

Grissom #4

ARBITRATION

TERMINATION APPEAL PROCEDURE

IN THE MATTER OF THE ARBITRATION BETWEEN:

EMPLOYEE, APPELLANT

AND

EMPLOYER, EMPLOYER

GR: Appeal: Termination

David W. Grissom

Arbitrator

ARBITRATION OPINION AND AWARD

This Arbitration was conducted under Employer's Termination Appeal Procedure on March 5, 2002 at the HOTEL in City A, Michigan (Joint Exhibit #1). The Hearing was concluded on the above noted date. Pursuant to the receipt of the official Transcript of these proceedings and Post-Hearing Briefs, this Arbitration Opinion and Award is rendered.

FACTS

This Appeal arises from the termination of Ms. Employee on March 20, 2001 on the grounds that she violated Employer's Theft and Unauthorized Possession of Employer Property policy in connection with an incident that occurred on March 12, 2001 in Store No. 12 on Road A in Grand Rapids, Michigan. The policy states as follows (Employer Exhibit #6):

Theft and Unauthorized Possession of Employer Property

Team members involved in or having knowledge of a theft or unauthorized possession of property from the Employer, fellow team members, vendors, or suppliers will be terminated, regardless of the amount or value of the merchandise, their work record or length of service. Team members involved in theft are subject to prosecution.

On March 30, 2001, Ms. Employee filed an Appeal to Arbitration under the Employer's Termination Appeal Procedure alleging that the discharge was not for just cause and requesting that she be reinstated and made whole (Joint Exhibit #2). Ms. Employee was hired in October 1969 and at all times pertinent, worked as a Credit Representative in the Commercial Charge Department at Employer's Corporate Office.

Relevant aspects of Employer's Termination Appeal Procedure are set forth below (Joint Exhibit #1).

Termination Appeal Procedure

Policy No: 237	Revision: 2	Effective: 04/26/98
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Purpose and Scope

This procedure has been established to provide an exclusive, final and binding method for the Employer and any eligible team member to resolve all claims, controversies, disputes or complaints arising out of or relating to the team member's termination from employment, including any claims or complaints based on federal, state or local law in the event a team member who is eligible to use this procedure has a complaint about his or her termination from employment, it will be resolved in accordance with this procedure.

Notwithstanding the foregoing, decisions to terminate employment for business or economic reasons may not be challenged through this procedure. Decisions to terminate employment for business or economic reasons remain within the sole judgment and discretion of the Employer.

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Election to Arbitrate

If the team member is not satisfied with the answer of the HP C/S department and desires to arbitrate his or her claims, the team member must elect arbitration in accordance with the procedures below.

The team member must give written notice to the HR C/S department of the team member's election to arbitrate the termination by completing and signing Part 3 of the Termination Appeal Form. Part 3 of the Termination Appeal Form must be delivered to

the HR C/S department or must be postmarked no later than fourteen (14) calendar days after the date the answer was personally delivered or mailed to the team member.

If for any reason the team member does not receive a written answer from the HR C/S department within twenty-eight (28) calendar days of the date the team member submitted Part 1 of the Termination Appeal Form, the team member's claims shall be deemed to have been denied.

In that case, if the team member wants to challenge the termination the team member must notify the HP C/S department in writing of the team member's intention to arbitrate the termination. The written notice must be delivered to the Vice President Human Resource Communications/Services or must be postmarked no later than forty. . . .

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Exclusive Remedy, Effect of Arbitration and Condition Precedent

This procedure is intended to be the sole and exclusive remedy and forum for all claims arising out of or relating to an eligible team member's termination from employment. The decision and award of the arbitrator is final and binding between the parties as to all claims arising out of or relating to an (sic) team member's termination from employment which were or could have been raised at any step in this procedure and judgment may be entered on the award in any circuit court or other court of competent jurisdiction.

