

Bocken 2

In the Matter of the Arbitration Between:

Employer

AND

Union

ARBITRATION DECISION

The undersigned Arbitrator was appointed by the parties to arbitrate the grievance of the employee. The Employee was separated from his employment as a Customer Service Agent for the Employer on November 15, 1995 for violation of the Employer's Rules of Conduct, Category I, Sub-Paragraph 16, which prohibits "Fighting, threatening bodily injury towards supervisors, employees, passengers, vendors, officers or officials of the Employer or any other individual". The Union appealed the termination on behalf of the Employee and demanded arbitration.

An arbitration hearing was held on March 26, 1996 at the Employer's offices in City 1, State 1.

DISCUSSION

On February 2nd, 1995 the Employee, who was on sick leave at the time, came to the Employer's City 1 Station and asked another terminal agent who Person 1 was. The agent told the Employee that Person 1 was an "alright guy" and not to bother him. After that, the agent saw the Employee with Person 1 and, although he could not hear all the conversation, he heard the Employee say to Person 1 "watch your back" and believed the Employee's words were said in a threatening manner.

Another witness testified that she saw the Employee approach Person 1 and, although she could not hear what was said, she described the Employee's conduct to be very hostile and angry as he was shaking his fingers at Person 1.

Person 1 testified that on February 2, 1995, he was scheduled to appear at a hearing at the City 1 station concerning an incident with another employee, Person 2. Person 2 had grabbed him by his shirt and threatened him, for which action Person 2 was to be disciplined. Prior to attending the hearing, Person 1 was working the back counter area when approached by someone (later identified to him as the Employee). After the Employee inquired if he was Person 1, he asked him what he was going to say at the Person 2 hearing as Person 2 had a family and needed the job. The Employee did not identify himself but said "you better watch it. Person 2 has family you know and you better watch your back". Person 1 again asked the Employee's identity and why he was bothering him. The Employee still did not identify himself but shook his finger at Person 1 repeatedly saying "I going come after you". Person 1 testified he felt threatened by the Employee and reported the incident at the Person 2 hearing.

As a result of the incident with Person 1, an investigative hearing was held and the Employee was terminated November 15, 1995 for violating Subparagraph 16 of the Employer's Rules of Conduct which prohibits "fighting, threatening bodily injury towards supervisors, employees, passengers, etc." A violation of this provision is a Category I offense subjecting the violator to immediate discharge.

The Employee believed he was unjustly terminated, and the Union demanded arbitration on his behalf.

ISSUES

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

UNION POSITION

Due to a heart condition, the Employee went on sick leave on January 5, 1995 and was living in City 2. While traveling from City 2 to City 1 on February 2, 1995 to check on medical matters, he saw a friend, Person 2, on the flight. According to the Employee, his friend, also an employee of the Employer, was traveling to City 1 for his disciplinary hearing and was concerned about his job.

The Employee went to the Employer's offices to get some documents. He then walked down to the area where he thought Person 1 was. He did this because he thought by talking to Person 1 he could help his friend, Person 2. After having Person 1 identified by Person 3, the Employee went to Person 1 to discuss the Person 2 hearing. However, the Employee testified that Person 1 became very defensive and got "cocky" with him. The Employee denied making any threats to Person 1 although he did say to Person 1 to "take it easy on Person 2".

The Employee has been with the Employer for about five years and has a clean record except for losing his "swap" privileges in 1993, because he was late for work. The Employee believed the investigation of the threatening charge was unfair as the investigator acted more like a prosecutor.

EMPLOYER POSITION

The Employer submitted that its witnesses at the investigative hearing and the arbitration hearing established that the Employee sought to interfere with the Person 2 hearing by threatening a witness, Person 1. That act constituted a violation of subparagraph 16, Employer Rules of Conduct.

Person 1 testified that the Employee threatened him by saying such things as "you better watch it. Person 2 has family and you better watch your back" and "I'm going to come after you". Further, the Employee used profanity and shook his finger at him repeatedly. The Employee's actions against Person 1 were substantiated by two witnesses at the arbitration hearing who observed the Employee's hostile manner, and one witness overheard the Employee tell Person 1 to "watch your back".

The Employer submitted that it cannot condone any harassment or violence in the work place. Due to the concern expressed by some employees, the Employer's management has stressed that harassment and violence will not be tolerated. This position was included in the testimony of the Customer Service Manager and the Security Manager for the Employer.

DECISION

Violence and threats of violence are matters of increased concern in the work place. The Employer and its employees are adversely affected by an environment of fear and anger. The Employer's Security Manager testified that management has stressed that violence and harassment will not be condoned. The Employer's Rules of Conduct prohibit such

conduct, and employees who are guilty of such actions commit Category 1 offenses and are subject to immediate discharge.

The Employee denied threatening Person 1, although he admitted that, while on sick leave, he sought out Person 1 and asked him to "go easy on Person 2" at the hearing that day. While he testified that he was only helping a friend keep his job with the Employer, it is obvious that there was an element of intimidation in the Employee's meeting with a prospective witness.

The testimony of Person 1, and other witnesses at the hearing, compels a finding that the Employee was threatening Person 1. According to Person 1, the Employee threatened him with profanity and angry gestures and statements such as "You better watch it. Person 2 has family you know and you better watch your back" and "I'm going to come after you".

One witness to the incident stated she could not hear what was said, but stated that the Employee's actions were hostile and threatening. This was confirmed by another witness who heard the Employee tell Person 1 to "watch your back".

Accordingly, there is conclusive evidence that the Employee violated the Employer's Rules of Conduct as charged and that such conduct provides for discharge.

AWARD

The grievance is denied.