

Grissom #8

VOLUNTARY LABOR ARBITRATION
TERMINATION APPEAL PROCEDURE

IN THE MATTER OF THE ARBITRATION BETWEEN:

EMPLOYER

AND

EMPLOYEE

GR: Termination Effective September 3, 1997

David W. Grissom

Arbitrator

ARBITRATION OPINION AND AWARD

This Arbitration took place under Employer, Inc.'s Termination Appeal Procedure on May 28, 1998 at the HOTEL A in City A, Michigan and on June 15, 1998 at the HOTEL B in City B, Michigan respectively. Pursuant to the receipt of the official Transcript of these proceedings and Post-Hearing Briefs, this Arbitration Opinion and Award is rendered.

FACTS

On September 6, 1997, Mr. Employee lodged the instant Appeal under Employer's Termination Appeal Procedure contesting his termination of employment effective September 3, 1997 for an alleged violation of the Employer's Honesty Policy (see Appeal Procedure — Joint Exhibit #1). The fundamental contention in Appellant Employee's Appeal is that his discharge was not for just cause and should therefore be overturned. Mr. Employee requests that he be reinstated to his job and made whole (Joint Exhibit #3).

At the time of his termination, Mr. Employee was a Team Leader in the Men's/Boy's Shoe Department at Store No. 28 in City A, Michigan. Mr. Employee was hired on January 15, 1990 at Store No. 44 in City A in the Building Services Department. Thereafter in November 1994, he was transferred to the Hard Lines Department at Store No. 105 in City C and in March 1995, was promoted to Hand Lines Manager at Store No. 57 in City D, Michigan. On April 14, 1997, Mr. Employee was assigned to Store No. 28 in City A where he worked in the above cited Department until his termination effective September 3, 1997.

The discharge of Mr. Employee was predicated upon Employer charges that on the night of August 23, 1997, two (2) friends were involved in a fraudulent Layaway scheme in the Men's/Boy's Shoe Department at Store No. 28 which Mr. Employee became aware of but purposefully declined to report to the Employer; that during the subsequent investigation into the untoward Layaway incident, he was untruthful to Management representatives until ultimately, he admitted his dishonesty several days later. Employer, Inc.'s Honesty Policy is set forth below in its entirety (Joint Exhibit #4).

NOTICE

TO: ALL TEAM MEMBERS

REGARDING: HONESTY

IN ORDER TO BE A STRONG AND HEALTHY EMPLOYER IN TODAY'S BUSINESS WORLD, WE DEPEND ON YOU TO BE TOTALLY HONEST. THE EMPLOYER BELIEVES STRONGLY THAT THERE CAN BE NO EXCEPTION TO THIS RULE IN LIGHT OF THE NATURE OF OUR OPERATION WHICH DEALS WITH SUCH A WIDE VARIETY OF MERCHANDISE. THIS LONGSTANDING CONDITION OF EMPLOYMENT HAS BEEN AND MUST CONTINUE TO BE APPLIED AND ENFORCED THROUGHOUT THE EMPLOYER.

JUST AS YOU EXPECT THE EMPLOYER TO BE HONEST WITH YOU AT ALL TIMES, LIKEWISE WE EXPECT YOU TO BE TOTALLY HONEST AT ALL TIMES. THIS TOTAL COMMITMENT IS A MUST.

BASED ON THIS, WE REQUIRE YOU TO BE TOTALLY HONEST WITH GUESTS, THE EMPLOYER, FELLOW TEAM MEMBERS, VENDORS, SUPPLIERS, ETC. TEAM MEMBERS INVOLVED IN THEFT OR UNAUTHORIZED POSSESSION OF PROPERTY FROM ANY OF THESE SOURCES WILL BE TERMINATED.

DISHONEST TEAM MEMBERS HURT EVERYONE. THEY CAN JEOPARDIZE EVERYONE'S JOB SECURITY THROUGH THEIR ACTIONS. IF YOU SHOULD BECOME AWARE OF ANYONE WHO IS DISHONEST, IT IS YOUR RESPONSIBILITY TO NOTIFY A FIRST ASSISTANT OR LOSS PREVENTION. FAILURE TO DO THIS WILL RESULT IN TERMINATION OF EMPLOYMENT. WE HOPE THAT THIS RESTATEMENT PREVENTS ANY MISUNDERSTANDING FROM OCCURRING IN THE FUTURE.

