INSIDE THE NEWS: ESSAY; The Knicks Boldly Go Where Companies Have Not

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NO one was surprised by the recent announcement that management of the New York Knicks had decided to fire the team's head coach, Larry Brown, after he presided over an utterly dismal 23-59 season. The surprise was over the company's decision not to pay him the $40 million remaining on his contract because, the company says, Mr. Brown violated club policy in seeking to make trades and violated the team's media policy in talking to reporters.

The Knicks, in firing Mr. Brown "for cause," are boldly going where many companies have feared to tread -- and may be signaling a new willingness by corporations to start asserting their legal rights to sidestep, or reduce through negotiations, huge severance packages.

The Knicks' hiring of a superstar only to terminate him a year later brings to mind the spectacular hiring a decade ago of Michael S. Ovitz as president of the Walt Disney Company, only to have him fired after 14 months by his longtime friend, Disney's chief executive, Michael D. Eisner.

Although the excitement generated by the hiring of Mr. Ovitz paralleled that of Mr. Brown's, Mr. Ovitz quickly raised concerns. In 1996, Mr. Eisner was telling Sid Bass, a major investor in the company, that many Disney executives were having troubles with Mr. Ovitz.

"Can you at least tell me in a general way, what was the problem executives were having with Mr. Ovitz?" Mr. Bass was later asked in a deposition. Mr. Bass replied: "Well, he was a liar. "

At the end of Mr. Ovitz's tenure, on Dec. 16, 1996, Mr. Eisner wrote to a Disney executive that the two main points about Mr. Ovitz were: "(1) He is a psychopath (doesn't know right from wrong), cannot tell the truth. Basically has a character problem, too devious, too untrustworthy to everybody, and only out for himself. (2) Totally incompetent."

After a year of Mr. Ovitz's dismal performance, Disney sent him on his way with, not $40 million, but roughly $140 million of shareholders' money as severance. Given Mr. Eisner's statements to the major shareholder and Disney board members about what he repeatedly characterized as Mr. Ovitz's rampant deceptions, it is shocking that the board didn't fully investigate the nature of Mr. Ovitz's misdeeds (if any) to protect Disney's shareholders.

While Mr. Ovitz clearly could have been fired for cause if Mr. Eisner's allegations against him were true, the case against Mr. Brown is not nearly so clear cut to us and probably will turn on the precise terms of the contract and the nature of the acts that his employers now characterize as misconduct.

The Cablevision Systems Corporation, which owns the Knicks, is certainly within its rights to terminate a coach or any other employee for cause if he or she has, in fact, materially violated contractual obligations. But the Knicks have been pursuing bad trades for years before Mr. Brown arrived. It seems a bit harsh to hold some of the latest failures as evidence of misconduct by Mr. Brown rather than simple misjudgments.

Mere incompetence generally does not amount to a material breach of an employment contract, which made the additional allegations of repeated dishonesty so central to the Disney case. In essence, shareholders sued Disney for not doing to Mr. Ovitz what the Knicks did to Mr. Brown.

Of course, Mr. Brown will argue that he didn't breach his agreement and that the for-cause firing is just a ruse to avoid paying him what he is owed. Typically, when employers fire "for cause," they offer an unremittingly harsh assessment of the discharged employee.

This contrasts with the oddly positive statements that the Knicks made about Mr. Brown -- James L. Dolan, chief executive of Cablevision, for example, seemed to say that Mr. Brown acted with the "best intentions" -- which tends to undermine the view that Mr. Brown acted in bad faith or in violation of specific management directives.

But this dispute, which will be arbitrated by the N.B.A. commissioner, David Stern, is unlikely -- whatever the outcome -- to leave the Knicks worse off than Disney in passively handing over a king's ransom to a failed executive. (Not only did Disney shareholders get soaked for Mr. Ovitz's severance, but the board and top executives spent years in embarrassing litigation to establish that the chummy discharge did not violate their fiduciary duty.)

FOR years, a surprisingly pleasant outcome for many top executives -- although not for their employers -- was to be fired and to walk away with a fortune. For example, Carlton S. Fiorina was forced to resign as chief executive of Hewlett-Packard in 2005 and received a $42 million severance package.

Companies have been willing to pay even in the face of substantial evidence of serious misconduct. Gemstar-TV Guide International, for example, negotiated to give a $29.5 million severance payment to its chief executive, Henry C. Yuen, amid investors' allegations of accounting fraud and an 80 percent fall in the company's stock price. Mr. Yuen subsequently pled guilty to charges of obstruction of a federal investigation, and a judge has since found him liable for $22.3 million for securities fraud in an S.E.C. lawsuit.

Corporations have felt that they were caught between a rock and a hard place with failed executives. They either have to stick with a manager who isn't working out, or they have to pay him or her an ungodly severance amount. This was the Hobson's choice that Disney's board encountered when it chose to pay Mr. Ovitz $140 million.

But the Knicks' action shows that corporations have a third option. In the end, it may not apply to Mr. Brown if the accusations of misconduct are contrived. But the examples of the Knicks and Disney suggest that corporations should give serious consideration to invoking the for-cause option before they fork over millions to an executive they think has been misbehaving.

Photo: The Knicks don't want to pay Larry Brown after firing him. Will corporate America follow suit? (Photo by Julie Jacobson/Associated Press)