

Possession of small amount of marijuana was just cause to fire employee

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The Newfoundland and Labrador Court of Appeal has upheld the firing of a unionised millwright who was caught with a small amount of marijuana in his pocket during screening before boarding a helicopter that would transport him and other employees to an offshore platform. (1) The employer had a policy prohibiting possession of illegal drugs, including marijuana, "while on company facility or while performing company business".

The employee, who was employed on a call-in or casual basis, claimed that he was "in disbelief that it was there" and that he "did not know how it got in his pocket". The labour arbitrator found that the employee likely knew that he possessed the marijuana (noting that he did not protest "loud and long" that it was not his or that he had no knowledge of possessing it), but had forgotten about it and not checked his pockets carefully. The arbitrator upheld the employer's decision to dismiss the employee; however, the Newfoundland Supreme Court set that decision aside.

The Newfoundland and Labrador Court of Appeal restored the arbitrator's decision, stating:

"To avoid disciplinary action, the employee was required to establish that he had taken all reasonable care to ensure that he did not breach the Policy by having possession of marihuana. The arbitrator reviewed the circumstances and the explanation provided by the grievor and concluded that he had not satisfied this onus. Rather, the arbitrator found that the grievor more probably than not knew about the marihuana in his pocket, but had forgotten it was there and had not carefully checked his pockets before entering the screening area... The employee's actions did not establish that he had taken all reasonable care to ensure that he did not breach the Policy. He did not meet the standard of the reasonable person in similar circumstances."

The employer's decision to dismiss the employee was therefore upheld. (2)

For further information on this topic please contact [Adrian Miedema](#) at Dentons Canada LLP by telephone (+1 416 863 4511) or email (adrian.miedema@dentons.com). The Dentons Canada LLP website can be accessed at www.dentons.com.

Endnotes

(1) *Terra Nova Employers' Organization v Communications, Energy and Paperworkers Union, Local 2121*, 2018 NLCA 7 (CanLII).

(2) For more information please see www.occupationalhealthandsafetylaw.com.

AUTHOR

[Adrian Miedema](#)

