

**Fredenberger Jr. #1**

IN THE MATTER OF ARBITRATION BETWEEN:

Employer

AND

Union

**ISSUE:**

Was the Employee discharged for just cause within the meaning of Article 2(A) of the applicable collective bargaining agreement?

**HISTORY OF DISPUTE:**

Before his discharge on September 19, 1995, the Employee worked as a Fueller for Company 1, a division of the Employer at Airport 1, where Company 1 provided fueling services to various airlines. The Employee was covered in his employment by a collective bargaining agreement (CBA) between the Employer and the Union; Article 2(A) of which enumerates certain management rights including the right "to discipline and discharge employees for just cause..."

The Union grieved the discharge on the ground that it violated Article 2(A) of the CBA. The grievance was handled in accordance with the provisions of Article 16 of the CBA (Grievance and Arbitration Procedure). Further pursuant to Article 16 the grievance was submitted to arbitration.

The hearing was held in this matter on January 7, 1997. The Employee attended the hearing. All concerned were afforded the opportunity to present documentary evidence as well as to testify at the hearing. It was mutually agreed that briefs would not be filed.

## **FINDINGS:**

Upon the record and all the evidence it is found that the parties have complied with all procedures of the CBA to bring this matter to arbitration. All parties, including the Employee, were given due notice of the hearing and attended. Clearly, it is the Employer's burden to substantiate that it discharged Employee in accordance with Article 2(A) of the CBA.

By interoffice correspondence dated September 18, 1995 to Company 1's Vice President, Customer Services and Vice President, Personnel, the Employer's General Manager stated the following:

In summary, it is the opinion of this writer that the Employee's decisions are flawed when it comes to conducting the business of Company 1. His action surely does not present a professional image and job performance is not meeting the expectations of this Division.

As the result, work assignments have been adjusted to accommodate the Employee in our rotational fueling scheduling, first in - first out. He is presently unable to provide services for Airline 1 due to the Suspicious Persons Activity Report. And, if removed from servicing Airline 2, he has effectively limited his usefulness.

Therefore, I am requesting the immediate termination of his services with the Company 1 Division.

As noted above, Employee was discharged the following day.

By way of background, on September 14, 1995 the Employee was assigned to refuel Airline 2, Flight No. 1079, Aircraft No. 9941. The Airline 2 Ramp Chief on duty at the time testified that another Airline 2 employee in the area told him that the Employee,

while refueling the aircraft had tied open the deadman switch and walked away. The Ramp Chief observed the fuel gauges registering while the Employee was not at the controls, which to the Ramp Chief confirmed that the deadman switch was open. The Ramp Chief approached the Employee, and admonished him with respect to his actions, to which the Employee responded in a nonchalant manner, apparently failing to take the incident seriously.

The deadman switch is a mechanical device which must be in the open position for fuel to flow from a fuel truck into an aircraft tank. It is intended to be held in the open position by the hand of the fueler who can release it to close in the event of an emergency such as a fuel spill. The Employer's fueling procedures specifically provide in pertinent part: "Deadman control must be in the hands of the operator during refueling and never jammed or locked in the open position."

The Ramp Chief orally reported the incident to Company 1's General Manager. The Ramp Chief then filed a written report at the General Manager's request. The General Manager testified that pursuant to the written report he interviewed the Employee in the presence of Company 1's Operations Manager and that during the interview the Employee admitted that he had tied the deadman switch open. The Operations Manager corroborated the testimony of the General Manager.

The Employee, in his testimony, denied that he had tied open the deadman switch or that he had admitted doing so to the Company 1 managers during their interview. He challenged the accuracy of the Airline 2 Ramp Chief's observations from that individual's vantage point, and emphasized that the Ramp Chief could not identify correctly the type of aircraft being fueled.

The weight of the evidence supports the conclusion that the Employee tied open the deadman switch. Three witnesses so testified, one as to personal observation and two as to Employee's admission. While Employee disputed the testimony of those witnesses, he did not manage to produce evidence seriously detracting from the accuracy and credibility of their testimony.

On July 17, 1995 Company 1's Operations Manager was called to the Airline 1 ramp services break room where he found the Employee. At the time, the Employee was waiting to refuel an Airline 3 flight in another area. The Employee had been instructed on July 13, 1995 after a meeting with the Operations Manager to stay out of all Airline 1 leasehold areas. This instruction followed a July 10, 1995 incident during which the Employee was reported to the police for taking sodas without authorization from Airline 1, an allegation which subsequently proved to be false, because the Employee had been granted permission to take the sodas - by an Airline 1 Ramp Supervisor.

The Employee apparently received only an oral admonition for exercising poor judgment in connection with the July 10, 1995 incident involving the sodas. However, the Employee received a written reprimand for insubordination, and for leaving his duty assignment without authority and proper relief as a result of his presence in the Airline 1 break room on July 27, 1995.

Company 1's General Manager testified that, during the course of his investigation of the September 14, 1995 refueling incident, the Airline 2 Station Manager stated that he had observed the Employee not maintaining the required distance from aircraft during fueling operations. The Employee denied that he ever had failed to ground a fuel truck during fueling operations or engaged in other improper fueling techniques. However, Company

1's Operations Manager testified that he had orally admonished the Employee for failing to ground fuel trucks properly during fueling.

At one point during his employment with Company 1, the Employee was challenged for failing to display his photographic identification properly. Apparently, the police were summoned and Company 1's operations were disrupted. The Employee testified that he was wearing the proper identification, but that it was under his clothing, and that he flashed the photo identification when challenged but kept walking past the individual who challenged him. The record is not clear as to whether the Employee received any discipline concerning this matter.

The Employer maintains that the record in this case fully supports the conclusion that the Employee was guilty of misconduct constituting just cause for discharge as provided in Article 2(A) of the CBA. Accordingly, urges the Employer, this grievance must be denied.

The Union and the Employee emphasize vigorously that employees who have committed singular acts of misconduct identical or similar to those involved in this case have not been discharged. They place particular emphasis upon the fact that the only instance of discipline for tying open a deadman switch during refueling was a three day suspension for the employee involved. However, as the Employer points out., that employee's case is different from this one in that the employee had no previous record of discipline. We believe the Employer's point is well taken that Employee's cumulative disciplinary record in this case presents a wholly different situation.

It must be borne in mind that the Employee was an employee with less than one year's service at the time he was discharged. In that time he engaged in numerous acts of

misconduct. Oral and written warnings did not correct the situation. It was not unreasonable for the Employer to conclude that the Employee was heading down the wrong road as an employee.

Particularly damaging to Employee's case is the fact that he had been barred by Airline 1 from refueling its aircraft, and likely would have received the same sanction from Airline 2, as a result of Employee's failure to follow proper refueling regulations and techniques. Moreover, Company 1's General Manager testified that such restrictions caused scheduling difficulties with other employees who were required to work hours they otherwise would not have had to work. The Employee clearly had so impaired his usefulness to Company 1 as an employee that the General Manager was warranted fully in recommending his discharge. In light of that fact, the General Manager's November 20, 1995 recommendation of the Employee for a fueling position with another Employer does not detract from his earlier conclusion that the Employee should be discharged from Company 1's service. Nor, in light of that fact does it appear that lesser discipline such as a suspension was warranted.

## **AWARD**

Employee was discharged for just cause as provided in Article 2(A) of the applicable CBA.