

NOVA Legal Beat: “Discourteous”™ Behavior on the Job?

Q. My supervisor and I do not get along, and he’s warned me about my “insubordinate” and “discourteous” behavior. Is this just semantics or is there a difference between the insubordination and discourtesy?

A.

Where there is insubordination, discourtesy towards a supervisor is often not far behind, but the two are actually separate charges. Employees can face removal for either charge, and the stakes are doubly high when they are charged together. As a Merit Systems Protection Board (MSPB) administrative judge noted in *David L. Walker Jr. v. Department of the Army*

(2006), “Insubordination and discourtesy involve different elements of proof and, thus, are separate charges.” Insubordination, the administrative judge noted, is “a willful and intentional refusal to obey an authorized order of a superior officer which the officer is entitled to have obeyed.” In contrast, discourtesy can occur when an employee, for example, speaks to a supervisor in a manner that is “loud, fraught, and inappropriate” or by being “loud, and interrupting continuously during their telephone conversation.” And keep in mind that an employee’s rude behavior can translate into another charge: disrespectful conduct toward a supervisor. Although discourteous or disrespectful conduct may seem like something best left to Ms. Manners, it is something of great concern to supervisors, too. As the Board noted in *Russell C. Jefferson v. Veterans Administration*

(1981), “To expect management to tolerate appellant’s repeated insolent behavior would make a mockery of management’s authority and supervisory responsibility; few other types of misconduct go so directly to the heart of maintaining the ‘efficiency of the service.’” Also, keep in mind that with the continuing focus on hostile environment sexual or discriminatory harassment, discourteous or disrespectful conduct takes on a whole new meaning for the employer, who most likely will be more concerned with ensuring that appropriate corrective action is taken to minimize liability than with cutting an employee a break. Federal employees charged with insubordination or discourtesy should immediately contact an experienced federal employment law attorney. Depending on the circumstances, an attorney could show an order was not issued or authorized or it was actually carried out or that the employee’s conduct was actually courteous or respectful. Mathew B. Tully is the founding partner of Tully Rinckey PLLC. Located in Arlington, Va. and Washington, D.C., Tully Rinckey PLLC’s attorneys practice criminal defense, matrimonial and family law, federal employment law, and military law. To speak with an attorney, call 703-525-4700 or to learn more visit