In the event a court of competent jurisdiction should determine that this procedure is not the sole and exclusive remedy and forum and/or that the decision and award of the arbitrator, if any, is not final and binding between the parties as to some or all of the team member's claims, it is intended that exhaustion of this procedure be a condition precedent to the institution or maintenance of any legal, equitable, administrative, or other formal proceeding by an eligible team member for all claims arising out of or relating to the team member's termination from employment.

In support of the Employer's position that the termination was for just cause, Road A Store Detective Person 1, testified as follows: Situated in the Stationary Department, she first observed Ms. Employee in the store between 4:30 P.M. and 5:00 P.M. coming from the Hardlines area pushing a shopping cart. In the child seat portion of the cart was a black purse with a package of Basic cigarettes lying next to it. The zipper on top of the purse was open. Ms. Person 1 testified that she decided to conduct a surveillance of Ms. Employee because she had seen her in the store on March 8, 2001 in the same mode – a package of Basic cigarettes next to

an unzipped black purse in a shopping cart and in that instance, she followed Ms. Employee' store movements but ultimately did not apprehend her because she had not seen Ms. Employee in an act of concealment, that is, placing the package of cigarettes in her purse (TR. 16-22).

Ms. Person 1 testified further as follows: On March 12, 2001 at the Road A Store, she was assisted by Store Detectives Person 2 and Person 3 in her surveillance activities. Ms. Employee proceeded from her left to the Magazine area, then went to the Dairy aisle and Grocery section. She selected a can of sour cream, went around the end cap and thereupon picked out two (2) cans of biscuits. She placed these items in the child seat portion of her cart on top of the package of cigarettes and then went to the Condiment aisle where she selected a jar of mayonnaise and around the corner to the next aisle where she picked a can of soup off the shelf. Ms. Employee thereafter pushed her cart across the main Grocery aisle to the Woman's Department near Bathing Suits where she took her eyeglass case out of her purse, put the pack of cigarettes that had been on the child seat into her purse and then placed the eyeglass case on top of the cigarettes. At this point she zipped up her purse. Ms. Person 1 testified that Ms. Employee had taken the package of cigarettes from underneath the biscuits in the child seat in order to transfer it to her purse (TR. 23-29).

Store Detective Person 1 testified additionally as follows: After Ms. Employee had zipped her purse closed, she walked through the Woman's and Children's clothes area to check out Lane No. 8. She placed all of the specified items on the belt but not the cigarettes. Then, the cashier conducted the transaction and checked her out. At this juncture, she (Ms. Person 1), Mr. Person 2 and Ms. Person 3 approached Ms. Employee, identified themselves and asked to speak to her about unpaid for merchandise (see path of travel in diagram – Employer Exhibit #1).

Ms. Person 1 testified that at no time did she lose sight of Ms. Employee during her surveillance and that she never saw the package of cigarettes fall from the child seat or the cart itself; that before she put the pack in her purse, she did not touch it as she moved through the store. Ms. Person 1 testified that from the time she first saw Ms. Employee to the time she approached the check-out lane, constituted about eleven (11) minutes (TR. 30-33).

Store Detective Person 1 testified further as follows: She directed Ms. Employee to the Loss Prevention Office where she recovered a package of Basic cigarettes – price \$3.13. Initially, when she and Store Detective Person 2 confronted Ms. Employee, she inquired if she knew why she had been asked to come to the office. Answer – No. This was followed by the question as to whether she had anything in her purse that she had not paid for. That is when she produced the package of cigarettes and said she had put it in her purse and had forgotten it was in there and thus had not paid for the cigarettes. According to Ms. Person 1, Ms. Employee stated that she had meant to pay for the cigarettes and then volunteered that the package had been falling out of the cart. To this, she (Ms. Person 1) replied that during the entire period of surveillance, she had not seen the package of cigarettes fall from anywhere. Then according to Ms. Person 1's testimony, Ms. Employee adjusted her previous remark by stating that she was "afraid" that the package of cigarettes was "might" fall out of the cart (TR. 33-37).

