

Bocken 1

In the Matter of the Arbitration Between:

EMPLOYER

AND

Union

Arbitration Hearing: March 19, 1996

ARBITRATION DECISION

The undersigned Arbitrator was appointed by the parties to arbitrate the grievance of the Employee. The Employee was terminated from his employment as a Terminal Agent at the City 1 station on April 28, 1995 for violating Employer Rules of Conduct, Section 700C, Category I, in that he falsified Employer records or reports and falsely claimed sick leave. A Third Step Hearing was held on May 19, 1995 concerning the Employee's challenge of his termination. The Hearing Officer denied the grievance after reviewing the documents presented and the testimony provided. The Union appealed the Employer's decision to arbitration on behalf of the Employee; An arbitration hearing was held on March 19, 1996 at the Employer's offices in City 2, State 1.

BACKGROUND

On March 1, 1995, the Employee called the Station Manager's office stating that he was sick and unable to work that day. Later that day, the Station Manager at City 1 talked by telephone with the Employee, and the Employee said he was moving residence but would be at work the following day, March 2. However, in the morning of March 2, the Employee called the Station Manager's secretary and told her he would not be working that day because he was sick.

On March 4, 1995, the Employee signed and submitted Form P-6, Application for Vacation or Leave for March 1 and 2, 1995. On that form, the Employee checked the block "Sick Leave" although there were blocks for "Vacation", "Personal Time Off", and other categories. When the Station Manager received the Employee's application for sick leave, he recalled the Employee telling him on the afternoon of March 1 that he was moving his residence and was not sick. Accordingly, he initiated an investigation which resulted in the Employee's termination. The Station Manager considered the past record of the Employee in the decision to terminate the Employee.

ISSUE

1. Was the termination of the Employee for just cause.
2. If not, what should be the remedy.

EMPLOYER POSITION

By his own admission, the Employee was not sick in March 1 and 2, 1995. Accordingly, violations of the Employer's Rules of Conduct as charged were established. Further, the Employee in writing acknowledged receipt of said Rules of Conduct. As to the appropriateness of the termination, the Employer established that the Employee had received counseling and warnings on several prior occasions for tardiness and unauthorized absences.

On January 3, 1994, the Employee received a letter of warning for unauthorized absence and was advised that further infractions would prompt disciplinary action up to and including termination. On June 16, 1994, the Employee received a verbal warning for his tardiness on May 30, June 7

and June 15, 1994. The Employee was again tardy on June 20, 1994; he was given a letter of warning concerning his conduct.

Because of the Employee's absences in October 1994, an investigation was scheduled. However, the Union, the Employer, and the Employee met, and an agreement was made on November 28, 1994 to forego the hearing, and permit the Employee two weeks absence to handle a personal matter. However, the Employee did receive a five-day suspension without pay for his absences. On February 27, 1995, the Employee received a verbal warning for wearing improper work shoes.

The Employer submitted that it had adequately counseled the Employee concerning his tardiness and unauthorized absences, and warned him several times that further absences could lead to termination of employment.

UNION POSITION

The Employee had been working at the City 2 station, but on February 26, 1995 took a temporary employment bid at the City 1 station. Due to this, he had to move out of his apartment in City 2. He worked late moving the night prior to March 1, 1995 and could not make it to work in City 1.

He did not mean to defraud anyone by calling in sick or submitting a sick leave request on March 4, 1995, but he was confused and "just wasn't thinking". He even told the City 1 Station Manager on March 1, 1995 that he was not sick, but was moving. He attributed some of his confusion to the questionable length of his temporary bid for the City 1 Station.

DISCUSSION

There is no question that the Employee had frequent prior warnings that he would receive disciplinary action up to and including termination should his absenteeism continue. In addition to warnings, the Employer counseled the Employee and in November 1994, he was granted two weeks leave to settle personal problems after having been absent from work without authorization.

The Employee conceded that he had received the Employer's Rules of Conduct which, among other things, listed violations which would result in discharge; particularly, "falsification of Employer records or reports . . . "and "falsely claiming sick leave pay". The Employee did falsely report to the Employer that he would not be at work, and did falsely claim sick leave pay. His statement in mitigation that he did not mean to act fraudulently is no excuse under the circumstances. He could have very well requested personal leave to attend to the residence change he alluded to, rather than reporting sick and trying to obtain sick leave pay. The Employer has a right to expect its employees to be dependable and responsible. The misconduct of the Employee reflected a lack of care in his duty to the Employer for which termination was appropriate.

AWARD

The grievance is denied.