

AMERICAN ARBITRATION ASSOCIATION
VOLUNTARY LABOR ARBITRATION

IN THE MATTER OF THE ARBITRATION

BETWEEN:

Chiesa #1

(Union)

-and-

(Employer)

/

AAA Case #54 39 -----

OPINION AND AWARD

APPEARANCES:

ARBITRATOR: Mario Chiesa

FOR THE EMPLOYER: F.N., Labor Relations

ALSO PRESENT: D. L., Alpena Branch Office
Manager

FOR THE UNION: D. M., Arbitration Specialist

ALSO PRESENT: L.C. , Grievant
J. A., Chief Steward
R. K.
G. S.

THE CASE

The grievance in this matter is dated February 11, 1992. It was filed in response to the grievant's discharge which resulted from his conduct on November 26, 1991.

For the most part the facts are not in dispute. The grievant, L.C., was employed by the Employer for just over a year before his discharge. He was working in the Alpena branch office. His wife and children lived in Roscommon. For a short period of time he commuted, but it became obvious that commuting was impossible in the long-term, so he rented an apartment in Alpena. He returned home on weekends.

The grievant is a Vietnam veteran who suffered some very serious combat injuries while serving in Vietnam. He was injured on February 5, 1968 and after several weeks in Japan, spent approximately one year as an Inpatient at Fitzsimmons Army Hospital in Denver, Colorado. He is classified as being one hundred percent disabled. The evidence establishes that the grievant considers himself an alcoholic and has been involved with the use of street drugs in the past. According to the 1984 medical reports, he has completed several drug or alcohol programs.

The grievant was also diagnosed as suffering from post-traumatic stress disorder. It is considered chronic and has caused him difficulties.

According to the report, he had several employers prior to working at THE CURRENT EMPLOYER. None of his employment could be characterized as long-term. The grievant related that for almost four years prior to his hiring at the employer he had been alcohol free. This was attributed to his efforts to remain

sober, as well as the support system that he had developed. An integral part of this system, in addition to AA meetings and the therapy, was his family.

When he took the assignment in Alpena, his support system disintegrated. While the grievant enjoyed his work as an E.S. interviewer in the Disabled Veterans Outreach Program, and was very good at it, it became apparent that he was starting to suffer difficulties. He realized this and unsuccessfully attempted to acquire a hardship transfer.

A few months after beginning in Alpena he was arrested and convicted of drunk driving. He was placed in a work release program so he could attend work during the day and return to custody in the evening.

The Employer was aware of his circumstances, but according to Branch Manager D.L., the grievant had represented that his problems were under control and that he was seeking help through a veterans' network.

As indicated, the events which led to the grievant's discharge took place on November 26, 1991. The grievant was out of the office earlier in the day and returned about 3:00 or 3:00 p.m. He went to his desk and starting talking in a loud voice. His immediate supervisor went to D.L. and indicated that the grievant was acting kind of funny. D.L. asked the grievant to come into his office. The grievant did so, but according to D.L. , had a weird face, kind of a blank look, and just slumped down into a chair. His speech was slurred. D.L. told the grievant that he was going to remove him from the workplace. The grievant got up, left the office, and went to his Union steward. D.L. made it clear that he thought the grievant was intoxicated. Shortly thereafter the steward and the grievant came back into a conference room. The grievant asked D.L. why he was being removed from duty and D.L. replied by indicating that the grievant's behavior was not appropriate. The grievant then asked D.L. if he (D.L.) was saying that

the grievant was drunk. At that point the grievant blurted that he was "fucking drunk." He went on to indicate that he was more talented than "that fucking nigger" and "arrogant ass." The "arrogant ass" statement referred to his immediate supervisor, while the racial slur referred to a fellow employee. D.L. then told the grievant to take sick leave and instructed the steward to take the grievant home. The manager was concerned about the grievant's intoxication and didn't want him to drive. In an act of frustration, with everyone agreeing that it was not directed at anyone, the grievant threw a chair across the room against the wall. He then got up to leave when D.L. stood up in front of him to speak to him, and the grievant bumped D.L. with his chest and said, "What the fuck are you going to do about it?" D.L. replied by indicating that he was going to call the police. At that point the grievant started to walk rapidly out of the office yelling, "Now I know why this fucking agency is going down the tubes."

The grievant related that he knew shortly thereafter he had hit the absolute bottom. On 12/26/91 he enrolled in a dependency program at Highland-Waterford Center, Inc., Holly Gardens. This is an inpatient treatment center. He successfully completed the treatment and was discharged.

Additional aspects of the record will be displayed and analyzed as necessary

DISCUSSION AND FINDINGS

There was a full and complete hearing with both parties being afforded every opportunity to present any evidence they thought was necessary. In addition, both filed helpful post-hearing briefs. It should be understood that I have carefully considered the entire record even though it would be impossible and probably inappropriate to mention everything contained therein. Portions of the Collective Bargaining Agreement read as follows:

ARTICLE 11 - HEALTH AND SAFETY, SECTION 6

"SECTION 6 - REHABILITATION.

