

HEALTH IN THE WORKPLACE

I

Don Hayward is employed as a chemical engineer at ABC Manufacturing. Although he does not work with hot metals himself, he supervises workers who are exposed to hot metals eight hours a day, five days a week. Don becomes concerned when several workers develop respiratory problems and complain about "those bad smelling fumes from the hot metals". When Don asks his superior, Cal Brundage, about air quality in the workplace, the reply is that the workplace is in full compliance with OSHA guidelines. However, Don also learns that OSHA guidelines do not apply to chemicals that have not been tested. A relatively small percentage of chemicals in the workplace have actually been tested. This is also the case with the vast majority of chemicals workers are exposed to at ABC.

Should Don do anything further, or should he simply drop the matter?

II

Don goes to ABC's science library, talks to the reference librarian about his concerns, and does a literature search to see if he can find anything that might be helpful in determining why the workers have developed respiratory problems. He finds the title of an article that looks promising and asks the reference librarian to send for a copy. The librarian tells Don that the formal request must have the signed approval of Cal Brundage.

Don fills out the request form and sends it to Cal's office for approval. One month later the article has still not arrived. Don asks Cal about the request. Cal replies that he doesn't recall ever seeing it. He tells Don that it must have gotten "lost in the shuffle." Don fills out another form and this time personally hands it to Cal. Cal says he will send it to the reference librarian right away.

Another month passes by and the article has not arrived. Don mentions his frustration to the reference librarian. He replies that he never received a request from Cal.

What should Don do now?

[Prepared with James Jaksa.]

COMMENTARIES

John B. Dilworth

This is a case about obstructionism, in a situation where undiscovered safety hazards are most probably present. Dan Hayward is the victim of deliberate attempts by his supervisor Cal Brundage to prevent him discovering any potentially compromising safety information about ABC's manufacturing processes.

Ethically the situation is clear. Managers and professionals such as Dan and Cal have a duty to preserve the health of their workers, and to minimize any likely threats to health caused by manufacturing processes. Hence any inaction or complacency by them with respect to these issues is morally wrong, and obstructionism (such as that by Cal) is doubly wrong because it prevents others (such as Dan) from carrying out their duties, in addition to being itself a form of inaction.

What should Dan do? In this case or in general, he should do whatever it takes to get the necessary information, and to get it acted upon if the information reveals that there are legitimate health concerns about the manufacturing processes. If administrative 'stonewalling' continues, Dan may even have to go outside ABC Manufacturing (to regulators such as the OSHA, or to the press, for instance) to get appropriate action taken.

By so doing Dan might easily put his own job in jeopardy, but the obligation to ensure the safety of those one supervises is so fundamental that Dan must be prepared to risk getting fired. (An analogy: if one joins a police force, one must be prepared to risk getting shot at sometimes. It is part of the obligations which go with the job.)

In a broader context however, does this account of safety responsibilities in the workplace place too much of a burden on the few individuals who are prepared to carry out their moral duty, whatever the personal cost? Or to put the problem another way, can it really be one's duty, or be morally required, that one should have to do things which could severely harm one's own interests? Should this rather be regarded as moral heroism (as being above and beyond the call of duty), rather than as being morally required of anyone holding such supervisory jobs?

It seems to me that this concern over burdensomeness is legitimate, but that moral skepticism would be a very inappropriate response. The problem could instead be handled as follows. We should recognize that as members of a society we have some second-order moral duties, whose description includes a reference to one or more regular, first-order moral duties. In the present case, we have the second-order duty to reduce as far as possible the burdensomeness upon individuals of first-order moral duties such as that of protecting the health of those whom one supervises.

This may sound complicated, but a ready-made analogy is at hand in standard legal systems and the sanctions they employ to achieve compliance. Broadly speaking, the purpose of a legal system is to ensure that everyone adheres to basic moral rules or standards in their social relations (no harming of others, and so on). The threat of sanctions or punishments for those who might break the laws serves to minimize the burdensomeness of obeying the laws for law-abiding citizens. Generally speaking, the sanctions ensure that it is in one's interest to obey the law rather than to break it, so that conforming to the law (and hence to the underlying moral rules) is generally a benefit rather than a burden to citizens.

What we need to do (i.e., our second-order duty) in the present case is to ensure that there are enough legal and regulatory mechanisms in place so that people such as Don can do their first-order duty with a minimum of risk to themselves and their own careers. The regulations should also be designed so that the kinds of obstructionism employed by people such as Cal should pose great risks to their own careers (risks such as firing or imprisonment), so that even if they have no concern for morality, self-interest would motivate them to do the right thing.

Once we ensure that those who respect morality will generally have an excellent chance of succeeding in moral conflict situations, we will no longer be tempted to be skeptical about the extent of moral duties over such basic matters as health and safety issues. Much can and should be expected of each of us in the workplace, but we are entitled to full social and legal support in carrying out our difficult responsibilities.

