

**Daniel #8**

IN THE MATTER OF THE ARBITRATION BETWEEN:

EMPLOYER,

and

EMPLOYEE,

ARBITRATOR: WILLIAM P. DANIEL

This arbitration is conducted under the terms of the Termination Appeal Procedure by which certain eligible employees may seek to resolve claims and controversies arising out of termination of employment including any claims based on federal, state, or local law. A discharged employee not satisfied with the company response to his complaint has the right to institute proceedings under the arbitration clause and, in this case, the claimant did so.

**FACTS**

The claimant's employment began in 1988 as a store detective at Store #28 in City A, Michigan. Thereafter, he attended regular training classes and was provided copies of the code of conduct, rules, and policies as applied to him over ensuing years. It is not disputed that he was aware of such obligations and directives.

On September 12, 2002, the claimant was working with other store detectives, Person 1 and Person 2. They observed and followed an elderly woman in a battery operated cart provided by the store as she was picking up various articles and concealing them in her purse and coat pocket. Some of this merchandise, she returned to the proper area or removed from her purse just before she went to check out. However, they noted that she went through without paying for a greeting card that she had concealed in her purse.

The claimant, along with the other detectives, followed the woman outside and, as the lead officer he tracked her to her vehicle, arriving after she had opened the doors and put several bags in the car. He called the other detectives to come closer and apprehended the individual, locking the car up for her and requiring her to return to the store where she was interviewed and signed a statement before being released. The card, which had been found in her possession, was returned to stock.

There was a specific policy well published and known to the claimant which-required that when a customer reached their vehicle, no attempt should be made to apprehend them and that contact was to be disengaged. The grievant's actions in this regard constituted a violation of the training policy.

The incident had occurred at approximately 4:55 p.m. that Thursday and shortly thereafter, the claimant had a discussion with Loss Prevention Team Leader Person 3 in the office. It was of a casual nature and in the course of it, the claimant mentioned that he had stopped an older lady in an Amigo in the parking lot for shop lifting to which Person 3 had exclaimed "I hope it wasn't at a vehicle" and the claimant asked "why" and was told that such would be a violation of the training rule. At this point, instead of indicating the true circumstances, the claimant stated that he had stopped her between two cars and concealed the fact that the woman had reached her car and opened the door. The next day, Friday, September 13, the claimant wrote his report of the incident in which he stated:

She then went outside the east exit. Grace and I then approached her, ...

After having written his report in this fashion, the claimant called Officer Person 1 and told her about Person 3's caution to him about such a situation being a training violation and urged her to make her report to coincide with his. The claimant testified that he had not realized

at first that what he had done was a training violation and when Person 3 pointed that out, he felt it necessary to write his report so as to avoid indicating that. He asserted that he did this out of concern for Officer Person 1 who he believed would also be given a disciplinary penalty. He believed that she was at a disciplinary level that such could cause her loss of employment. Person 3 testified that this perception on the part of the claimant was wrong and that though Person 1 was on a disciplinary track for other conduct, it did not involve such matters as this.

Person 1 reported to Person 3 the claimant's contact about making the reports coincide and the claimant was called to an interview on September 17, 2002. Person 3 immediately raised the subject of the apprehension on September 12, recalled the grievant's previous comment to him that he had stopped the woman between cars and pointed out that such was not mentioned in his report. Person 3 testified that the claimant's report would give the impression that the woman had been apprehended right outside the east doors of the store when, in fact, that was not true. Person 3 then told him, as he had previously, that once a subject reached their vehicle, a detective was to disengage. At that point, the claimant confessed that the woman had reached her vehicle and had opened her door and put bags of groceries inside. Person 3 informed him that Person 1 had reported a contact from him attempting to influence her report. The claimant admitted calling her because of concern that it would be a training violation for her also if she revealed that. When asked for an explanation, the claimant said that he told her to make a report in that way so that she would not get in trouble.

Person 3 concluded the interview by telling the claimant that he should have admitted to him on September 12 that he approached the woman at the car and that there was a training violation to deal with. He told him that he had been dishonest and had violated that separate

policy of the employer and had compounded it by writing a report that he knew was false and then, even worse, had attempted to cause another employee to falsify her report.

He testified the situation was aggravated since the claimant had had all day Saturday, Sunday and Monday to consider his actions and still had not attempted to revise his report until he was confronted. The claimant did not deny Person 3's accusations nor did he, in his testimony at the time of hearing, contend otherwise.

The claimant testified that he believed he was discriminated against since the other two detectives, Person 2 and Person 1 did not get any discipline. He cited other cases where other detectives, including Person 1, had training violations but were not discharged. He also noted that a detective at the Brighton store once made a stop by himself without backup which was a violation and failed to report it thereby falsifying his record, and he was permitted to rewrite his report.

Person 3 testified about the various training procedures and notices given to employees as to report writing, the code of conduct and training violations. He noted that training violations may fall into two categories - serious or less than serious - and that disciplinary action may be taken accordingly. He explained that Person 2 and Person 1 were not disciplined for training violation in this instance because they were not involved in the apprehension - rather the claimant was the lead officer and bore the responsibility for what occurred.

Person 3 received directions from OMP Relations Representative Person 4 to interview the claimant and get his version of the incident. Person 4 testified that he reviewed all of the reports and Person 3's interviews and concluded that there was falsification, dishonesty, and serious training violations involved. He found the falsification very serious because not only was it contained in the report but it also was substantiating a false verbal reference made by the

claimant to Person 3. He found the attempt to get another employee to falsify her statement as a particularly exacerbating circumstance. According to Person 4, there was found to be no basis for mitigation and the claimant's excuse that he was trying to protect Person 1 did not justify his actions. The company's position upon concluding the appeal process was that:

The termination of your employment was done for just cause for falsification of documents, violation of the honesty policy, and violation of Loss Prevention training guidelines. Our investigation further found no evidence of discrimination or retaliation.