Ms. Person 1 provided the following additional testimony: In compliance with Employer policy, she wrote out a one (1) page confession, then read it and showed it to Ms. Employee (Employer Exhibit #2). Ms. Employee refused to sign it. Ms. Employee at no time in the office stated that the package of cigarettes accidentally "fell into" her purse. Further, she told Ms. Employee that she had seen her in suspicious circumstances in the store on March 8, whereupon Ms. Employee denied being in the store that day due to the fact that she had been working. In

this record is a receipt for the biscuits, soup, mayo and sour cream — cost \$4.57. A five (5) dollar bill plus two (2) cents was tendered to the cashier who gave Ms. Employee \$.45 cents change (Employer Exhibit #3). Ms. Person 1 testified that she shortly ended the interview and thanked Ms. Employee for her time. She then left the office. Ms. Person 1 also testified that she had learned that Ms. Employee was an Employer's employee at the check-out counter, that she was wearing an Employer's badge. Ms. Person 1 also stated that she subsequently reviewed the store video tape of March 12 and it showed Ms. Employee selecting the Basic cigarette pack at the 23 SPIN rack. She stated that she filed a written report of the incident (TR. 38-41).

On cross-examination, Store Detective Person 1 answered as follows: On March 12, 2001, she did not see Ms. Employee pick out the cigarettes and had not observed her from the moment she came into the store. She was certain Ms. Employee had an eyeglass case but did not mention it in her report. Also, during the surveillance, Ms. Employee at times had her back to her but that continuously, she (Ms. Person 1) was between two (2) feet and a maximum of ten (10) feet from her. Back on Redirect, Ms. Person 1 testified that the Customer Service Desk is about fifteen (15) feet from the check-out lanes where Ms. Employee was stopped and that she had approached Ms. Employee at the first point after her purchases, an Employer policy on apprehensions. However, Ms. Person 1 stated that further under Employer policy, if the customer is an employee, he/she can be stopped as soon as an act of concealment is observed. On Re-cross, Ms. Person 1 agreed that items may be purchased at the Customer Service Desk and that customers (Guests) must be apprehended beyond the cash registers (TR. 41-64).

Former Store Detective Person 2 testified as follows: In corroborating of Store Detective Person 1's testimony, he advised that while in the Stationary Department with Ms. Person 1, he saw a package of cigarettes in the child seat of the cart Ms. Employee was pushing; that her

purse was also in the child seat – open. Ms. Person 2 then described Ms. Employee' route through the store in conformance with Ms. Person 1's testimony including Ms. Employee's selection of the grocery items which were placed on top of the package of cigarettes; then her path of travel to the Ladies Fashion Department where she stopped in the aisle and from underneath the grocery items, took the cigarette package out and put it into her purse. Then according to Mr. Person 2, Ms. Employee put her glasses in the purse, zipped it up and proceeded to check-out Lane No. 8. In this, she walked back through the Ladies and Children's Department to get to the check-out counters (TR. 66-72).

Mr. Person 2 testified further as follows: He stood near the check-out lane where he observed Ms. Employee' purchase of the grocery items. She took a wallet from her purse in order to retrieve her money and at that point, he could see the cigarette pack which receded deeper into the purse; that Ms. Employee paid for the goods, put the wallet back into her purse, then left the check-out lane and proceeded towards the concourse exit. As she was moving in that direction, he and Store Detective Person 1 identified themselves (just beyond the check-out lanes at Point 12 on the diagram – Employer Exhibit #1). Mr. Person 2 testified that during his surveillance he never lost sight of Ms. Employee and that the cigarette pack never fell out of the child seat or cart; that in the Loss Prevention Office, Ms. Employee stated that she had put the pack in her purse because it kept falling out of the cart. She did not say that the package of cigarettes "fell into" her purse in any circumstance (TR. 72-76).