Joseph Ellin

Don is trying to research health problems he fears may affect workers at ABC Manufacturing. He shows admirable initiative and concern for fellow employees. But his supervisor, Cal, prefers that potential health

problems remain unknown, presumably for fear that ABC will have to make costly changes in the factory. To this point, Don's actions indicate commendable concern for the welfare of others, extending beyond his official responsibilities.

Now we're supposed to believe that Cal has blocked Don's access to the library. Don should confront Cal with this and get it cleared up. If Cal has covertly refused Don's library access, he is being sneaky and shows himself to be untrustworthy. If he has reason not to want Don to use the library, he should order Don directly not to do so. Don should simply tell Cal that there are other libraries and he's going to get the article he wants somewhere, so Cal should stop being so petty. If Cal then orders Don to drop all further investigation into the problem, Don has the right to tell Cal that it's not within Cal's authority to control how he uses his free time.

Suppose Don confirms his suspicions about the workplace chemical. In that event, he should initiate whatever steps are necessary to obtain company and OSHA review. This may not be easy, or even possible, but Don's responsibilities don't go any further than putting the problem on the way to solution. Don is not himself responsible for seeing that the problem is resolved; there are labor unions, government regulations, law courts and all the rest for that. As an engineer, his responsibility goes no further than to see to it that these other channels are activated.

However Don might not want to do any of this in order not to antagonize his superior. He then obviously has a bit of a dilemma. If he's really afraid of Cal, he might be justified in dropping the investigation, or at least dropping it after discretely putting someone less exposed onto it, for example, the employee's labor union. He won't like this, but if he doesn't comply, he may have a fight coming, and may be disciplined or lose his job. This doesn't affect his ethical position, but he's entitled to temper ethics with prudence.

Carl O. Hilgarth

Don Hayward is correct in his concern when several workers develop respiratory problems and complain about "those bad smelling fumes from the hot metals". When he checks this out with his superior Cal Brundage, he's told that the workplace is in full compliance with OSHA guidelines. But Don learns that only a small percentage of the chemicals in the workplace have been tested, and that OSHA guidelines do not apply to materials that have not been tested. What can he do? A lot!

To quote from Anton (1989) "In view of the increased emphasis on toxicity, it is strongly recommended that when chemicals are being purchased for plant use, processes, and manufacturing, the manufacturer should supply a "Material Safety Data Sheet" (OSHA Form 20).

The primary information shown in the data sheet for any chemical will include trade and chemical names and synonyms; chemical family, and possibly the formula; a list of hazardous ingredients; physical data; data on fire and explosion hazards; data on reactivity; proper procedures for cleaning up spills or leaks; special protection needed; special precautions that should be followed when using it; and first aid procedures in the event of an accident.

Under the Toxic Substances Control Act, purchasers should get this information from the supplier upon request. It is in the best interest of employees to ask the supplier for the Material Safety Data Sheet (MSDS) before the materials are actually delivered into your plant.

The company or plant itself must have personnel (or at least one person) who can understand and interpret the

data and be able to recognize any gaps where additional information or technical expertise is required."

OSHA has a Hazard Communication Standard. Again citing Anton(1989) this "is a `performance standard,' which means that it describes objectives that must be met, but without specifying the method for accomplishing those objectives. The method is up to the individual organization to choose.

The standard requires chemical manufacturers and importers to assess the chemicals which they produce or import, and all employers to use hazard communication programs to provide information to their employees concerning hazardous chemicals."

All the information that Don needs is available from the chemical manufacturers under the Toxic Substances Control Act. He should not drop the matter. Under this act, the manufacturers must provide him the information he needs. He doesn't need to waste his time trying to have the reference librarian find this information. It's available free from the manufacturers. He can also call the OSHA regional office, or call his local congressman. Either can provide any information about the about the OSHA Hazard Communication Standard and Toxic Substances Control Act.

What Don has encountered is a typical management stonewall of a fundamental industrial hygiene requirement resulting from the fact that the supervisor obviously isn't knowledgeable of OSHA requirements regarding chemicals in the workplace, and doesn't want to take the time to find out about them.

Successful safety programs depend on leadership by the employer, safe and healthful working conditions, and safe workpractices by employees. By ignoring the first two, ABC Manufacturing is ignoring the purpose of OSHA "to assure so far as possible every working man and woman in the nation a safe and healthful working conditions and to preserve our human resources." The OSHA inspection, when it comes, will find and cite this violation. Solve it now and avoid the potential fine and reinspection.

The best reference I have found for occupational health and safety matters, and have cited in my commentary, is:

Occupational Safety and Health Management, 2nd edition. Anton, Thomas J., McGrawHill, 1989.

Wade L. Robison

I

The case says that "OSHA guidelines do not apply to chemicals that have not been tested" and that "a relatively small percentage of chemicals in the workplace have actually been tested." OSHA guidelines presumably apply to chemicals, and only to chemicals, that have been tested somewhere or other. Otherwise a company could refuse to comply with any OSHA guidelines on the ground that it, the company, had not tested any of the chemicals. So the way to read the case is that a large percentage of the chemicals used at ABC have not ever been tested for their toxicity anywhere and that therefore they are not subject to OSHA regulations.

