

Employment—Reassignment to Another Location

Case No. 16-9

Facts:

Engineer A works for Company X, an engineering firm owned by Engineer B. Company X does business in several states but is headquartered in State M. Company X has a policy to not terminate an employee unless Company X provides the employee with at least 90 days of written notice of termination. Due to financial issues confronting Company X, Engineer B decides to reassign some of its employees, including Engineer A, to an out-of-state location 200 miles away from Company X headquarters in State M where Engineer A has been working. As a result, Engineer A will need to relocate with his family. Company X advises reassigned employees that they have one week to decide and their failure to accept reassignment would constitute their resignation of their position with Company X. Engineer A is unable to relocate due to family issues and claims that, as a practical matter, Engineer B's decision to unilaterally reassign Engineer A to another location constitutes a violation of Company X's written notice policy of providing at least 90 days of "written notice of termination," and therefore is unethical.

Question:

Was it unethical for Engineer B to unilaterally reassign Engineer A to another location without providing "90 days of written notice of termination" as stated in Company X policy?

NSPE Code of Ethics References:

Section I.3. - Engineers, in the fulfillment of their professional duties, shall issue public statements only in an objective and truthful manner.

Section II.4. - Engineers shall act for each employer or client as faithful agents or trustees.

NSPE BER Case References: 72-10; 87-1; 07-07

Discussion:

Ethical issues regarding relations between engineers and their employers has long been an area of consideration by the NSPE Board of Ethical Review. Over the years, the Board has sought to balance the legitimate ethical concerns of employers and their employees. Key to consideration of these issues is the engineer's obligation to act as faithful agent and trustee for the engineer's employer or client and the ethical obligation of engineers to issue statements in an objective and truthful manner.

For example, in an early case, BER Case No. 72-10, Engineer A left the employ of Engineer B and opened his own local consulting practice. He immediately contacted several of Engineer B's clients (those for whom Engineer B had periodically done work but who were not under contract

at that time) in an effort to have them become his clients. He also offered two engineer employees of Engineer B a raise to come to work for him. One of the employees accepted the offer.

In the ensuing months, Engineer A repeatedly approached the other employee and proposed a raise plus a cash bonus to induce the employee to make the change. In deciding that it was not unethical for Engineer A to seek to obtain the clients of Engineer B provided that such attempts did not involve projects for which Engineer B had been retained or was in the process of being retained, and it was not unethical for Engineer A to seek to obtain the services of employees of Engineer B by offering increased salaries or bonuses to make the change, the Board noted salaries are properly a function of the law of supply and demand and that under this “free market” concept, there does not appear to be any warrant to hold that the NSPE Code is meant to deny employed engineers the right to change employment on the basis of improved salary or other economic conditions, nor does it forbid one employer the right to make more attractive economic offers to other engineers in competing firms. The higher salary offer may lure employees away from a competing firm, but those employees may find that their increased economic status is short-lived or their employment only temporary. But the Board noted that it must rely on the good sense and judgment of the employees so invited to evaluate these factors, as well as to act ethically themselves in this situation. The Board concluded that in the absence of any facts to indicate the intent of Engineer A, it assumed that his purpose was only to staff his own operation. It also recognized, however, that his action might nevertheless harm the interests of Engineer B.

Later in BER Case 87-1, Engineer A was a professional engineer employed by the Army Corps of Engineers. Because of a substantial decrease in the work load, Engineer A was informed that his position with the Corps’ River Basin Planning Section was being abolished and that he would be reassigned. Engineer A was asked to accept a staff engineer position with the Coastal and Special Studies Section, where he would be supervised by an experienced engineer. Engineer A accepted the new assignment even though he lacked the technical expertise to perform the required duties. Following its review, the BER concluded that it would be ethical for Engineer A to accept the new assignment even though he lacked the technical competence to perform the required duties, noting that Engineer A was accepting a position as a staff engineer of a governmental agency and would be reporting to an experienced engineer. The Board indicated that it did not read the Code to prohibit Engineer A from accepting this new assignment. To do so would be to limit the ability of engineers to expand their level of experience and knowledge. The Board concluded that the intent of Section II.2. was to limit individual engineers from undertaking assignments or positions of authority and responsibility where they lack adequate competence or experience; the Board did not believe the Code’s intent was to prohibit engineers, whose work was subject to review and oversight by senior engineers, from accepting new and different tasks and duties, thereby growing professionally. To decide otherwise, the Board said, would be to ignore the practical realities of engineering and impose inflexible practice requirements on the profession.

