

Report on a Case by the Board of Ethical Review

Case No. 83-4

Employee Termination of Employment—Job Shop

Facts:

Engineer A provides services regularly through a job shop system. In this type of arrangement the engineer is listed with a so-called job shop, which is actually a referral service, and which advises the engineer from time to time of opportunities for part-time or temporary employment. When so referred the engineer is interviewed by the prospective employer/company, which determines if the engineer has the qualifications required for a particular assignment. If so, the employer/company offers temporary employment at stipulated hourly rates and other working conditions. Thereafter, the employer/company pays the job shop an agreed-upon rate, which in turn, pays the engineer the rate agreed upon between the engineer and the employer/company. The job shop takes care of tax deductions, social security deductions, etc. and receives a fee from the employer/company for overhead and profit. When the temporary assignment is finished the engineer is usually returned to the job shop list for future assignments as such opportunities arise.

Under this kind of arrangement, Engineer A has agreed to provide services for Company B to analyze a new engineering development and draft a technical manual for use by customers for the new product. Company B upon hiring Engineer A for the particular assignment has advised Engineer A that it estimates the work will take approximately six months.

After three days on the job with Company B, Engineer A is advised by the job shop that a more lucrative assignment has opened with Company C and that Engineer A appears to be well qualified for the new assignment opportunity. Engineer A is attracted by the apparently better offer, but before deciding on whether to be interviewed by Company C for the better position inquires if leaving Company B under these circumstances would be ethical.

Question:

Would it be unethical for Engineer A to leave the assignment with Company B to seek the more attractive offer from Company C and to take the position with Company C if offered?

Reference:

Code of Ethics - Section II.4. - "Engineers shall act in professional matters for each employer or client as faithful agents or trustees."

Discussion:

In Case 69-3, the Board recognized that the use of third party search firms in the recruitment of engineering employees was a proper method of obtaining the names of prospective engineering employees. There we noted: "... the basic principle is that there should be an open opportunity for engineers to improve their position through a change in employment, if they so desire... We might react in quite a different fashion if the prospective employer or his agent made personal contact and sought to induce the employee away from his present employment. Depending upon the facts and circumstances of the personal contact and the type of inducement, this might be considered the use of 'unfair' methods."

Although Case 69-3 generally dealt with the flip side of the case presently before the Board because it reviewed the conduct of an "engineer-employer" rather than an "engineer-employee," many of the same considerations appear to be applicable. While an engineer is free to seek and accept employment, the engineer is required to do so in a manner consistent with the Code of Ethics. NSPE Professional Policy No. 19-E provides only general guidance for the engineer-employee under the facts of this case. It states: "The National Society of Professional Engineers believes that an individual professional engineer has the right to seek and accept other employment provided the seeking and acceptance of such other employment is consistent with the Code of Ethics as it pertains to relations with clients and employers. NSPE opposes any agreements between employers which limit the individual engineer's employment opportunities. Nothing in this policy opposes the use of noncompetitive agreements between partners, shareholders, and/or other persons sharing an ownership interest in an engineering firm."

Under more traditional methods of employment of engineers, which usually anticipates a continuing, even though indefinite, relationship, either the employer or employee may legally and ethically terminate the employment relationship in the absence of an employment contract for a stipulated period of time. In that kind of traditional employer-employee relationship it is generally expected that if a professional employee decides to take a different position with another employer the employee will first discuss the reasons for leaving with the employer, which may result in a resolution of the causes of dissatisfaction and retention of the employment. However, there is no ethical restraint on the engineer leaving the employment for the engineer's own reasons without such discussion or the giving of the reasons, which may range from economic considerations to working conditions or purely personal problems. Likewise, there is no restraint on the employer terminating the employment for economic or other reasons, subject only to contractual agreements or applicable laws governing employment matters.

