

Case 8

Loan-sharking. Criminal behaviour. Special Issues: Private life vs. work misconduct. Damaged employer's image. Conflict of interest. Summary dismissal.

An employee of a large transportation company for 25 years, Ken Taylor was a middle manager when he was arrested by police for loan sharking. He was found guilty under the *Criminal Code* and fined \$2,000. His employer then dismissed him. Ken had been loan-sharking with several other employees and some of the group's "clients" were also company employees.

After his arrest it was discovered that Ken had falsified employee records and passed confidential information about employees to people outside the company.

Ken wrote to the Labour Program claiming he had been unjustly dismissed. He said that his association with the group had ended several months before he was arrested. He believed that because of his excellent work record, progressive discipline should have been applied. As well, he thought the company had fired him in response to pressure from employees who wanted to get back at him.

The employer argued that Ken had admitted his criminal actions. Although they happened outside working hours, those actions conflicted directly with his responsibilities in the organization. During the internal investigation, Ken had not been co-operative or honest. The employer said the trust required in the employer-employee relationship was destroyed and Ken had been dismissed.

Adjudicator's Decision

Ken's criminal activity was found to be related to the work place because it involved his co-workers. He had also passed on confidential information to people outside the work place for his own personal gain. The adjudicator ruled that his dismissal was fully justified.

V. Aggravating and Mitigating Factors Considered by Adjudicators

Whether a dismissal results from a series of minor infractions or a major offence, it is generally accepted that there are two types of facts, aside from the strict facts of the case, that play a role in determining the appropriate disciplinary action, especially when an action as serious as dismissal is being considered.

Adjudicators refer to "**aggravating**" and "**mitigating**" factors to determine the type and severity of disciplinary action appropriate for the offence, as well as whether or not the dismissal is just. These elements are taken into consideration when adjudicators evaluate the seriousness of the offence and the corrective measures imposed by the employer. For example, the fact that the misconduct was an isolated and unpremeditated act may mitigate the seriousness of the offence. On the other hand, the fact that the offence had been planned will be considered as an aggravating factor.