

## The first ruling on abusive use of the Internet

By Anne Boyer

Given the dramatic increase in Internet and e-mail use by employees in a company setting, it is in the interests of all employers to implement policies to better control the growing use and misuse of this form of communication.

In a grievance involving the *Communications Energy and Paperworkers Union of Canada, Local 522* and *CAE Electronics Ltd.*, rendered on January 26, 2000, the arbitrator, Jean-Pierre Tremblay, examined a policy dealing with Internet use in the workplace.

CAE Electronics designs and manufactures flight simulators and other equipment used in civil and military airplanes. Mr. Petruzzi had worked at CAE since 1985 as a grade 3 mechanical-technical inspector. His duties consisted basically of inspecting and accepting or rejecting parts and mechanical systems submitted to him for assessment. Mr. Petruzzi could decide, on his own initiative, whether or not he needed to work overtime. His work did not require the use of his computer except on very rare occasions.

Only certain employees were given Internet access. Also, the employer had implemented a policy on Internet use, the thrust of which was that employees could use the Internet only for work-related purposes, and only during working hours. Personal use of the Internet outside business hours was a benefit granted only to certain authorized staff members.



Mr. Petruzzi formally undertook to comply with the employer's policy on Internet use by countersigning the document that set forth the policy. The employer also had a very strict zero-tolerance policy prohibiting the use or transmission of pornographic or sexual material, images or photographs.

In January, February, March, and April of 1999, Mr. Petruzzi's overtime increased significantly but he was still behind in his workload. His immediate superior gradually noticed that the

grievant was spending more time at his computer, despite the fact that he did not need to use it in order to do his work.

The employer conducted an investigation and discovered that the grievant was using his computer for personal purposes during working hours, and visiting various websites. Mr. Petruzzi's total Internet-use time was 46.21 hours in January, 33.31 hours in February, 120.53 hours in March, 101.52 hours in April and 26.27 hours in May. The majority of this time was spent visiting pornographic Web sites. The employer established these facts by filing the company's monthly Internet-use report.

On the basis of the evidence submitted to the arbitrator, the employer had shown that for the months of January, February, March, April and May, Mr. Petruzzi's overtime corresponded almost exactly to his Internet-use time. The employer dismissed Mr. Petruzzi, who contested his dismissal by filing a grievance.

The arbitrator upheld the dismissal and found that not only had the employee stolen a significant percentage of his employer's time, but he had also contravened the employer's policy on Internet use as well as its policy on the use of material of a pornographic or sexual nature. Accordingly the arbitrator upheld the dismissal and characterized Mr. Petruzzi's misconduct, in objective terms, as serious wrongdoing.

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Accordingly, using the Internet in a manner inconsistent with the employer's policy, and the extent and seriousness of the misconduct in the circumstances, i.e., clearly abusive use of the Internet by an employee, was accepted as sufficient grounds for upholding the dismissal of an employee.

This ruling is undoubtedly the first in a long series to come of cases on the subject of improper Internet use in the workplace. Given the relative recentness of this phenomenon in the workplace, it is becoming increasingly necessary that employers lay the ground rules. Should you require our assistance, we would be pleased to help you develop an internal Internet use and e-mail policy or review the one you currently have in place. Please do not hesitate to contact us.

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