

Chairman #1

IN THE MATTER OF ARBITRATION BETWEEN:

Employer

AND

Union

BACKGROUND

This is an arbitration proceeding involving a grievance filed pursuant to the grievance and arbitration provisions of the collective bargaining agreement (hereinafter "Agreement") in effect between the Union and the Employer. A hearing was held during which time sworn testimony was taken, exhibits were offered and made part of the record, and oral argument was heard. The hearing was stenographically reported and a transcript numbering 229 pages was provided. Post-Hearing Briefs were filed by the parties on December 30, 1997,

STATEMENT OF THE CASE

This case involves the termination of an Aircraft Mechanic employee for allegedly attempting to steal four packages of batteries from the Employer, and for insubordination in refusing to allow his supervisor to inspect his personal bag.

The Union contends that the Employer did not prove that Employee engaged in theft, and that it treated him in a disparate manner by singling out his alleged misconduct for discipline.

The Employer contends that it had just cause to terminate the Employee for theft and insubordination, and that there is no evidence that he was treated in a disparate manner.

ISSUE

The issue to be decided is whether the Employee was terminated for just cause; and, if not, what shall the remedy be?

STATEMENT OF FACTS

The Employee has been employed by the Employer as an Aircraft Mechanic for seven years, and at the time of the events in question in this dispute was assigned to the Employer's maintenance facility in City 1, State 1.

Person 1, a Maintenance Foreman on the third shift at the City 1 facility, testified that he was approached by Union representative Person 2 early in the morning of November 20, 1996.

Person 2 told him that another Union member, Person 3, had reported seeing the Employee place packages of batteries in his personal bag while in the break room. Person 1 then conferred with Person 4, a Maintenance Foreman, and Person 5, the Manager of Maintenance at City 1. The three of them decided that a bag and lunch pail check of all employees on the shift would be conducted as employees exited the facility that morning after completing their shifts.

Person 1 testified that the Employee initially left the premises carrying nothing in his hands, but returned a few minutes later. Employee then approached the exit gate again carrying his personal bag:

And as he approached me, I stepped over and stopped him, and I explained to him that I was conducting bag searches and informed him of the reason, that we had a tip that someone was going to remove some Employer material, and I was just checking everyone's bags.

And he said, "You want to check my bag?" I said, "Yes, I have to check everyone's bag. I've checked the guys that had gone out earlier and I need to check your bag." He said something to the effect that, "This is bullshit," and at that time, turned around and went back into the hangar.

Person 6, a Production Controller, witnessed this exchange and corroborated Person 1's version of the exchange when he testified later at the hearing. Person 1 testified that he then tried to follow Employee inside the hangar:

He went out of my sight as he went around the tail dock. And as I came around the tail dock, I saw Person 4 in front of me standing at a table...

And I walked up to Person 4. I didn't know where Employee was at that time. As I came around, he was gone. As I walked up to Person 4, I stopped and Person 4 sort of nodded towards the toolbox, so I looked over. When I saw Employee, he was still at the toolbox, but had just turned and came back towards me. And Person 4 said something to the effect that, "he," meaning Employee, "unloaded his bag," I think is the way he put it.

So then Employee walked directly toward the toolbox to me and offered his bag for inspection. And I just asked him, "what did you have in your bag, Employee?" And he said, "I didn't have anything--" or nothing. And he just offered me the bag and closed it back up and started for the exit...

...And he continued to walk in a fairly brisk pace. I stopped and I watched him walk on out of the building. I was only there for what seemed like to be a few seconds and then Person 4 came up behind me and I turned around. Person 4 had something in his hand. I just held my hand out and Person 4 just placed four boxes of batteries in my hand.

Person 4 testified about his observations of Employee:

I discussed it with Person 1, and we decided to do a bag and lunch pail search of the exiting employees. We were both at the front gate for a while, at the front doors, the exit to the hangar.

