

**Bocken #3**

In the Matter of the Arbitration Between:

Employer

AND

Union

Arbitration Hearing: April 1, 1996

**ARBITRATION DECISION**

The undersigned Arbitrator was appointed by letter dated February 28, 1996 to arbitrate the grievance of the Employee. The Employee was separated from his employment as a Ramp Serviceman for Employer on January 30, 1996 for violating Employer Policy Manual, Section 900, Category a, Item 16, prohibiting "fighting, threatening bodily injury towards supervisors, employees, passengers, vendors, officers or officials of the Employer or any other individual." Category 1 offenses provide that violations will result in discharge. An investigative hearing was held January 23, 1996 which resulted in the discharge of the Employee; at the Third Step Hearing held on February 21, 1996 it was agreed that the grievance would remain unsettled, and the parties would proceed to arbitration.

An arbitration hearing was held on April 1, 1996 in City 1, State 1.

**ISSUE**

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

## **BACKGROUND**

On January 14, 1996 at approximately 1645 hours, an employee (Person 1) reported to his supervisor that the Employee had struck him in the face while he was off-loading an aircraft. According to Person 1, after off-loading the forward pit, he walked to the nose of the aircraft. A fuel truck drove up driven by the Employee. Without any provocation, the Employee struck him in the face. After receiving the unexpected blow, he asked the Employee, "Why did you hit me?" The Employee replied "Stay out of my way" and then drove away. Person 1 reported the incident to his Senior Agent who in turn reported it to his supervisor. Subsequently, the Employee was questioned. In a written statement, the Employee admitted he "backhanded Person 1 to get his attention in a matter". He stated that he had problems with Person 1 about "certain areas in our friendship" and that others had problems with him too. The Employee conceded his behavior was unjustifiable in hitting Person 1.

## **UNION POSITION**

While the Employee admitted striking Person 1, and that it was wrong to do so, he should not have been discharged as there were mitigating factors. The Employee and Person 1 had known each other for about eight years and had been on a friendly basis. However, Employee began to be annoyed by Person 1's conduct. For instance, he would come to the Employee's house and interrupt discussions, he was pushy and rude and intolerant of the way others did things. Sometime in 1994, the Employee told Person 1 to stay out of his way, but Person 1 seemed upset by this and started using "body language" which

annoyed the Employee. Further, at the time of the incident, the Employee was concerned about the health of his father.

Other employees were also annoyed by Person 1, and did not want to work with him. The Employee is a good worker while Person 1 is a complainer.

Finally, the Union submitted that the Employer had been inconsistent in administering discipline, and that not all Category 1 violations had resulted in termination.

## **EMPLOYER POSITION**

The Employer must maintain a workplace free of harassment, intimidation, bullying, and hostility. Hitting another employee is a Category 1 violation for which an offender is to be terminated. In this instance, the Employee's unprovoked hitting of another employee warranted termination. In addition to the Person 1 incident, the Employee had threatened another employee several times after disagreements on how work was handed out.

A letter of warning was issued to the Employee on April 21, 1995 resulting from complaints from flight attendants that the Employee had been loitering or loafing on an aircraft during his working hours.

## **DECISION**

The Employee admitted hitting another employee while both were on duty and that it was wrong to do so. He also acknowledged receiving the Rules of Conduct included in the Employee Handbook. The Rule he violated was classified as a Category 1 offense. The preamble to the Rules of Conduct states, among other things, that "Violation of the Category 1 will result in discharge unless mitigating facts are considered applicable."

The Union submitted that mitigating factors were present such as the Employee's irritation with Person 1's body language and personality traits. To substantiate the annoying traits, twelve employees signed a letter to the Employer dated January 20, 1996 in support of the Employee which characterized Person 1 as interfering in co-workers' business, having an inability to "create harmony in the work place" and "work as a team", "falsely accusing fellow co-workers to cover his wrong doings" and other similar traits. Four of the twelve testified at the arbitration hearing. All were friends of the Employee. None were friends of Person 1. One of the four had previously made a racial slur against Person 1 which resulted in an altercation. Another witness who signed the letter testified that he did not know Person 1, but only knew about him from hearsay. The other two spoke highly of the Employee's work performance, but that Person 1 was difficult to work with, although one did not agree with some of the criticisms of Person 1 contained in the letter. Some complained that management was inconsistent in applying discipline but, on cross-examination, admitted that many incidents were not reported to management.

A Senior Customer Service Agent with thirty years service was called by the Union, and testified that the Employee was a good worker. He also testified that Person 1 was a good, enthusiastic employee, but that some of the employees did not like him. He thought possibly it was because he was the only haole in the group. The Agent further testified that it was understood that if you hit another person on the job, "you're through". He agreed that fighting on the job cannot be tolerated.

On the other hand, a Ramp Serviceman with six years service testified of his problems with the Employee. He related that the Employee objected to the way he "handed out

work", and threatened him on several occasions with statements such as, "I'll kick your ass" or "I'll punch you". The witness stated he did not report the incidents to management as he thought he could handle it.

Two Terminal Agents testified that Person 1 was a "good guy". One said he noticed certain employees picking on Person 1 "from day one". The other Agent thought they did not understand Person 1 because he was not a "local".

The Employee testified that he had known Person 1 for several years and they had been friends. However, the Employee became increasingly irritated with Person 1's tendency to interrupt conversations, his perceived rudeness, and constant telephone calls. He told Person 1 to stay out of his way. This upset Person 1 who, according to the Employee, would use "body language" that was annoying to the Employee. Exactly what the body language consisted of was not explained. The Employee did not report his problem with Person 1 to management so that remedial action could be taken.

While it is apparent that Person 1 was not well liked by certain employees, it is irrelevant to the conduct of the Employee in hitting Person 1. The physical and verbal assault was unprovoked and unjustified. The Employee's prior threats against another employee indicate a propensity to be uncontrolled at times.

As to the Union's argument that the Employer has been inconsistent in its discipline for violations of Category 1 violations of the Rules of Conduct, there was insufficient evidence of a pattern of inconsistency or favoritism to substantiate such a position. To the contrary, the Employer has been consistent in its discipline for violations of paragraph 16 of the Rules of Conduct.

It is unfortunate that the incident prompted the Employee's termination as, apparently, he is otherwise a good worker. However, the Employer rules are clear and employees are aware of the consequences of striking another employee, supervisor or other person. Further, the Employer did not find mitigating circumstances to forego imposing termination, and the evidence supports that conclusion.

## **AWARD**

The grievance is denied.