On cross-examination, Mr. Person 2 confirmed that he had not seen Ms. Employee enter the store, had not mentioned a wallet in his report and did not recall a glass case but did specifically recall the glasses. He concluded his testimony by stating that there was always five (5) to ten (10) feet away from Ms. Employee (TR. 77-86).

Director of Treasury Operations Person 4 testified as follows: The Road A Corporate Office, Ms. Employee's former work location, is located about one (1) mile north of the Road A Store. There, Ms. Employee handled collection accounts. Her work performance was satisfactory. She (Ms. Person 4) learned of the incident on March 13, 2001, called Director of O.M.P. (Office, Management and Professional) Relations Person 5 who asked that she meet with Ms. Employee to secure an explanation. Shortly, this meeting was conducted with Ms. Employee, herself and Corporate Charge Manager Person 6. The primary question at this meeting was why she had put the pack of cigarettes into her purse. Ms. Employee' answer: She thought the pack "might" fall from the cart. According to the testimony of Director Person 4, Ms. Employee also told her that she had zipped up her purse because she was afraid her glasses would fall out. Ms. Employee also advised Ms. Person 4 that at the check-out counter, she had paid for the groceries but not the cigarettes because she had been stopped by the Store Detectives.

Director Person 4 further testified as follows: At the above described meeting, Ms. Employee answered that she "could" have been in the Road A Store on March 8, 2001. Ms. Employee was asked to put her explanation in writing and to prepare a diagram of her movements (Employer Exhibits #4 and 5). In her written statement, Ms. Employee attests that the pack of cigarettes "... were going to slide out" so she placed it ". . . just on top of my purse so I wouldn't lose them" and her glasses ". . . slide and I pushed them down. . ."; that at the counter she did not remember having the cigarettes in her purse but that when she got to the "Courtesy Desk" (Customer Service Desk) and opened her purse to get her unstamped letters, she would have seen the cigarettes and paid for them there (Ms. Employee did not go to the Customer Service Desk during her movements in the store on March 12, 2001) (TR. 89-100).

Ms. Person 4 testified that the purse she was shown by Ms. Employee was about 5 x 7", 2-3 inches thick with a zipper on top and a black strap. She testified that she could not understand how a pair of glasses could come out of that purse. Ms. Person 4 suspended Ms. Employee on March 13 pending investigation and issued a report to Ms. Person 5. On March 19, 2001, Ms. Employee was again interviewed at which time she admitted that she had selected a package of cigarettes at the Road A Store on March 8 but asserted that she had left the pack in the seat of the shopping cart. This acknowledgment was made after Ms. Person 4 told Ms. Employee that the store video tape showed that she had in fact picked out the cigarettes. According to the testimony of Ms. Person 4, at this second meeting, Ms. Employee also answered that at the check-out counter she did not recall having the cigarettes because the pack was in a separate compartment in her purse. Further, that at the end of the interview, Ms. Employee told Store Detective Person 1 that she had made "an error in judgment" but then quickly said she had "made a mistake." Following another report to Director Person 5, discharge was recommended and on March 20, 2001, she (Ms. Person 4) met with Ms. Employee and effectuated the Termination (TR. 101-106).

On cross-examination, Director Person 4 testified that Ms. Employee told her in the second interview that she had been on her way to the Customer Service Desk to buy stamps and mail letters and that there, she would have had the opportunity to pay for the cigarettes. Further, on March 13, 2000, Ms. Employee had a purse with her she said was the same purse she'd had on the 12th; that this was the small black purse previously described. Also, she said she had zipped up her purse because of the glasses, not the cigarettes and had no intention of taking them without making payment (TR. 106-115).