IF YOU HAVE ANY QUESTIONS PLEASE CONTACT YOUR FIRST ASSISTANT.

EMPLOYER.

The above referenced Honesty Notice constitutes a constructive part of the provision entitled "Honesty" at page 48 of the Associate Handbook also provided to all Team Members, to wit (Joint Exhibit #4):

Honesty

In order to be a strong and healthy Employer, we depend on you to be totally honest. The Employer believes strongly that there can be no exception to this rule in light of the nature of our operation that deals with such a wide variety of merchandise. Based on this, we require you to be totally honest with guests, the Employer, fellow Employer people, vendors, suppliers etc.

Dishonest people hurt everyone. They can jeopardize everyone's job security through their actions. If you should become aware of anyone who is dishonest, it is your responsibility to notify a supervisor or Loss Prevention.

People who are not totally honest with the Employer, or have knowledge of other individuals' dishonesty and fail to report this information, will be subject to discipline up to and including termination.

It is not in dispute that Mr. Employee was familiar with the Employer's Honesty Policy and rendered such an acknowledgement during the course of this Arbitration Hearing. In this

connection, Mr. Employee became the recipient of all Employer Policies and Procedures upon his hire on January 15, 1990 (Employer Exhibit #5).

The Employer's position that the discharge of Mr. Employee was for just cause in the matter of the fraudulent Layaway incident of August 23, 1997 and surrounding events, was advanced via the testimony of Layaway Retail Clerk Person 1, Store No. 28 Director Person 2, Corporate Loss Prevention Superintendent Person 3 and Senior OMP Relations Specialist Person 4 as described below.

According to the testimony of Layaway Clerk Person 1, two (2) young men approached the Layaway counter at about 10:00 P.M. on August 23, 1997 with two (2) shopping carts full of tennis shoes. This transaction was processed during which the I.D. of one (1) of the men was secured including a phone number. The total amount of the Layaway came to \$1,181.55 with one (1) dollar down (deposit). In all, fifty-two (52) pairs of Spalding tennis shoes were placed in Layaway in the name of Person 5 (see receipt — Employer Exhibit #1). Ms. Person 1 further testified that it was apparent to her that the two (2) men were intoxicated and after she and Associate "Person 8" boxed the shoes for storage, she called the Security Department to report what she considered to be an unusual transaction carried forward by customers who had been drinking (TR. 29-42).

Shoe Department Clerk Person 6 testified as follows: On August 23, 1997, she was working the Third Shift, 10:00 P.M. to 6:30 A.M. Mr. Employee was her immediate supervisor but was off that night. As she was making her way to the Shoe Department, two (2) men walked past her pulling a shopping car full of tennis shoes towards the Layaway counter. Ms. Person 6 further stated that a six (6) week sales contest involving all employees in the Shoe Department including the Department Manager, had been going on. There would be a cash prize for the

Associate who sold the most shoes during that period and this included Layaway purchases (TR. 44-47).

Ms. Person 6 went on to testify as follows: As she was proceeding to the center aisle, she was paged by Mr. Employee who was inside the store even though he was not working that night. Thereupon she told him about the two (2) men who were putting the tennis shoes in Layaway. Additionally, she joked with Mr. Employee, stating that she hoped he did not have anything to do with the transaction and Mr. Employee assured her that this was not the case. Later, Security called her to inquire about any unusual occurrences whereupon she recounted her observations of the two (2) young men and her subsequent conversation with Mr. Employee (TR. 48-57).

Next, Store No. 28 Director Person 2 testified on behalf of the Employer, to wit: When he came to work on Monday, August 25, 1997, he was told about the incident. Considering that the contest was still going on and Mr. Employee had apparently been seen by store detectives with at least one (1) of the men, suspicions were raised in Mr. Person 2's mind as to whether the Layaway was legitimate and above board. Mr. Person 2 further described the "Back to School Continuity Contest" earlier referenced, denoting that the first prize was \$250.00 and that Layaway purchases of Spalding tennis shoes counted towards the total sales of merchandise credited to any eligible employee (Employer Exhibit #2) (TR. 59-64)