What this way of putting the matter brings out is that OSHA is presuming that a chemical is innocent until proven guilty. No chemical is presumed to cause health problems until it has been tested and, one supposes, shown to cause them.

One must presume that OSHA has reasons for this presumption, for clearly they could make other presumptions, even the opposite one, namely, that no chemical is presumed safe until it has been shown not to cause harm. One

likely reason is that many new compounds are very helpful, that large numbers are being introduced on a continual basis, and that testing each and every one of them for their toxicity would be a very expensive undertaking and to some measure useless when it is reasonable to assume that many will never be positioned so as to cause problems. For instance, PBB was introduced into the food chain in Michigan when it was accidentally mixed in with farm feed, and no one had a clue what the source of the problem was when the animals began to sicken and die. No one had ever tested PBB for its toxic effects, and with good reason: it would never occur to anyone that a compound primarily used to insulate heat sources would ever get into the food chain. No doubt many chemicals are like that and are never used in any manufacturing process where they are likely to cause problems.

Don Hayward's problem thus turns out to be relatively complex. Hayward cannot appeal to OSHA to prevent the workers from being harmed by hot metals, if they are, because the metals have not been tested by OSHA. So Hayward, if he pursues the matter, will be in the position of asking that ABC Manufacturing satisfy stricter guidelines than those required by OSHA.

But Hayward is supervising workers who are becoming ill, and he has an obligation, as their supervisor, to see if he can find the source of the problem. He is presumably in charge of making sure that whatever it is that the workers are producing is in fact produced, produced in the quantity needed, and when it is needed. So if the workers he supervises are becoming ill, he needs to be concerned about their health just because their ill health may prevent his section of ABC from doing what it is supposed to do. But he also ought to be concerned about some of the long-term implications of the problem for the company. If the workers are becoming ill because of the toxicity of the hot metals they work with, then, whether OSHA guidelines apply or not, the company may have to pay the costs of long-term health care. That the use of metals which cause workers harm is not regulated by OSHA will not necessarily protect the company from a legal suit and perhaps vast monetary awards from sympathetic juries. So the immediate solution of ignoring the problem, which is the implication of Cal Brundage's remark that the company is in full compliance with OSHA guidelines, may have expensive long-term consequences.

He thus has two concerns as an employee of ABC, both of which obligate him to pursue the matter. There is a third source of obligation. That is that some people are being harmed, that he is in a position to help, and that no one else who might help seems to care. The workers are being harmed. It may be that the cause is not the hot metals they are working with, but that seems the obvious first suspect. In any event, Hayward is the workers' supervisor, the one most immediately aware of the problem and, since Brundage, his supervisor, has made it clear that he is not going to pursue the matter, the one best positioned to help. He has an obligation to try to help them that comes from the obligation any of us have, as persons, to come to the aid of others in need of help when we can. This is an obligation that becomes more and more pointed the more harmed the persons are needing help, the less likely it is that they will receive help from others, the better positioned one is to give help, and so on.

The question is what should he do. He has already approached his supervisor about the air quality. He might approach him again, explaining that although having higher air quality might have the company satisfying stricter guidelines than OSHA requires, their capacity to produce the product in his section is likely to be increased. That is, he might use a practical, not a moral argument, to get his supervisor to do something. He might also point out his concerns about the long-term legal consequences, and he might give his moral concerns an airing. He need not feel at this point, that is, that he has exhausted all possible avenues of discussion with the person most likely to be most helpful, his immediate supervisor.

II

Searching the literature for something that might be helpful is another way to proceed. It is better to have some information about whether any of the hot metals may actually be causing a problem if he is to proceed. Of course, if he finds evidence that any have been tested and found to be cause health problems, he has a response to Brundage's remark that the workplace is in compliance with OSHA. It may be, but Don can then go to OSHA, point out that one of the metals not regulated has been tested and found toxic, and ask that it be regulated. Under such circumstances, ABC would be well-advised to go ahead and regulate the use of the metal in a way that would eliminate its toxic effects--either by not using it at all or by using it in a way, or under such conditions, that it could not cause harm.

The puzzle is why he has not gotten the article he has ordered. It seems odd that a supervisory engineer must get approval of his supervisor in order to have an article sent for. Why should anyone else control what one wants to read in the company library? But that is a given.

It is also given that the actual request has twice failed to go through. Anyone who has ever worked in a bureaucracy can sympathize and wonder if, indeed, the requests did not get "lost in the shuffle." So Don cannot assume without more ado that Don is preventing him from getting his article. He should get another request form, take it to Don to get his signature right then and there, to take it back down to the librarian. He can explain to Cal that, for some reason, the request did not make it through, and since he wants to read the article, and has wanted it now for some months, he would like to hand carry the request. If Cal refuses, then he and Don can talk about that and Don will no doubt be faced with a new problem. But at least he will know what the problem is and can pursue it until it is resolved so he can do what he must do to try to help and protect his workers.