

When can a worker say 'no' to the boss?

Whistler dog sled case raises questions around employment law and an employee's right to refuse

BY DARAH HANSEN FEBRUARY 7, 2011



After an Outdoor Adventures Whistler employee was asked to kill sled dogs, many people wondered why he didn't refuse, prompting a debate about when it's OK to say 'no.'

Photograph by: Claudia Kw an, Special to The Sun

By now most people have heard of the controversial killing of 100 sled dogs last April by a worker at, and part-owner of, a Whistler outdoor adventure company.

The story went public last week, sparking widespread outrage, after news leaked that Robert Fawcett had won WorkSafeBC compensation for post-traumatic stress disorder suffered after he culled the dogs.

The dogs were shot or had their throats cut while tethered.

Whether he had any choice in the matter has been up for debate, but it has raised questions around the right of an employee to say "no" to a boss.

If there's an easy answer, it's that there are few easy answers.

"What the case law has decided is that you can refuse what is an unreasonable order from your employer. That's the starting point," said Martin Sheard, an employment lawyer with the Vancouver

firm Tevlin Gleadle.

“But, as you might imagine, lawyers make it impossible to determine what is ‘unreasonable.’ You have to engage in a contextual analysis based on everything — job history, job description, who you are as a person, everything,” he said.

According to Sheard, it’s always an employee’s decision to say yes or no to a boss’s order.

The worst-case scenario, of course, is you could lose your job if you don’t give the answer your employer wants to hear. In that case, you may be forced to sue for compensation for wrongful dismissal.

Sheard said that it is “always going to be unreasonable” to ask a someone to violate the Criminal Code.

“One of the most obvious examples would be if someone was ordered to kill someone,” he said.

Demands that run contrary to human rights legislation and other statutes, such as the Motor Vehicle Act, also likely fall into the same legal category.

But the situation gets murkier when the demand made of an employee violates personal principles.

For example, Sheard pointed to a decision in 2000 by the B.C. Court of Appeal where an employee of Everywoman’s Health Centre Society refused to be a voluntary witness in a heated trial involving anti-abortionists, citing safety and security concerns.

The case hinged on whether her disobedience was “reasonable” given her job responsibilities, personal and professional history and specific circumstances surrounding the matter.

The B.C. Supreme Court found the clinic was justified in firing the woman for refusing to follow orders but the B.C. Court of Appeal held otherwise, and called the firing wrongful dismissal.

“There is no one thing that means automatic termination,” Sheard said.

Sheard suggested anyone who questions whether something that is being demanded is actually part of his or her job should speak up right away.

“Essentially the worst possible thing that could happen, just from an employment perspective, if you say ‘no’ is you could be fired and then the courts could find that termination was not wrongful and you lose your wrongful dismissal pay,” Sheard said.

Most cases are settled out of court, so the employee could receive something.

Issues and complications arising from ethical questions have long been on the policy books of large companies in Canada.

Telus, for instance, has a “well-established and refined ethics policy that goes back many, many

years," said spokesman Shawn Hall.

The company also employs an ethics officer and operates an anonymous ethics line for anyone who may question a particular situation or demand at work.

"You are encouraged to ask questions," Hall said.

"Simply by having that stuff in place, by sticking to those important tools ... you really minimize your risk of running into ethics problems."

dahansen@vancouversun.com

© Copyright (c) The Vancouver Sun