

Fired employee reinstated? That doesn't excuse more misbehavior or poor performance

Take heart if you have ever decided to reinstate an employee or rescind discipline because the employee threatened litigation. Doing so won't wipe clean his disciplinary record or imply that you admitted he's living up to your expectations.

If he continues to perform poorly and doesn't take advantage of his second chance to improve, you will be able to use his poor work record as justification to terminate him.

Recent case: Jerome drove buses for the Twin Cities' Metro Transit system. Over the years, he got plenty of complaints from customers. For example, several said he would park the bus and run personal errands, making the bus late. Management verified several complaints by checking the tape from the bus's onboard video camera system. It disciplined Jerome. If a complaint couldn't be verified, it wasn't used.

Finally, Jerome was fired and he filed an internal grievance. Metro Transit reinstated him as a compromise, and he dropped the grievance. Still, the complaints rolled in and he was fired again.

He sued, alleging that because he had been reinstated, that meant he must have been performing his job to expectations and that none of his prior behavior could be used to justify his termination.

The court disagreed. It saw the reinstatement as a one-time gift, not an admission that Metro Transit had made a mistake by firing Jerome. It was free to use the past conduct against him. (*Paul v. Metropolitan Council*, No. 10-4759, DC MN, 2012)