Gentile #2

IN THE MATTER OF ARBITRATION BETWEEN:

Employer

AND

Union

ISSUE

Was the discipline imposed on the Employee for violating Rules One and Four too severe?

If so, what shall be the remedy?

A hearing in the above referred to matter was held on February 16, 1994, at the offices of the Union, before the undersigned who was mutually designated by the Employer and the Union to serve as arbitrator pursuant to the terms of the collective bargaining agreement. The parties had full opportunity to be heard, to present evidence and testimony in support of their respective positions.

BACKGROUND

The Employee had been employed by the Employer for twenty five years. As of the date of her discharge, she enjoyed the job title and hourly rate of pay of a Senior Storekeeper.

The Employee, on September 18, 1992, was scheduled to report to work at 2:30 pm, and approximately one hour prior to her scheduled starting time, she called in and requested a DAT vacation day. The basis for her requested DAT vacation day was attributed to the need to dispose of her pet goat that had died. There was some confusion as to whether the Employee had in fact

been granted a DAT vacation day by Person 1, the Employee's Supervisor. Person 1 had stated to Person 2 that he had not authorized the granting of the DAT day requested by the Employee. An investigation of the matter emanated, as it had appeared to the Employer, that the Employee had falsified her time card for the requested DAT vacation day. If substantiated, it constituted a violation of the Employer Rule No. Two; a dischargeable offense.

Pursuant to standard Employer procedure affecting "holding an employee out of service," the Employee was directed to remove her personal belongings from her lockers. In the two lockers identified by the Employee as her lockers, her mailbox and briefcase were items identified as Employer property. The possession of such items constituted a violation of Employer Rule One, a dischargeable offense.

The Employer initiated an investigation and determined that the Employee had violated three specific Rules of Conduct. Each violation is cause for separation. Accordingly, the Employer discharged the Employee, citing a violation of Rules of Conduct No's One, Two, and Four, a Level Five, Non-Punitive Discipline.

An Investigative Review Hearing was held on October 28, 1992. The Review officer dismissed the claim of a violation of Rule of Conduct No. Two, but sustained the Employer claims of a violation of Rules of Conduct No's One and Four.

The Employee grieved her discharge. The matter was processed through the grievance machinery pursuant to Articles XV11 and XV111 of the collective bargaining agreement. The parties were unable to resolve the dispute and a demand for arbitration was served upon the Employer by the Union on behalf of the Employee.

PERTINENT ARTICLES AND RULES OF CONDUCT

Article X, Seniority

F. An employee covered by this Agreement shall lose his seniority status and his name shall be removed from the seniority list under the following conditions:

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2. He is discharged for cause

Article XV11, Disciplinary Action

E. If, as a result of any hearing or appeals therefrom, it is found the suspension or discharge was not justified, the employee shall be reinstated without loss of seniority,and made whole for any loss of pay he suffered by reason of his suspension or discharge, and his personnel records shall be corrected and cleared of such charge; or, if a suspension rater than discharge results, the employee shall have that time he has been held out of service credited against his period of suspension. In determining the amount of back wages due an employee who is reinstated as a result of the procedures outlined in this Agreement, the maximum liability of the Employer shall be limited to the amount of normal wages he would have earned in the service of the Employer had he not been discharged or suspended.

Article XXI General And Miscellaneous

K. The right to hire; promote; discharge or discipline for cause, and to maintain discipline and efficiency of employees is the sole responsibility of the Employer except that employees will not be discriminated against because of Union membership or activities. In addition, it is understood and agreed that the routes to be flown; the equipment to be used; the location of plants, hangars, facilities, stations and offices; the scheduling of airplanes; the scheduling of overhaul, repair and servicing of equipment; the methods to be followed in the overhaul, repair and servicing of airplanes are the sole and exclusive function and responsibility of the Employer.

Rules

Violations of one or more of the following Rules will result in discharge unless mitigating factors are considered applicable.

1. Unauthorized actual or attempted:
a) possession
b) removal
c) purposeful misplacement of any Employer property including records or confidential or private information, or property of employee or customers

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4. Furnishing false information concerning absence from work.

EMPLOYER'S POSITION

The Employer believes that the matter before the arbitrator involves trust and honesty. The Employer trusts its employees and when that trust is irreparably breached, discharge becomes the only appropriate penalty. The Employee irreparably breached the Employer's trust when she not only stole a large quantity of Employer property, but she admittedly falsified her reasons for a DAT. In addition, the Employee provided false documentation to support the fabrication. As a result of this broken trust, the Employer took the only action appropriate and terminated the Employee's employment. The Employee acknowledged that she violated Rules of Conduct No's One and Four, offenses that are just cause for discharge.

UNION'S POSITION

The Union does not dispute the claims set forth by the Employer. The Employee acknowledged that she had violated Rules of Conduct No's One and Four. This the Employee readily admits. However, the Union contends that sufficient mitigating factors are present to have the discharged reduced to a lesser penalty.

DISCUSSION AND OPINION

The matter in the instant grievance is unique to the extent that the Employee readily admits to her culpability. This blanket admission of guilt relieves this arbitrator of the burden of reviewing all the pertinent evidence that gave rise to her discharge. The only matter that befalls this arbitrator is to determine whether sufficient mitigating circumstance exist to supplant the judgment of the Employer.

The discharge of an employee and its ensuing ramification, the loss of employment, a worker's sole source of income, imposes upon an arbitrator, the heavy burden to judiciously ascertain whether the penalty imposed is justly warranted. It is further incumbent upon an arbitrator, who is honed by the concept of fair play, that he be guided by what a reasonable person, cognizant of what is aptly described as the law of the shop, would do under similar circumstances.

The discharge of an employee constitutes the extreme penalty one can impose for improper conduct of an employee. A discharge is not merely a punishment for such misconduct of that employee, but serves as a deterrent to others by dramatizing the extent the Employer punishes such unacceptable behavior. In other instances discipline is applied to correct the misconduct with the expectation the errant employee will become a more responsible and productive employee.

Clearly the Employer has a right to adopt reasonable rules of conduct and to communicate those rules to all. It is necessary to give guidance to all so each may be aware of what is expected of each of them. And finally, if proven, the Employer has a right to terminate the employment relationship of those who knowingly violate such reasonable rules.

The Union's attempted portrayal of mitigating circumstance relied upon the presentation of an array of co-workers who tried to show the Employee as a likable, conscientious and competent. Each witness was complementary and supportive and each portrayed her most favorably. Unfortunately, the matter of her involvement in the theft and falsification issue was not adequately addressed by this array of witnesses. Each witness endeavored to convey the impression storing of Employer property in lockers was not uncommon, and that each at various times possessed Employer property in their assigned lockers. However, the witness's were meticulous and exact to point out that the Employer property alluded to by each witness

consisted of special tools and scarce spare parts. In that their intent for the hoarding of spare parts and tools were for the sole purpose of expediting repairs. The glaring distinction between these two scenarios is that one was driven for personal gain, the other, the belief of better serving the Employer.

I am not persuaded by the Employee's claim that a hostile environment was created by her supervisor, Person 2. The Employee was unable to provide a cogent explanation as to what ingredients were present that caused her to perceive that Person 2's manner contributed to a hostile environment. The Employee merely rambled on that his presence and manner made her uneasy. The Employee's asserted that she was of the belief that Person 2 did not like her. Conversely, the Employee later acknowledged that she was having a dependability issue, and that Person 2 did her a favor by allowing her to utilize a DAT in order to avoid a chargeable absence. It is possible to suppose the claim of hostile environment stems from the Employee's inability to attain a acceptable dependable ranking. The Employee had testified that she and Person 1, her immediate supervisor, enjoyed an amiable relationship. It is well to note that it was Person 1, the supervisor, who from the onset claimed that he had denied the Employee's requested DAT. A claim that initiated the investigation that ultimately gave rise to her discharge. I am perplexed to ascertain the correlation between an alleged hostile environment, and one's compulsion to falsify a time card and steal from one's employer.

Arbitrators are reluctant to supplant their judgment in matters of discipline, unless there are mitigating or extenuating circumstances. In the instant grievance I find no such circumstance. If seniority is the sole basis that constitutes a mitigating circumstance, then any employee who had been employed for an extended period would be shielded from discharge. However, this is not always the case; seniority is consideration and may at times influence a lesser penalty. As in each

instance, the gravity of the offense must have primary consideration. In the instant grievance, the Employee violated two Rules of Conduct affecting gross misconduct. Each offense, standing alone, typically, warrants termination.

The demeanor of the Employee conveyed to this arbitrator that the Employee does not fathom the gravity of her misconduct.

To characterize herself as a pack rat to justify the theft of Employer property is farcical and borders on being ludicrous. Her falsehoods appear to be a chronic malady, a malady that may not be curable. It is interesting to note at a prior arbitration hearings a character fault was noted by the then arbitrator that continues to this date. Arbitrator Eischen had observed that the Employee gave "frequent changing versions, which are internally inconsistent, self-contradictory and implausible". Simply put a characteristic commonly referred to as a "shifting defense". Unfortunately for the Employee, this is neither a baseball game that allows three strikes before you are out. Or a football game that permits four plays to achieve a down. The Employee's character fault causes her discharge, and her amoral behavior was her undoing.

The Union recognized the Employer's right to discipline the Employee for her transgressions. The matter to be determined is whether the discipline imposed was too severe. Citing from the Employee's prior hearing, "Arbitrators do not have authority to grant clemency or "mercy" where penalty assessed by management cannot be found too severe."

The Employee, a former shop steward, should have known better. She had proper and sufficient notice that, if by chance she chose to violate the Employer's Rules of Conduct, she did it at her own risk.

In consideration of all the facts, evidence and testimony adduced at the hearing, I find:

AWARD

The discipline imposed on the Employee by the Employer for violating Rules One and Four was proper.

The grievance is denied.