

Define Cause to Terminate an Employee or Roll The Dice



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An employee openly defies a clear directive from his supervisor, and in doing puts the company at risk for liability to invitees. So surely, the defiant employee can be terminated “for cause” under the company’s employment contracts, handbooks and policies based upon the employee’s insubordination? According to a recent New Jersey Supreme Court decision, maybe not.

The Supreme Court of New Jersey recently approved an arbitrator’s decision reinstating a School Board employee’s employment under circumstances where “good cause” for employment termination was not defined in the collective bargaining agreement (“CBA”), and the arbitrator concluded that termination was too severe a sanction to impose based on the infraction. This case may impact future judicial constructions of private employment agreements and signals an additional issue that should be considered in drafting and/or revising employment agreements.

Linden Bd of Ed. v. Linden Education Assoc., 2010 N.J. LEXIS 507 (June 8, 2010), involved the Linden Board of Education’s decision to terminate a night shift custodian at Linden High School (“LHS”). A dance recital was scheduled at LHS that required some of its participants to change outfits using several classrooms. The head custodian posted signs informing the night custodian that certain classrooms would be used as changing rooms and that he should knock and announce himself before entering the classrooms.

Ignoring his supervisor’s direction, the night custodian entered a classroom where several female students were changing, ignored the students’ pleas for him to leave, and proceeded to clean the glass panes on the classroom door. The custodian left only after a teacher intervened.

The Board placed the night custodian on paid suspension, conducted an internal investigation, and, later, voted to terminate his employment.

The custodian filed a grievance, and the parties submitted the following questions for arbitration: Did the Board of Education have just cause to terminate the employment of the custodian? And, if not, what shall be the remedy?

The arbitrator found that “the Board has not proven that termination of [the custodian]’s employment is appropriate.” The Arbitrator instead found that the appropriate sanction was a ten-day suspension without pay.

On subsequent review, the New Jersey Supreme Court agreed with the Arbitrator, relying heavily on the fact that the collective bargaining agreement did not define “just cause” for termination. The Court concluded as follows:

The contractual language drives our decision. The parties did not define “just cause” in the Agreement and the arbitrator needed to fill in the gap and give meaning to the words “just

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cause.” The Arbitrator did so. He concluded that “progressive/corrective discipline [was] an integral part of the just cause concept [.]” and that the employee’s misconduct was not so egregious to support just cause to terminate. Once the arbitrator reached that conclusion, consistent with the issues presented by the parties, he imposed discipline upon the employee

As a result of the Linden Board of Education decision, corporate counsel should revisit existing employment contracts, handbooks and policies. The Court’s reliance upon a void in the collective bargaining agreement would likely to apply equally to employment contracts, handbooks and policies. If that occurs, the employer could find itself in the same position as the Linden Board -- having its termination of the employee rescinded -- and/or paying damages and other compensation. Consequently, in-house counsel should use this decision as an opportunity to reevaluate and, if necessary, tighten employment agreements to define “just cause” for termination.



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