Later in BER Case 07-07, Engineer A was the owner of FGH Engineers, a medium-sized engineering firm with civil, environmental, and structural divisions. Engineer B, the owner of IJK Engineers, an environmental and structural engineering firm, approached Engineer A to discuss the possibility of Engineer B acquiring the civil engineering division of FGH Engineers. An agreement was reached, and included in the agreement was a provision whereby, following the acquisition, Engineer B and IJK Engineers agreed not to hire any of the employees of Engineer A and FGH Engineers in the future.

Following its review of the facts, the Board of Ethical Review determined that (1) it was unethical for Engineer A to include in its agreement a provision whereby Engineer B and IJK Engineers agree not to hire any of the employees of Engineer A and FGH Engineers in the indefinite future; and (2) it was unethical for Engineer B to agree not to hire any of the employees of Engineer A and FGH Engineers in the indefinite future. In finding this result, the Board noted that it was clear that the terms of the agreement between Engineer A and Engineer B were designed to limit the prospects of engineers employed in Engineer A's firm. The subject contract provision was clearly questionable because it sought to advance the interests of Engineer A at the expense of the prospects of Engineer A's employees. The Board noted that it was reasonable to assume that in initially hiring employees, at least a part of Engineer A's recruitment approach would involve express or implicit appeals to prospective employees regarding opportunities to grow and gain experience for future opportunities elsewhere. The Board said, "this contract provision flies in the face of such an appeal." The Board noted that Engineer A was unethical for seeking inclusion of the provision in the agreement, and Engineer B was similarly unethical for agreeing to be a party to the terms of the agreement. Both benefited in some way from its terms, to the detriment of those engineers employed by FGH Engineers.

Turning to the current case, this Board's view balances the ethical interests and concerns of Engineer A, Engineer B, and Company X. While it arguably may have been advisable and appropriate for Company X to have a more thoughtful policy concerning the reassignment of engineers to other company locations, the Board does not believe Engineer B, as owner of Company X, acted unethically in reassigning Engineer A to another company location under the facts. In today's world, it is not unusual for engineering firms to open or close engineering offices and reassign employees from one location to different locations based on company and client needs. The simple act of reassigning an employee is generally based on legitimate business needs and unless there is some evidence to the contrary, this action alone, while resulting ultimately in the decision on the part of the engineer employee to discontinue employment, does not amount to an employer-initiated termination of employment. The facts indicate that Engineer B and Company X's decision to reassign employees to another location was objectively based on financial issues—a legitimate business consideration by Engineer B and Company X. While the company may have been better advised to consider alternative approaches involving greater flexibility to accommodate family concerns and other issues, or communicated this information more effectively, under the facts of this case, this Board is not inclined to take a position on what was or was not ethical in the context of a separation of employment between Engineer B, Company X, and Engineer A.

Conclusion:

It was not unethical for Engineer B and Company X to unilaterally reassign Engineer A to another location without providing “90 days of written notice of termination” as stated in Company X policy.

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Each opinion is intended as guidance to individual practicing engineers, students, and the public. In regard to the question of application of the NSPE Code to engineering organizations (e.g., corporations, partnerships, sole proprietorships, government agencies, and university engineering departments), the specific business form or type should not negate nor detract from the conformance of individuals to the Code. The NSPE Code deals with professional services, which must be performed by real persons. Real persons in turn establish and implement policies within business structures.

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