## TERMINATION APPEAL PROCEDURE

### Purpose and Scope

This procedure has been established to provide an exclusive, final and binding method for the company 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.

\* \* \*

### Election to Arbitrate

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

\* \* \*

### Arbitrator's Authority

The arbitrator's authority shall be limited to deciding claims arising out of or relating to the team member's termination from employment. The arbitrator shall have the authority to determine whether the termination was lawful under applicable federal, state and local law and to determine whether the company had just cause for termination.

\* \* \*

If the arbitrator finds that the team member violated any lawful company rule, policy or procedure established by the company as just cause for termination, and finds that the team member was terminated for that violation, the team member's termination must be

upheld and the arbitrator shall have no authority to reduce the termination to some lesser disciplinary action.

### RULES OF REPORT WRITING

Report writing is an integral part of the Loss Prevention function. Thousands of reports will be written this year, and following these rules of report writing can enhance many: Reports should be thorough:

- All details related to the event must be reported. Many times reports of an apprehension are thorough up to the point the apprehension is made and then the facts dwindle. All information at the stop and in the office must be documented. This includes defensive tactics, interviews, voluntary statement procedures, and police actions.

\* \* \*

Your signature is more than a procedure

- When you sign, date, and time any report you are affirming that the information in it is accurate, truthful, and complete. Make sure that your reports answer all of the pertinent who, what, when, why, and how questions. If your signature is not readable, you should print your name below. Each report you write should be work you are proud to submit.

### CODE OF CONDUCT MANUAL

#### 1. CONDUCT UNBECOMING A LOSS PREVENTION ASSOCIATE.

\* \* \*

- Dishonesty, deception or fraud

### **POSITIONS OF THE PARTIES**

Employer: There was just cause for discharge here because there were four separate acts of misconduct. Failure to disengage was a serious training violation. Moreover the claimant lied to his supervisor regarding the incident, knowingly filed a false report and then contacted another detective in an attempt to have her falsify her report. The claimant did not avail himself of the opportunity of rewriting or revising his report until he was confronted and, at that time, admitted his guilt.

There is no evidence that he was discriminated against or treated in an improper fashion in regard to other incidents involving other employees. The facts in other cases clearly distinguish them. This was a particularly aggravated case of dishonesty and falsification and the penalty of discharge was merited.

Claimant: The claimant's long years of seniority should have some value as a mitigating factor as to the discharge penalty. In fact, the claimant acted only out of concern for a fellow employee and not to protect himself. It was his belief that Person 1 would be fired because of an accumulation of violations and, therefore, he did not report her involvement to Person 3 or put it in his report. He later told her of this so that she could write her report to match his only for the purpose of avoiding disciplinary action.

Other detectives involved in similar incidents have not been discharged and, therefore, the penalty is improper.

For these reasons, this appeal should be granted and the claimant returned to work with back pay and benefits.

## **ISSUE**

Was the grievant guilty of misconduct in violation of published rules, policies and regulations, and, if so, was discharge the appropriate penalty?

## **OPINION**

The arbitrator has only that jurisdiction granted to him under these procedures and does not have the authority to impose his own concepts of fairness or justice. The question is whether the grievant was guilty of the misconduct charged and, if so, whether such constituted just cause for his termination.

It is quite clear that in writing his report, the claimant was well aware that it did not match the actual circumstances. He had been through numerous training sessions over the years and knew that the rule of disengagement applied once the woman reached her car. She had arrived at her car and, in fact, had opened it and, at that point, his obligation was to discontinue any contact. He chose not to do so. Inadvertently, by mentioning the incident to his supervisor, he came to learn that what he had done was a training violation. Once he realized that his supervisor might be suspicious, it was his decision to cover it up. This constituted dishonesty and falsification.

The arbitrator believes that the claimant intended to make out a false report because he was in violation; it was his intention to cover it up. His actions were compounded by his attempt to get detective Person 1 to write her report so as to mesh with his. This was a dishonest act in itself because it sought to cause another employee to act dishonestly.

The arbitrator has considered the claimant's claim that he acted only out of concern for Person 1 so that she could avoid further discipline and discharge. It is difficult to tell whether that was his true motivation. He had much at stake and could well have perceived that he might suffer some very severe discipline or even discharge. But even if he was acting out of pure concern for Person 1, it was without any logical foundation. He was the lead detective and responsible for the apprehension; she and Person 2 were simply back-ups and there was no way that they would be charged with a training violation.

A store detective is a unique type of employee and so is held to very high standards of honesty and conduct. The rules are very specific and strict in that regard and detectives are constantly reminded of their obligations and responsibilities. Despite this, the claimant decided to further violate the rules rather than admit his error to his supervisor initially and take his

punishment. It is entirely possible that had he done so, he would not have been discharged. This discharge is built upon compounding factors of lying to his supervisor, falsifying the report and, particularly, attempting to cause another employee to act dishonestly.

There is no comparable case that the claimant can point to and that is the reason why it must be found that he has not been treated in a disparate fashion verses other employees.

The grievant knew his report was false and, yet, failed to act for a period of 3 days thereafter to revise it and admit his guilt until confronted by his supervisor. By that time, it was too late to cure his previous misconduct.

## **AWARD**

It is found that the employer had just cause to terminate the claimant in light of his particularly egregious acts of misconduct. The appeal is denied.

Dated: 3/25/2003

William P. Daniel

Arbitrator