In this case the only ethical standard to consider is whether the departure of Engineer A after only three days of employment would breach the ethical obligation to be a "faithful agent" as stipulated in Section II.4. of the Code. That reference has long been in the Code of Ethics as a philosophical statement of what should be a professional employer-employee or professional client relationship, and we continue to endorse its general purpose and objective for that purpose. At the same time, we must recognize that such a sound philosophical sentiment cannot override the right of every engineer to change employment for reasons the engineer deems sound and sufficient. In this case a departure after only three days of employment is a "hard case," but we cannot lay down any hard and fast rules for a time interval to govern when an engineer is justified in making a change for what the engineer considers to be a better position or better opportunity for advancement. It is recognized that under these circumstances Company B has been harmed to some extent by now having to locate and hire another qualified engineer for the assignment, but that harm cannot outweigh the right of the engineer to exercise personal judgment in determining a course of action best suited to the engineer's personal concerns.

As indicated above, the "faithful agent" concept is a sound philosophy which should govern professional employment relationships to the extent possible, to be construed, however, under the peculiar facts of each case. In its best practical sense, to be a "faithful agent" means to devote oneself to the best interest of the employer or client while serving in a professional capacity for that employer or client, but it cannot and does not amount to a master-servant relationship which binds an individual to a particular employment when that individual determines that "the grass is greener" in another place.

Conclusion:

It would not be unethical for Engineer A to leave the assignment with Company B to seek a more attractive offer from Company C, and to take the position with Company C if offered.

Note: This opinion is based on data submitted to the Board of Ethical Review and does not necessarily represent all of the pertinent facts when applied to a specific case. This opinion is for educational purposes only and should not be construed as expressing any opinion on the ethics of specific individuals. This opinion may be reprinted without further permission, provided that this statement is included before or after the text of the case.

Board of Ethical Review: F. Wendell Beard, P.E., Ernest C. James, P.E., Robert W. Jarvis, P.E., Lawrence E. Jones, P.E., James L. Polk, P.E., J. Kent Roberts, P.E., Alfred H. Samborn, P.E., chairman.

Additional Views:

We concur with the conclusion in this case and note that the opinion reflected a unanimous vote of the Board. It is further noteworthy that of the two normal choices available to the Board, (i.e., ethical or unethical), the Board opted to find that the conduct of Engineer A " . . . would not be unethical . . . " On the surface, this may appear as a play on words. In fact, however, this wording was one important element to approval by the supporters of this additional view. The discussion in this case clearly alludes to the Board's difficulty in balancing the implications of conflict in interpreting the expectations of behavior of the employed professional engineer as a " . . . faithful agent(s) or trustee(s)" in Section II.4. versus the implicit right of every engineer to change employment for reasons he (the engineer) deems sound and sufficient as interpreted from PP 19-E. The "... not...unethical..." conclusion was a conscious effort by the Board to reduce the harshness of its decision and clearly illustrates that had the facts in the case been different in areas of employment conditions and employer expectations, the conclusion may well have differed in either direction.

For instance, the Board, in arriving at its conclusion, felt that had the facts in this case reflected a more conscious effort toward professionalism on the part of Engineer A in providing Company B with reasonable notice of intent to terminate employment and/or an offer to assist in finding a replacement for this "particular assignment," our conclusion would have been demonstrated more positively in a finding that Engineer A was ethical.

Conversely, the heavier reliance by the Board on PP 19-E should not be construed as diminishing the responsibility of the professional engineer employee to fairly consider his employer's situation as it results from abrupt employment termination, regardless of the third party relationship as evidenced in this case by the job shop. We also consider it important that Engineer A sought guidance in his actions before termination with Company B and acceptance of employment with Company C, providing the theoretical opportunity to sever employment under more professional and, therefore, ethical conditions. *Robert W. Jarvis, P.E., James L. Polk, P.E.*

Additional Views:

The undersigned agrees that the Board's conclusion in this case, drawn on strict interpretation of the Code of Ethics, is correct. But to leave it at that ignores an obvious professional responsibility on the part of Engineer A to avoid harm to Company B by his abrupt departure after only three days' effort on a six-month engagement. Granted that there apparently was no formal contract between the parties and the job shop employer company relationships are usually of the cold-hearted, all-business type Engineer A nevertheless remains a professional engineer. As such it would seem that in this instance of a specialized, fairly fixed term engagement with Company B, there is an implied good faith commitment, if not to complete the assignment, to give at least reasonable notice to Company B to allow it to secure a replacement without loss of appreciable time (which very well could be critical to the company) or to permit the job shop to round up an acceptable and competent substitute. *F. Wendell Beard, P.E.*