Director O.M.P. Relations Person 5 testified as follows: Pursuant to her review of the case, she recommended termination. The grounds: Violation of Employer's Theft and Unauthorized Possession of Employer Property policy (Employer Exhibit #6). This policy is enunciated in the Team Handbook and it is not in dispute that Ms. Employee knew the policy. The penalty for violation is discharge – zero tolerance. Ms. Person 5 explained that "unauthorized possession" occurs when an employee has Employer merchandise in his/her possession beyond the point of sale without authorization; that this aspect of the policy is in place because individuals who are apprehended in such situations invariably claim that they "forgot" to pay for the unpaid for item(s). Further, that Ms. Employee was guilty of Theft because she zipped the pack of cigarettes into her purse. Director Person 5 testified additionally that Ms. Employee had changed her story several times and that her contentions regarding the Customer Service Desk did not correlate and that in any event, it is quite uncommon for purchases to be made at that station in the store (TR. 116-137).

This concluded the Employer's presentation.

Appellant Employee testified on her own behalf as follows: She had worked at Employer's for some thirty-one (31) years and had no discipline in her record. On March 12, 2001, at about 4:40 P.M., she went to the Road A store for the purpose of purchasing items for a meal she planned to prepare for her companion and her parents. She first selected the cigarettes and put them on the child seat of the cart with her purse. In this, Ms. Employee exhibited a large black purse with three (3) compartments – one (1) in the middle and two (2) on either side which she advised was the purse in question(Appellant Exhibit #1). Ms. Employee stated that at the outset, she had two (2) unstamped envelopes in the middle compartment and did not have a wallet; that the zipper is on top of the central compartment with a strap attached to both sides.

Ms. Employee testified that the purse, situated in the child seat of the cart, was unzipped so that she could readily get her glasses out. She did not have a glass case (TR. 138-143).

Ms. Employee testified further as follows: Her route through the store as described in these proceedings, was accurate. She knew the policy on Theft and Unauthorized Possession – zero tolerance and was aware that there were cameras in the store. She picked out her grocery items and shortly there came a point in time when she was making certain that she had everything she needed and it occurred to her that the package of cigarettes might slide out of the cart and therefore she placed it on top of her purse. She did not put any of the merchandise on top of the cigarettes. As she was walking towards the check-out counters, she placed her glasses on top of the cigarette pack which she put in her purse together with her glasses because she did not wish to lose them and zipped up the purse. She was concerned that her glasses might fall out. Then, when she checked out, she retrieved her money from a side compartment in her purse, not the same compartment the cigarettes were in. No, she did not pay for the cigarettes because it "just slipped my mind" (TR. 143-152).

Ms. Employee testified further as follows: After she had paid for her grocery items, she intended to proceed to the Customer Service Desk to buy stamps and lottery tickets but was stopped by the Loss Prevention personnel who inquired if she had something in her purse that she had not paid for. To this she said, "Oh, my God, I left the cigarettes in my purse" and handed the pack over right then and there. In the office, she told the Store Detectives that she had no intention of stealing anything and that she had put the package of cigarettes in her purse because she thought they might fall between the spaces in the child seat of the cart. Ms. Employee testified that in this entire incident, she was "devastated and humiliated" and that her actions (concealment) were not intentional. Regarding March 8, 2001, Ms. Employee testified that she

did not recall being in the store on that day but she could have been and that when she was asked about this, she did not remember. Ms. Employee concluded her Direct testimony by indicating that she is a forgetful person (TR. 152-160).

On cross-examination, serious inroads were made into Ms. Employee's testimony: She denied selecting a package of cigarettes on March 8. She also denied telling Store Detective Person 1 on March 12 that she put the package of cigarettes in her purse because it had been falling out of the cart. Then she acknowledged that she "could have" told Ms. Person 1 that but did not remember. Ms. Employee agreed that the pack never did fall out of the cart and if she said that, it was untrue. Then, Ms. Employee confirmed that she put the cigarettes far enough into her purse so that it could be zipped up but then stated that initially, the pack was protruding half way out of her purse. Ms. Employee also testified that she did not put her glasses in her purse until she was almost at the check-out lanes and that is when she zipped up her purse (Area 14 on the diagram – Employer Exhibit #1). According to Ms. Employee, she put the package of cigarettes in her purse while walking out of the "Kids" Department towards the check-out lanes – Area 13; Ms. Employee agreed that she would have had to push the pack down in her purse at the threshold of the purchase line two (2) or three (3) feet away from the registers. She had no answer as to why if she intended to pay for the cigarettes, she did this instead of simply taking them out of her purse, setting them down on the counter and paying for them. Queries were then made on cross-examination regarding her explanation that she had put the package of cigarettes in her purse because they "might" fall out of the cart when according to her testimony, she did not place them in her purse until very late in her route – not until Area 13 as she proceeded to the check-out lanes (TR. 161-175).

Ms. Employee further answered on cross-examination that after entering the store at "A" and selecting the Basic package of cigarettes, it remained in the child seat throughout, all the way to Area 13. Ms. Employee was constrained to acknowledge that her written statement does not indicate that she put her glasses in her purse just before she came to the check-out lane and in fact the suggestion is that the glasses were already in her purse ("slide up and I pushed them down") (Employer Exhibit #4). Further, Ms. Employee had difficulty responding to questions regarding her Appeal allegations that she had put the package of cigarettes on her purse and that it "fell in" (Joint Exhibit #2). Ultimately, she answered that this did not happen; that she had pushed the pack down and zipped up her purse. Finally, Ms. Employee admitted that in the check-out lane, it was not in her mind that she would go to the Customer Service Desk to pay for the cigarettes (TR. 175-180).

Ms. Person 7, Ms. Employee' daughter testified that she is a good mother, devoted to her elderly parents and sometimes does not grasp what she is doing (TR. 180-183).

This concluded Appellant Employee' presentation.

ISSUE

Whether under Employer's Termination Appeal Procedure, the discharge of Appellant Employee was for just cause?

DISCUSSION

A fundamental notation is in order at the outset of this discussion. In disciplinary cases, the burden is upon the Employer to establish at least by the preponderance of the evidence that Grievant or Appellant is guilty of the Charges and that the discipline or discharge was for just cause, Vickers, Inc., 43 LA 1256 (Bothwell, 1964); Zinsco Electrical Products, 64 LA 107 (Carroway, 1979). In cases involving moral turpitude such as Theft, that standard as pointed out

by the Appellant, is commonly raised to "clear and convincing" evidence, Rowe v. Montgomery Ward and Co., 437 Mich 627 (1991). In applying the higher standard in the instant dispute, Employer's, Inc. has met its burden of proof.

On March 20, 2001, Appellant Employee was terminated from employment for violating Employer's Theft and Unauthorized Possession of Employer Property policy, to wit (Employer Exhibit #6):

Team members involved in or having knowledge of a theft or unauthorized possession of property from the Employer, fellow team members, vendors, or suppliers will be terminated, regardless of the amount or value of the merchandise, their work record or length of service. Team members involved in theft are subject to prosecution.

It is not in dispute that "zero tolerance" attaches to the violation of this Employer rule and that Ms. Employee was well aware of the policy.

It is recognized that Ms. Employee had rendered thirty-one (31) years of service to the Employer and had no discipline in her employment record. For this she is to be commended. However, based upon clear and convincing evidence, on March 12, 2001 in the Road A Store, she did attempt to abscond with a package of Basic cigarettes which upon apprehension past the check-out counters, she had not paid for. Her activities in the store that day have been recounted in detail earlier in this discourse and need not be reiterated chapter and verse. The upshot is that the testimony of Store Detectives Person 1 and Person 2 as well as that of Treasury Operations Director Person 4 and O.M.P. Director Person 5, clearly support the unavoidable conclusion that Ms. Employee was culpable of Theft and Unauthorized Possession of Employer Property. On the other hand, Ms. Employee's testimony was not credible and unfortunately for her, she was only able to present an untenable and tortured explanation of her actions. The following salient points

undergird the determination that Ms. Employee did violate the subject policy and that her termination was for just cause.