On the afternoon of August 25, 1997, Store Director Person 2 interviewed Mr. Employee in the presence of his immediate supervisor and the Loss Prevention Team Leader. Initially, Mr. Person 2 addressed the Honesty Policy and Mr. Employee was told to be certain to adhere to its requirements during the interview. Mr. Person 2 further advised Mr. Employee that failure on his part to disclose any knowledge of a "Guest's" dishonesty would also constitute a violation of the

Honesty Policy. Mr. Person 2 testified that he then asked Mr. Employee specific questions about the Layaway incident. His answers were as follows: He knew nothing about the Layaway transaction but acknowledged that he had been in the store that night (August 23, 1997). Yes, he was with two (2) friends, "Person 2 and Person 4", who he described as young white males. Mr. Employee further admitted that after leaving the store, all three (3) of them proceeded to one of their homes where they played cards and drank beer until about 4:00 A.M. Asked whether he had discussed the shoe contest with the two (2) men, Mr. Employee answered that "might have" but insisted that at no time after the Layaway incident, did he learn of that transaction (TR. 65-76).

During the course of his testimony, Director Person 2 indicated that Loss Prevention had discovered that the man who had conducted the Layaway transaction had given a false name and phone number. This was further evidence of fraud. Mr. Person 2 also testified that at the conclusion of the August 25, 1997 interview, he advised Mr. Employee to be certain to report anything he remembered about the Layaway incident and emphasized again that he must be honest (TR. 77-79).

Subsequent to the above described interview, Store Director Person 2 informed Senior OMP Relations Specialist Person 4 that he did not believe that Mr. Employee was being forthright and honest — especially in light of a now existing video tape showing the "Guests" with Mr. Employee. As such, Mr. Person 2 conducted a second interview of Mr. Employee on Tuesday, August 26, 1997. According to the testimony of Mr. Person 2, Mr. Employee again denied knowing anything about the Layaway incident even though he verified that the pictures shown to him by Mr. Person 2 depicted him (Employee) and the "Guests" together in the store on the night of August 23, 1997. It is not in dispute that shortly, Loss Prevention personnel supplied Director Person 2 with another picture of Mr. Employee leaving the store with one (1) of the

suspects, an event which was corroborated by Greeter Person 7 (Employer Exhibit #3) (TR. 81-94).

Mr. Person 2 went on to testify as follows: During the second interview, Mr. Employee reconfirmed his original denial that is he again stated that he knew nothing about the Layaway incident. This notwithstanding the fact that he and the "Guests" had played cards and drank beer shortly thereafter. At the conclusion of this interview, Mr. Person 2 reminded Mr. Employee about the necessity of being honest in the entire matter and that the withholding of material information constituted a dischargeable offense. Mr. Person 4 was then provided an update on developments surrounding the fraudulent Layaway (TR. 94-107).

On cross-examination, Mr. Person 2 advised that Mr. Employee had given him a written statement after the second interview disavowing any knowledge of the Layaway transaction (Joint Exhibit #6). Mr. Person 2 concluded his testimony by describing the nature of Mr. Employee's offense in terms of the Honesty Policy. He stated that Mr. Employee had violated the Honesty Policy when he denied knowing anything about the fraudulent Layaway but subsequently admitted to Loss Prevention Superintendent Person 3 that he was told about it immediately after the occurrence but nevertheless, had lied about having no knowledge of the incident (TR. 112-154).

Superintendent of Loss Prevention Person 3 testified as follows: Senior OMP Relations Specialist Person 4 contacted him with respect to the on-going investigation already described. The upshot was that the Employer considered Mr. Employee's responses during his interview to be deceptive in nature and therefore he (Mr. Person 3) was being requested to conduct a personal interview with Mr. Employee. On Friday, August 29, 1997, that interview took place in the

Director's office at Store No. 28. At the outset, Mr. Employee was asked to be straightforward and honest. The salient points in this discussion are set forth below.

Initially, Mr. Employee stated that indeed he was interested in winning the contest. He then advised that he had not known the Layaway had occurred until Store Director Person 2 had questioned him on that subject. When pressed on the issue, Mr. Employee repeated that he knew nothing about the Layaway incident. Mr. Employee then indicated to Mr. Person 3 that he "may" have told his friends about the shoe contest but that if he had known a fraudulent Layaway was planned, he would have reported such an intent to Employer authorities. Thereupon, Mr. Person 3 employed an interview technique which resulted in serious admissions by Mr. