

Glendon #4

ARBITRATION

EMPLOYER, INC.

-and

EMPLOYEE

Termination Appeal

SUBJECT

Appeal of termination for violation of found property policy.

ISSUES

Was Employee terminated for just cause?

CHRONOLOGY

Termination: October 21, 2002

Appeal filed: October 21, 2002

Arbitration hearing: April 30, 2003

Hearing transcript received: May 21, 2003

Award issued: June 20, 2003

SUMMARY OF FINDINGS

Appellant violated the found property policy, which was established by the Employer as just cause for termination, and her termination was based on that violation, so it must be upheld and her appeal is denied.

BACKGROUND

Appellant Employee worked for the Employer twice, the first time starting in 1990, the second time from September 23, 1997 until October 21, 2002, when she was terminated for alleged violation of the Employer's "found property" policy.

As it appears among policy statements in the Employer's Team Members' Handbook, that policy reads as follows:

Found Property

There may be situations when merchandise, money, refund slips, credit cards, identification documents, or property is accidentally left by someone. It is your responsibility to turn it in if you find it. Trust is an integral part of our relationship with each other and our guests!

Your first assistant will tell you where lost and found items should be reported and/or turned in at your unit.

The policy also has been expressed in notices that have been issued periodically and are maintained in notebooks at each unit. The Employer placed two such notices in evidence, dated 12-24-85 and 021996. They are identical (with slight terminology changes noted in parentheses below) and read as follows:

NOTICE

TO: ALL TEAM MEMBERS

REGARDING: FOUND PROPERTY

As an Employer associate (team member), you are expected to be completely honest with the Employer, with the public, with fellow associates (team members) and with yourself Today's business is based almost completely on faith, faith that the other person is telling the truth. Violations of that faith have no place in the business world.

There may be situations when merchandise, money (cash, bankcards, checks, refund slips, etc.), or property that belongs to another person, is left by a guest or other team member Because people generally return for these types of items, it is your responsibility to turn in any found item to a place specifically designated at your unit.

Persons violating this important procedure will be discharged (terminated).

We hope this will prevent any misunderstanding from occurring in the future.

At your store/unit any found items must be turned it at _____

On her first day of each period of employment with the Employer appellant signed a receipt acknowledging that she had been given the handbook and had "read and understand all of the notices in the Notices Notebook." She testified she had signed those receipts and was aware of policies in the notebook, but gave several versions of the state of her knowledge concerning the found property policy. She variously said she did not know about it at all, had known about it when she worked in a warehouse but not in a store, and knew about it and had complied with it by turning in found items but did not know it applied to items such as lottery tickets.

It is undisputed that on October 15, 2002, as she was walked through the produce department in Store No. 123 where she worked, she picked some papers up from the floor and kept one of them, a "Mega Millions" lottery ticket for that day's drawing which had been purchased for one dollar on that date. She put it in her pocket and when she came to work the next morning she presented it at the lottery counter in the store, learned it was a three dollar winner, cashed it in for three dollars, and remarked to the clerk at the counter that she had found it in the store the preceding day.

Familiar with the found property policy herself and curious about this apparent violation of it, the lottery clerk mentioned that incident to a loss prevention coordinator, who assigned a store detective to investigate. The detective interviewed appellant on October 16 and grievant admitted what she had done but said she kept the lottery ticket because she "thought it was trash." The detective wrote a report of the interview which included an admission by appellant that she had "deprived the rightful owner of the lottery ticket." The detective said appellant read

the statement and agreed with its contents but would not sign it. In arbitration, appellant again said she kept the ticket because she "thought it was trash" but gave no coherent explanation for turning it in for the winnings associated with it the next morning. She claimed that when she was questioned she immediately turned over the three dollars, but the detective said that did not occur until the end of the interview, after the store director joined them and suspended appellant pending further investigation and final disposition, which he told her would occur within seven to ten days.