I got called back in to work the aircraft. I was in the hangar and I observed the Employee come walking in the hangar at a rapid pace, walk past me, unzip the briefcase, pull out what turned out later to be a pack of batteries, set them on top of a toolbox, walk back towards me holding his briefcase open for inspection.

At that point Person 1 approached where I was standing and started a conversation with the Employee. I walked over to the toolbox where I saw the Employee place the batteries. And, in fact, they were packages of batteries. I picked them up, returned and gave them to Person 1.

Person 5 testified that he convened an investigatory meeting on November 21, 1996, during which the Employee denied that there had been any confrontation with Person 1 concerning a

search of his bag, and then stated that he had received some AA batteries on that day from the stock room, and had put two in his flashlight and the remainder in his toolbox. Person 5 testified that a search of the Employee's toolbox showed no batteries in there, and the Employee was then placed on suspension with pay pending completion of the Employer's investigation. Person 7, Director of Arbitration and Administration in the Employer's Labor Relations Department, was present during these exchanges and corroborated Person 5's version of the events which occurred.

The Employee testified to his belief that management was out to get him, and denied that the events testified to by the other witnesses had taken place:

Q. I would like to know whether you're now denying that during the interview with Person 7, you told him that you had obtained batteries that day. You put two of them in your flashlight, and the remaining supply in your toolbox.

Are you saying that never happened?

A. I'm saying it never happened...

* * *

Q. Let's go back to the morning of November 20th. When you left the building and Person 1 asked to look in your bag, could you tell us your version of what happened?

A. Person 1 never asked me to look in my bag. If Person 1 would have asked me to look in my bag, I would have told him, no. Then in return, that would have given me the opportunity to get a shop steward present. So that if he wanted to look in my bag, then I would have been forced to have him look in my bag, given a direct order.

...No one ever asked me anything. This ain't nothing but a modern day witch hunt.

Q. Okay. So let me understand this quite clearly. Person 5 lied, Person 1 lied, Person 4 lied, Person 6 lied, and Person 7 lied?

A. So that's not uncommon?

* * *

THE ARBITRATOR: Person 1 said he stepped in front of you and said, I want to see what's in your bag. We're checking everybody's bag.

Did he say that?

THE WITNESS: No. The only time Person 1 made an attempt to even talk to me--and he wasn't the one that was talking. It was Person 4.

When I went back to lock my toolbox up to go home, I was walking back toward leaving the building. And when I got there, Person 4 said to me, "What have you got in your bag?" And I said "What?" He said, "What have you got in your bag?" I said, I don't have, "Nothing," then I went on home. And then, after that, all this other stuff's coming out like this.

On November 22, 1996, after completing its investigation of the incident, the Employer terminated the Employee for alleged theft and insubordination and, after exhausting the various steps of the grievance procedure, the Union took the matter to arbitration.

POSITION OF THE UNION

The Union contends that the Employer has the responsibility to make sure that its policies and procedures are adhered to and administered equally, and maintains that it has shown that other employees were allowed to ignore the Employer rules by keeping snacks at their work stations, and using Employer property to work on their personal home projects, but that the Employee alone was singled out for punishment for his alleged violation of Employer rules.

The Employer stated that the Employee was insubordinate, because he failed to allow Person 1 to inspect his personal bag before leaving the property. Person 1, however, never explicitly issued a direct order to the Employee to open his bag, and never explicitly demanded that Employee comply or suffer the consequences for his actions. Given these facts, the Union argues that Employee cannot be found to have been insubordinate as alleged by the Employer.

The Union points out that Person 1 and Person 4 testified that when the Employee approached them from the toolbox area, neither of them requested that the Employee allow them to inspect

the contents of his personal bag. The Employee continued exiting the premises, and was informed at a later date that he was suspended pending an investigation of the incident. If Person 1 believed that the Employee was attempting to steal Employer property, he should have stopped the Employee from leaving and questioned the Employee with a Union Steward in attendance. Any questions could have been answered then, not days later.

