's ruling should not be considered as evidencing a new bias in favor of "whistleblowers" brought by the Obama Administration. The members who issued the decision are longtime ARB members who were appointed by the Bush Administration. The ARB's decision does, however, underscore how important it is that management carefully considers how similarly situated employees have been treated when contemplating discipline (particularly termination) and the importance of precision and consistency in articulating the reason for discipline.

The case is *Speegle v. Stone & Webster Construction, Inc.* (Sept. 24, 2009). If you have any questions about the above, please feel free to contact us.

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