"The Union and the Employer recognize that less than satisfactory performance can be a consequence of behavioral difficulties attendant to physical, emotional or mental illness, substance abuse, or family and personal conflicts. Without diminishing the Employer's right to discipline employees for just cause, the Employer shall maintain existing Employee Services Program and/or advise employees relative to counseling and other reasonable or appropriate rehabilitation services available to employees. Appropriate consideration, prior to disciplinary determinations, shall be given to an employee's involvement in such programs."

ARTICLE 18 - COUNSELING AND DISCIPLINARY ACTION,

"SECTION 2. DISCIPLINARY ACTION.

"The parties recognize the authority of the Employer to reprimand in writing, suspend, discharge, or take other appropriate disciplinary or corrective action against an employee for just cause. . . ."

The Employer argues that the grievant's conduct on the day in question provided just cause for the discharge. It points out that shortly after coming to work for the Employer the grievant started drinking and was arrested for driving while under the influence. The Employer goes on to indicate that the grievant was asked if he needed help and that offer was declined because, according to the grievant, he had his own counselor.

The Union takes the position that the Employer entered into the Disabled Veterans Outreach Program knowing full well that they would be hiring veterans with special problems. It argues that the employee must be afforded a reasonable opportunity to change his behavior. It points out that the grievant voluntarily admitted himself to Holly Gardens Residential Program on December 26, 1991. It argues that the grievant was sorry for what he did, has made his apologies, but due to extenuating circumstances, should have another chance.

The language in the Collective Bargaining Agreement, specifically Section 2 of Article 18, Counseling and Disciplinary Action, provides that discharge, *inter alia*, must be for just cause. The cause, just cause, proper cause standard -- I consider them synonymous -- has been utilized by parties to Collective Bargaining Agreements for decades to establish a criteria which must be met before discipline and/or discharge can be sustained. There are many arbitration decisions dealing with the meaning of just cause and the common thread between most of them is the concept of reasonableness. I interpret the term just cause to mean that the Employer's actions must be reasonable when judged by all the circumstances. This means that not only must the Employer establish conduct which it may reply to, but it must also show that its reply is appropriate. There must be a careful consideration of the grievant's record, length of service, proven misconduct, mitigating factors, disparate treatment, etc.

There is no doubt from this record that the grievant not only enjoyed, but was very effective at his job. Given his life experiences it is not surprising that he possessed a special concern and compassion for disabled veterans. He has had his own burdens to overcome and perhaps this gives him a special insight.

I don't think anyone could agree that the conduct the grievant exhibited in the Employer's Alpena branch on November 26, 1991 was acceptable. To the contrary it was very severe misconduct which justifiably could result in discharge.

The grievant was intoxicated at work. Not only was he intoxicated, his language was totally inappropriate for the setting. He made racial slurs and displayed an insubordinate attitude towards his supervisor. He bumped the branch manager in the chest and then in an almost taunting manner asked "What the fuck are you going to do about it?"

I agree that the grievant's conduct was probably directly related to his intoxication. However, the grievant's involvement with substance abuse is not a new circumstance. The record indicates that he has had several bouts of abusing both alcohol and other drug's and has completed several drug or alcohol programs. In other words, the grievant is no stranger to these problems and has tried to varying degrees of success to deal with them over a substantial period of time.

The Collective Bargaining Agreement makes reference to a rehabilitation program, but by its terms doesn't diminish the Employer's right to discipline employees for just cause. The record establishes that the grievant was offered assistance while he was still employed. Even given his prior experience with substance abuse and the fact that he had been convicted of drunk driving and the realization that his support group was disintegrating, the grievant refused the help. I understand that the grievant did not receive the transfer that he requested, but there is no showing that the Employer's actions in that regard were inappropriate. The point is that the Employer offered to aid the grievant, which of course would have helped him maintain his employment status. The grievant declined. What else was the Employer to do at that point? The grievant did attend the program at Holly Gardens, but only after the initial decision was made to discharge him.

As I indicated above, the misconduct engaged in by the grievant was extremely serious. This must be analyzed in light of the fact that the grievant was a very

short-term employee. He was at the Employer for only slightly more than a year. In fact, he was only there for a few months when he had started drinking again.

In summary, and after carefully examining the record it is apparent that the grievant engaged in misconduct which was extremely severe and which could appropriately be utilized as a basis for discharge. The grievant was offered help during his tenure and refused it even though he knew that he was having difficulties. Given these circumstances, along with a careful evaluation of other factors, such as his length of employment, I really have no alternative but to conclude that the Employer has established just cause for discharge.

While the record in this case leaves me with no alternative but to sustain the discharge, I, as well as the others involved, recognize that the grievant has a very high potential of being able to help and counsel disabled veterans. It seems he has a real proficiency and interest in that area and hopefully in the future will be able to put his desires and skills to constructive efforts. This is an unfortunate situation and it can only be hoped that now after his latest efforts to reach sobriety the grievant will realize his potential and go on to a fulfilling life.

AWARD

The grievance is denied.

MARIO CHIESA

Dated: January 4, 1993