1) On March 12, 2001 during her interview with Store Detective Person 1, Ms. Employee denied being in the Road A Store or there, selecting a package of cigarettes. However, on March 19, 2001 after being advised by Director Person 4 that the store video tape showed otherwise, she admitted that she had in fact been in the store, picked out the cigarettes but according to Ms. Employee, had left them in her cart before departing.

2) Store Detectives Person 1 and Person 2 testified that they never lost sight of Ms. Employee from the time they first observed her coming from the Hardlines area with the package of cigarettes in the child seat of the cart next to her unzipped purse. She was shortly seen placing the grocery items on top of the pack of cigarettes in the child seat.

3) In the Woman's Department (Ladies Fashions), Ms. Employee was observed taking her eyeglasses out of her purse, putting the package of cigarettes into her purse, placing the glasses on top of the pack and zipping up the purse. In doing so, she had taken the pack out from under the grocery items. This course of conduct squarely constituted concealment.

4) At check-out Lane No. 8, Ms. Employee paid for all of her merchandise but kept the package of cigarettes in her purse and did not pay for them.

5) Ms. Employee was stopped by the Store Detectives and questioned after she had paid for the described items – beyond the cash registers at which time she still had the package of cigarettes concealed in her purse.

6) During her first interview on March 12, 2001 in the Loss Prevention Office, Ms. Employee asserted that she had placed the cigarettes in her purse because they had been falling out of her cart. That statement was untrue. When told that she had been under constant

surveillance, she altered her explanation to state that she had put the cigarettes in her purse because she was afraid they "might" fall out of the cart.

7) Ms. Employee acknowledged that her contention in her written Appeal that having put the package of cigarettes on top of her purse, they accidentally "fell in", was not factual and did not occur (Joint Exhibit #2).

8) Ms. Employee' averment that she zipped up her purse to prevent her glasses from falling out is implausible and reasonably defies gravity.

9) Ms. Employee' claim that she could have or would have paid for the cigarettes at the Customer Service Desk cannot be adopted because she never did go to that station in the store but proceeded to the check-out counter – Lane No. 8 where she failed to pay for the cigarettes and was thereafter immediately apprehended. In other words, based on her actions, this claim had to constitute a late assertion to minimize her culpability.

10) Ms. Employee advised Director Person 4 on March 19, 2001 that the package of cigarettes was in a separate compartment in her purse and as such, she forgot it was there. But her cross-examination testimony belied this earlier averment. She testified that as she approached the check-out counter, the cigarette pack was protruding half way out of her purse and that she had pushed the pack down at the threshold of the purchase line, two (2) or three (3) feet from the registers. Mr. Person 2 testified that when she opened her purse to get her money, he saw the cigarette package therein. Further, if Ms. Employee did not place the cigarette pack into her purse until late in her route as she had said, it is exceedingly difficult to reconcile her contention to Ms. Person 1 that she was afraid the pack "might fall" out of her cart. Beyond this, if she was almost to the check-out counter when she put the pack in her purse and zipped it up, why would she not simply take it out and pay for it with the other items she in fact did pay for?

11) A review of Ms. Employee' cross-examination testimony, standing alone, is dispositive of this case – representing a truly unfortunate end to a long career with Employer.

For all of these reasons, it is determined that Appellant Employee intentionally did not pay for the package of Basic cigarettes at the Road A Store on March 12, 2001. Her actions unquestionably involved concealment and did constitute Theft as well as Unauthorized Possession of Employer Property based on her possession of the unpaid for cigarettes beyond the point of sale (check-out lane case registers) when she was stopped and questioned by Store Detectives.

Ms. Employee' actions clearly violated Employer's Theft and Unauthorized Possession of Employer Property policy and was just cause for discharge. The Appeal is denied.

AWARD

The termination of Appellant Employee was for just cause and is upheld. The Appeal is denied.

David W. Grissom

Arbitrator

June 11, 2002