

Grissom #3

ARBITRATION

TERMINATION APPEAL PROCEDURE

IN THE MATTER OF THE ARBITRATION BETWEEN:

EMPLOYEE, COMPLAINANT

AND

EMPLOYER, RESPONDENT

David W. Grissom

Arbitrator

ARBITRATION OPINION AND AWARD

This Arbitration, conducted under Employer's Termination Appeal Procedure, took place on August 3, 2000 at HOTEL in City A, Michigan. Pursuant to the receipt of the official Transcript of these proceedings, this Arbitration Opinion and Award is rendered.

FACTS

This Appeal, under Employer's Termination Appeal Procedure, arises from the discharge of Ms. Employee who was notified of her separation from employment on February 23, 2000 by Senior OMP Specialist Person 1 (Joint Exhibit #1). The termination of Ms. Employee, hired on January 6, 1997, was effectuated on the grounds that she refused to report to work at the City A Store on the scheduled work days of Sunday, February 6 to Saturday, February 12 and as such, became a "no call/no show" for three (3) consecutive days under Employer policy. This is a dischargeable offense. The "no call/no show" policy is embodied in the Retail Notices Notebook pursuant to which all Team Members are notified in the following terms (Employer Exhibit #2):

NOTICE

TO: ALL TEAM MEMBERS

REGARDING: NO CALL/NO SHOW

WE RELY ON OUR TEAM MEMBERS TO WORK THE HOURS THEY ARE SCHEDULED. THIS HELPS TO DEVELOP A SMOOTH AND EFFICIENT WORK PLACE WHICH IS BENEFICIAL TO OUR GUESTS AND TEAM MEMBERS.

WE RECOGNIZE THAT ON OCCASION YOU WILL NOT BE ABLE T WORK YOUR SCHEDULED HOURS, BUT WHEN THIS OCCURS, YOU MUST NOTIFY YOUR FIRST ASSISTANT OR PERSON DESIGNATED BY YOUR FIRST ASSISTANT. THIS SHOULD BE DONE AT LEAST ONE HOUR PRIOR TO YOUR SCHEDULED STARTING TIME.

FAILURE TO WORK YOUR SCHEDULED HOURS WITHOUT NOTIFYING YOUR FIRST ASSISTANT OR THE PERSON DESIGNATED BY YOUR FIRST ASSISTANT DURING YOUR SCHEDULED TIME WILL BE CONSIDERED A NO CALL/NO SHOW.

TEAM MEMBERS WHO FAIL TO CALL OR SHOW UP FOR THEIR SCHEDULED HOURS WILL RECEIVE DISCIPLINARY TIME OFF WORK WITHOUT PAY UP TO AND INCLUDING DISCHARGE. IN ADDITION, A TEAM MEMBER WHO IS A NO CALL/NO SHOW FOR THREE CONSECUTIVE SCHEDULED SHIFTS WILL HAVE THEIR EMPLOYMENT TERMINATED FOR REASON.

WE HOPE THIS NOTICE WILL PREVENT ANY MISUNDERSTANDINGS IN THE FUTURE. IF YOU HAVE ANY QUESTIONS PLEASE CONTACT YOUR FIRST ASSISTANT.

EMPLOYER
(Emphasis added)

The broader and included basis for the Employer's termination of Ms. Employee was that she simply refused to report to work after being warned of the consequences of her actions. Ms. Employee appealed her discharge on March 3, 2000, effectively alleging that her termination was without just cause. Complainant Employee requests that she be reinstated and made whole (Joint Exhibit #2). On March 27, 2000, the Employer responded as follows:

The termination of your employment was done with just cause for failure to report to work. Our investigation further found no evidence of discrimination or retaliation.

Person 2 /s/	3-23-00
Associate Services Representative	Date

In advancing the position that the termination was appropriately in accord with Employer policy and was for just cause, Senior OMP Representative Person 1 testified as follows: On February 7, 2000, Ms. Employee called him to state that she had been shorted a days pay and that she could not make her house payment. She seemed to be quite upset and told him that she did not intend to report to her job at the City A Store. It is not in dispute that at the time, Ms. Employee was an "unassigned" Team Leader informally working in the Stationery/Small Appliance Department. Mr. Person 1 testified further that during the February 7, 2000 call from Ms. Employee, she advised that she had received a transfer from the City B Store in the City C Metropolitan area to the City A Store (February 1999); had refused the assignment but had later in October 1999 accepted the position as an "unassigned" Team Leader under the supervision of Ms. Person 3. She complained that Ms. Person 3 had called her an "over-glorified Team Leader." Mr. Person 1 testified that Ms. Employee also related other complaints to him including a contention that City A Store Manager Person 4 had "yelled" at all Team Leaders who smoked for doing just that (TR. 17-20).

Senior OMP Specialist Person 1 additionally testified as follows: During the February 7, 2000 phone conversation, Ms. Employee advised that she wanted to meet personally with him right away. On such short notice, he told her that he was currently occupied with business but offered her another OMP Specialist. She declined. He also informed Ms. Employee that he would try to get her pay shortage taken care of as soon as possible after checking into it but that there was no way he could excuse her from work in the meantime. He told Ms. Employee several

times that she must report for work; that if she did not, she was subject to termination. From her allegations on the phone, he determined that her issues did not involve health, safety or security matters. He agreed to meet with Ms. Employee on February 14, 2000. Again, at the dose of the February 7 phone discussion, he stressed that she must report to work and that her refusal was grounds for discharge. At the end of the conversation, Ms. Employee insisted that she would not go to work (TR. 21-24).

Ms. Employee was scheduled to work from February 6 to February 12, 2000. It is undisputed that she did not report for work on any of those six (6) days nor did she call in to tell Store Director Person 4 that she would not be there. Mr. Person 1 testified that he did meet with Ms. Employee on February 14 at the RESTAURANT A across the street from the City A Store at her request. Mr. Person 1 testified that at this meeting, he advised Ms. Employee that she was placing him in a "tough position" by her refusal to report to work and again repeated that this was grounds for termination. Thereupon, Ms. Employee presented Mr. Person 1 with an undated letter to the attention of Mr. Person 5 summarizing her complaints (Joint Exhibit #3). Several of the alleged incidents had purportedly occurred almost a year earlier when Ms. Employee had been working in the City B Store and had applied for a transfer to the Deli Department at the City A Store. It has been established that she was awarded the transfer but later declined it because she was having difficulty selling her home in City D, Michigan. Ms. Employee had bid for the Deli Department position at the City A Store in October 1998. In terms of sequence, Ms. Employee later in the year decided to accept the job and on October 14, 1999, assumed the "unassigned" Team Leader position at the City A Store and reported for work on that date. By that time, she had sold her house downstate and purchased a home in City E, Michigan, about twenty (20) miles south of City A. Mr. Person 1 testified that on February 14, 2000, he told Ms.

Employee that he would investigate her complaints but again emphatically emphasized that her refusal to report to work could mean her discharge. She replied that she absolutely would not report back to work (TR. 26-34).

Mr. Person 1 testified further as follows: After the February 14 meeting, he called City A Store Director Person 4 to advise that Ms. Employee' paycheck had been short which he was unaware of and he also informed him that Ms. Employee was refusing to report to work. Mr. Person 1 further stated that just after the February 7 call from Ms. Employee, he had talked to District Director Person 6 to apprise him of the situation. Mr. Person 6 had been instrumental in arranging for Ms. Employee' transfer to the City A Store as an "unassigned" Team Leader after she told him in a City F interview, that she was "commuting" from City E to City B and back (weekends). Ergo, he created the job for her. Mr. Person 1 testified that in reviewing the letter, he confirmed his initial conclusion that Ms. Employee' complaints did not involve health or safety issues which might justify her refusal to work; that her allegations focused on the check shortage, Mr. Person 4's insistence that she use her "indemnity days" rather than Personal days (vacation) when she called in sick; also a remark made by Team Leader Person 3 about her job performance and an alleged statement made by a male supervisor at a "Lines" meeting at HOTEL which she considered to constitute sexual harassment. It is not in dispute that this statement was allegedly made in December 1998. Mr. Person 1 went on to testify regarding two (2) extensions Ms. Employee was given by the Employer to report to the City A Store in February/March 1999; then her decision not to take the job (TR. 39-50).

Senior OMP Specialist Person 1 testified further that his investigation into Ms. Employee' concerns found that in December 1998, a Deli Supervisor had made a comment at a meeting about female employees under his supervision marking their calendars as to when their

menstrual cycles started. Recall however, that Ms. Employee was not working in that Department; she thereafter worked in Stationery/Small Appliances at the City A Store. Mr. Person 1 also stated that he found out that Ms. Employee had accepted a full-time position as a supervisor at the Humane Society in the City A area. Consequently, she had two (2) full-time positions while working at the City A Store which created scheduling conflicts; that Store Director Person 4 had told her in early 2000 that Employer needed to be her main job and that he expected no scheduling problems. In short, her position at Employer had to take priority. In this, Mr. Person 1 testified that the Employer does not ordinarily allow Team Leaders to have two (2) full-time jobs but that an exception was made for Ms. Employee. It was also established through Mr. Person 1' testimony, that Ms. Employee was issued a check for the shortage on February 25, 2000 in the amount of \$93.04 (Joint Exhibit #5) (TR. 51-60).

Mr. Person 1 testified that his investigatory finding was that the ill-advised remark from the Deli Supervisor in December 1998, did not create a hostile work environment, the standard for sexual harassment. Nor did any of Ms. Employee' other complaints. He testified that he verbally notified Ms. Employee of her termination on February 23, 2000 on the grounds that she had flatly refused to report to work for six (6) days running and failed to call in to inform her Store Director of pending absences; that as such, she became a "no call/no show" for three (3) consecutive days in contravention of the policy enunciated in the Retail Notices Handbook (Employer Exhibit #2). As denoted at the outset of this discourse, this provision in pertinent part states as follows:

Team Members who fail to call or show up for their scheduled hours will receive disciplinary time off work without pay up to and including discharge. In addition, a Team Member who is a no call/no show for three consecutive scheduled shifts gill have their employment terminated for reason.

(Emphasis added)

Ms. Employee signed a receipt on January 6, 1997 for the Team Member Handbook and the above referenced Notices Handbook (Employer Exhibit #3). Mr. Person 1 concluded his testimony by stating that he recommended that Ms. Employee be terminated based upon her outright refusal to work notwithstanding his repeated warnings to her that if she did not report to work, she was subject to discharge; that District Director Person 6 agreed with his recommendation and that Ms. Employee was terminated accordingly (TR. 61-75).

Complainant Employee testified on her own behalf as follows: She described the hardship in traveling from City E to the City B Store and back for upwards of six (6) months. She further explained her difficulties in selling her house in City D and her move up to City E in May 1999. Ms. Employee went on to point up the complaints embodied in her letter (Employer Exhibit #3) and recounted the "menstrual cycle" remark made by a Deli Supervisor at a meeting in December 1998. She added that he had also said that "This is this way (marking calendars), I can tell when they're bitches." Ms. Employee further testified that she never wanted to work at the City A Store in the first place and felt that she was singled out, sexually harassed and discriminated against by Team Members, Leaders and the Store Director (TR. 77-93).

Ms. Employee also testified that she had asked Mr. Person 1 for a transfer pending his investigation and that she did not report to work because her shortage in pay was the "last straw." In this, Ms. Employee acknowledged that she did not go to work or call in from February 6 to February 14, 2000. She further admitted that during this period, she was working as a full-time Supervisor at the Humane Society "around" her Employer's schedule. On cross-examination, Ms. Employee was also constrained to acknowledge that she had never filed a Sexual Harassment Complaint and had never reported the December 1998 remark to Store Director Person 4. In the final analysis, Ms. Employee made the admission during her testimony that Mr. Person 1 had

warned her that if she did not report to work, she would be terminated but that notwithstanding, she did not do so (TR. 94-107).

This concluded the presentations of the parties.

ISSUE

Whether the termination of Complainant Employee was consistent with Employer policy and for just cause?

DISCUSSION

On the evidence, it is determined that Complainant Employee was terminated on or about February 23, 2000 in accordance with Employer policy and for just cause. This finding is predicated upon the undisputed fact that Ms. Employee refused to report to work and did not call in to the City A Store for absence notification purposes on her scheduled workdays of Sunday, February 6 through Saturday, February 12, 2000. Ms. Employee' actions constituted an absolute violation of Employer's "no call/no show" policy which specifies that an employee who fails to report to work or call in for three (3) consecutive days will be discharged (Employer Exhibit #2). It has further been established in these proceedings that beginning with Ms. Employee' February 7, 2000 call to Senior OMP Specialist Person 1, then forward to their meeting on February 14, Ms. Employee was repeatedly warned by Mr. Person 1 that if she refused to report to work, she faced termination. Notwithstanding, Ms. Employee insisted that she would not go to her job and she did not do so. Therefore, Ms. Employee is deemed here to have intentionally abandoned her employment position as a Employer's Team Leader at the City A Store.

The evidence further supports the conclusion that all of Ms. Employee' concerns initially brought to Mr. Person 1's attention on February 7, 2000 and later in an undated letter on February 14, were readily resolvable and/or relatively moderate complaints of personal

dissatisfaction except to a degree, the untoward comment made by the Deli Supervisor about "menstrual periods." But that crude remark was made in December 1998, some fourteen (14) months prior to her termination and Ms. Employee never filed a Sexual Harassment Complaint. Further, consistent with Mr. Person 1's investigatory findings, that statement standing alone, did not create a hostile working environment in the Deli Department which in any event, was not Ms. Employee' assigned work area. The upshot is that none of Ms. Employee' concerns involved matters of safety or health and therefore no justification whatsoever existed for her refusal to report to work for six (6) days running. In any event, her responsibility was to "work now and grieve later."

Complainant Employee has advised that the shortage in her pay check (\$93.04) was the "last straw" in a series of personally impinging incidents at work; that therefore she could not and did not report to work. But frankly, this offering as a reason for not working for an entire week, makes no sense unless he had decided to simply quit her job. Given Ms. Employee's contact with Senior OMP Specialist Person 1 on February 7, 2000, some other reason most likely portends. Recall that Ms. Employee was holding down a full-time job as a Supervisor at the Humane Society while working full-time at Employer's City A Store. In this, she was constrained to acknowledge that she was working at the Humane Society between February 6 and 12, 2000. She has also admitted that she was working "around" her Employer's schedule and sometimes had scheduling conflicts. Is that what occurred to keep her from reporting to her job at the City A Store under the pretense that she faced insurmountable problems on the job that kept her from going to work? While this query constitutes informed speculation, the evidence strongly suggests that Ms. Employee had another agenda. In the final analysis, the answer

remains within the exclusive knowledge of Complainant Employee but the fact remains that she did not report to her job or call in for six (6) consecutive days.

Pursuant to Ms. Employee' failure and refusal to report to work or call in from February 6 to February 12, 2000, it is determined that she became a "no call/no show" under Employer policy and was terminated accordingly. The discharge was for just cause. No evidence of sexual harassment or discrimination is found. Ms. Employee' Appeal is denied and her claims are dismissed.

Ms. Employee' Appeal is denied and her claims are dismissed.

David W. Grissom

Arbitrator

August 31, 2000