The store director testified that appellant talked to him privately after the interview and asked if she should sign the detective's report. He said he told her he could not permit her to do so belatedly, to avoid an appearance of coercion. He said she then asked if ten days wasn't too much of a penalty for three dollars and he told her ten days might not be the end of it, because she could be terminated. He said she replied, "You're kidding, over three dollars?" The store director testified that after consultation with OMP Relations he decided she must be terminated, in accordance with the stated terms of the policy and for the sake of consistency, because every other employee caught violating it had been terminated.

Appellant filled out and filed a termination appeal the same day she was terminated. In it, among other things, she wrote:

On Tuesday, Oct. 15 on my way to lunch, working the afternoon shift I happen to pick up several pieces of paper in the produce dept on the floor. I thought it was trash until I unfolded the papers and there was a lottery ticket dated the same date so I decided to put it in my pocket not thinking nothing about it. The next morning I had the early shift so I went to the lottery desk to have the ticket checked before starting my day. The girl (Person 1) said you won \$3.00 and I said that pretty good because I had found that ticket on the floor the day before.

My point is I don't remember getting a hand book with all the rules & regulations and also I never had orientation at the store! The only question everyone keeps asking is what's the difference in money and a lottery ticket? To me a lottery ticket is paper and I pick it up thinking it was trash from the floor I did give back the \$3.00 to dept 10 on that

day and told them I'm not hard up for \$3.001 If I would have know about the rules maybe this nightmare wouldn't had happen. It was an honest mistake on my part.

The Employer argues that whether she actually knew about the found property policy or not, it made reasonable efforts to communicate it to her and on other occasions she had complied with it by turning in other found items (as she admitted). It also argues her protestation of innocent and honest mistake is not credible, because she did not merely put the ticket in her pocket and forget it, but turned it in and claimed the winnings associated with it, so her termination in accordance with the stated terms of the policy should be upheld.

In her own closing argument, appellant again asserted that she was guilty of only an "honest mistake," which she attempted to correct by turning over the money as soon as she was questioned about it and for which termination is much too harsh a penalty. She argues that in light of her seven-plus years of service with the Employer she only should have got a warning and should be reinstated with full back pay.

DISCUSSION AND FINDINGS

The only thing honest about appellant's mistake was her spontaneous remark to the lottery clerk that winning three dollars in the lottery was "pretty good" because she found the ticket on the floor. Her repeated assertion that she regarded the ticket as just "trash" or "paper" certainly was not honest. Perhaps she thought the papers she picked up off the produce department floor were trash until she got a close look at them. But as soon as she did, she knew full well the lottery ticket was not trash but a chance to win "millions" in that day's lottery drawing. With that knowledge she put the ticket in her pocket, took it home, presented it next morning to see if it was worth anything, accepted the money it turned out to be worth, and even remarked about her good fortune in winning the money with somebody else's ticket.

Even if the Employer had no policy on that subject, that was dishonesty, plain and simple, serious misconduct for any employee of any employer, and grounds for equally serious disciplinary action. In this employment relationship, however, there was a policy specifically addressing such matters, and it required that any found property be turned in.

Grievant's protestation that she was not fully aware of that policy was not honest or convincing either. Whether or not she ever took the time and trouble to read that or any other Employer policy, such policies were provided for her to read and on other occasions she had complied with this particular policy by turning in other found property. Thus there can be no question that the found property policy was fully applicable to her and to this situation.

That policy clearly states that it is the employee's "responsibility to turn in any found item to a place specifically designated at your unit," and that "persons violating this important procedure will be terminated."

The Termination Appeal Procedure, in defining the arbitrator's authority, states that if "the arbitrator finds that the team member violated any lawful Employer rule, policy or procedure established by the Employer 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."

Appellant clearly violated the found property policy. The policy specifies that violation will result in termination. Appellant was terminated for that violation. Therefore, even if I were inclined to agree with appellant that a mere warning would be more appropriate discipline for dishonestly claiming only three dollars in lottery winnings (which I do not), her termination would have to be upheld.

AWARD

The termination appeal of Employee is denied.

Paul E. Glendon,

Arbitrator

June 20, 2003