The Union raised doubts about whether Person 4, who was standing approximately 65 feet from where the Employee was located, could have accurately distinguished the precise number of items the Employee allegedly placed on a toolbox. Person 4 also made no effort to stop or question the Employee; even though he knew Employee had been singled out in advance. It is also possible that Person 4 could have walked to any number of other toolboxes and retrieved batteries.

The Union believes that the evidence presented by the Employer is inconclusive, and, based on this evidence, maintains that the only decision the Board can make is that the Employee did not attempt to remove batteries from Employer property. The evidence showed that Employer property was scattered around on several toolboxes, and, given all the circumstances in this case, the Union believes that the Employer could not properly charge the Employee of theft. The Union therefore requests that the grievance be sustained.

POSITION OF THE EMPLOYER

The Employer contends that this is a straightforward case of an employee attempting to take Employer property for his own use in violation of Employer rules of conduct, and of insubordination when the Employee refused to comply with a reasonable request from management to inspect the contents of the bag which the Employee was carrying.

It is undisputed that the Employer received a report that the Employee had placed items of Employer property in his bag while in the break room, as the first step in the process of stealing property from the Employer. Whether or not Person 1 confronted the Employee and asked to search his bag, the fact remains that Person 4 observed the Employee remove something from his bag, and place whatever it was that he removed from his bag on a tool box. When Person 4 retrieved the items, he observed that the items in question were four boxes of batteries.

In order to believe Employee's account of the events in question in this case, the Board would have to reject the testimony of all of the other witnesses in the case, including the Union witnesses. The only reasonable and supportable conclusion to be drawn from the Employee's conduct in refusing to have his bag searched, and then removing the batteries from his bag, and placing them on someone else's toolbox, is that Employee did not want to be caught with the batteries in his bag. This was because the batteries were the property of the Employer, and Employee was in the process of taking them home with him. The Employer is not required to tolerate dishonesty of this type by its employees, and accordingly requests that the grievance be denied.

FINDINGS AND CONCLUSIONS

After a review of the record, and after having had an opportunity to weigh and evaluate the testimony and credibility of the witnesses, the Board has reached the conclusion that the Employee was discharged for just cause.

The Employer presented clear and convincing evidence from a number of credible witnesses that the Employee attempted to steal four packages of batteries, and, while attempting to do so, refused to obey an order from Person 1 to submit his personal bag for inspection.

This evidence shows that, after receiving a tip from a Union representative that the Employee apparently was attempting to steal some batteries, Person 1 and other management personnel conducted a bag and lunch pail check of all employees as they exited the facility after their shifts were completed. When the Employee began passing through the check point, he refused to open his personal bag for Person 1 and retreated back to his work area, where Person 4 observed the Employee "unloading" his personal bag. Person 4 then discovered that the Employee had taken out four packages of batteries.

While the Employee testified that the events testified to by the Employer's witnesses did not even occur, and that all of these witnesses were lying, the Board found the testimony of these witnesses to be credible and consistent, and of such a compelling nature as to meet the "clear and convincing" standard of proof required to prove a charge of theft.

The Union raised the issue of disparate treatment in this case, contending that other employees were allowed to violate Employer rules by keeping snacks at their work stations, and using discarded materials for use on home projects they brought into the facility after working hours. There is no valid comparison between those kinds of rule infractions and charges of theft and insubordination. However, and the Board concludes that the Employee was not treated in a disparate manner in this case.

The Union also contended that the Employer did not prove the charge of insubordination, since Person 1 did not give the Employee a specific direct order, and did not warn him in express terms of the consequences of his refusal to obey an order. It is not necessary for the Board to address this contention, however, since the proven offense of theft is by itself so serious that it almost always leads to the termination of an employment relationship.

It has been firmly established in arbitral precedent that an essential element of the employer-employee relationship is trust. Once that trust is compromised, the relationship becomes so tainted that the employer has the prerogative of severing that employee. An employer need not retain anyone whose honesty has come into serious question, as it clearly has in this case.

Based on all of the foregoing considerations, the Board is compelled to conclude that Employee was terminated for just cause.

AWARD

The grievance is denied.