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Termination frustration

For companies, firings can be tricky business

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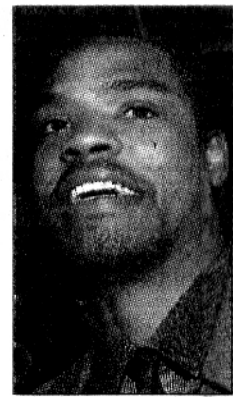
It's an employer's worst nightmare.

Someone on the payroll did something awful — and the bad apple's still here.

In almost every community, there are employers who are finding barriers to getting rid of "bad actors" — drug users, potentially violent workers, the dishonest or abusive. The workers aren't necessarily incompetent at their jobs, but they've stepped over the lines of appropriate behavior.

The latest case involves Golden State Warriors basketball star Latrell Sprewell, who choked and punched head coach P.J. Carlesimo. After the December incident, the Warriors canceled Mr. Sprewell's four-year, \$32 million contract, and National Basketball Association commissioner David Stern suspended him for a year. On Wednesday, an arbitrator,

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Latrell Sprewell . . . his suspension will end July 1, five months earlier than the league wanted, and he will be paid \$16.3 million over the next two seasons.

Companies find firings can be tricky business

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hearing the player's appeal, decided that the Warriors must honor the contract and reduced the suspension to five months.

In effect, the ruling trumped the Warriors attempt to fire Mr. Sprewell. It saddled the team — and the NBA — with an employee it simply doesn't want.

"The bottom line is, he'll get back in the league, whether it's for Golden State or someone else, because there will be a lot of takers for him," said ESPN basketball commentator Dick Vitale.

Harvey Shapan, head of the labor and employment law section at Dallas' Godwin & Carlton, says more and more discharged workers are taking their pink slips to their lawyers' offices.

"Employees are very feisty," he said. "They read in the newspapers about employees getting millions of dollars when firings are judged unfair."

In Texas, an employment-at-will state, employers have wide latitude in dismissing workers. Even so, companies can get in trouble if they fail to apply their labor practices and policies evenly — for example, firing one worker for an offense that doesn't cost others their jobs.

The process can get even trickier when workers have the additional protections of unions, individual contracts or tenure. In these cases, getting someone out the door might involve a tortuous legal process, the outcome of which may be uncertain.

At Dallas-based Greyhound Lines Inc., unionized bus drivers have the right to appeal any disciplinary action to a grievance committee and then to an independent arbitrator, spokeswoman Katherine Williams said. Within the past five years, only 20 employees have demanded arbitration, she said, and about half won their appeals.

"If it's clear to a manager that an employee has done something that's wrong, then we'll take whatever action we need to take," she said. "Because we have such a good relationship right now with our union, everybody knows what's going to happen."

of about 12,500. "We have some procedural matters that are based in law that probably go beyond anything the NBA has," he joked.

The most visible cases have involved police officers. "They have so much power to do their jobs, they have more rules to comply with, and so there are more things they can do wrong," he said.

"The greatest frustration that has been very clear with the citizens, with the City Council, with the administrative board and the Police Department in general, has been the number of cases where officers were reinstated when they had done something sufficiently public to be newsworthy," Mr. Truly said.

Last year, several officers were reinstated, including a detective who had been videotaped beating a handcuffed kidnapping suspect and an officer who had had sex on duty.

Three of the five judges who hear appeals from officers are new this year, Mr. Truly said. "I think the system's back on keel without stacking it," he said.

At the U.S. Postal Service, an agency so notorious for employees snapping that "going postal" has entered the vocabulary, there are rigidly prescribed steps for disciplining workers, said Dallas spokesman McKinney Boyd. Mr. Boyd said he couldn't discuss individual cases, but "you just don't commit a violation and be terminated the next day."

University administrators also think twice about firing staff members, said George Wright, senior vice president and provost at the University of Texas at Arlington.

"When a department chair gets involved in a disagreement, I'm often asked, 'How can I avoid being sued?'" he said. "Sometimes, there's just no way around it."

The union's arbitration procedures helped Mr. Sprewell. Arbitrator John Feerick ruled that the suspension exceeded the penalties given to other wayward players. "It's tougher to terminate an employee who has a collective bargaining agreement," said Rogge Dunn, a labor-law specialist at Matthews Carlton & Stein, a Dallas firm.

Frank Coy, principal consultant with Human Resource Consultants Inc., which does employment mediation, said one of the biggest problems in getting rid of a bad actor is that managers avoid confrontation.

"I get called in to sometimes look at a problem employee, and it turns out management has been avoiding it," he said. "They haven't followed the rules consistently, and, more than that, a lot of managers are afraid of the legal ramifications. Most people don't want to deal with hostile, negative behavior, because it's scary."

David Truly, director of the civil service department for Dallas, said there are about 100 to 125 firings per year among the city's workforce

"Companies are always faced with the problem: 'Should I terminate this person and risk a lawsuit?'" said Michael Maslanka, a lawyer with Clark, West, Keller, Butler & Ellis in Dallas. "If you want to run your company so that you won't be sued, you can. You end up with a company full of bad characters."

And when faced with unacceptable behavior, particularly potentially violent employees, companies shouldn't cower in fear of lawsuits, Mr. Maslanka said.

"There are worse things than being sued," he said.

Staff writer Charles Ornstein contributed to this report.
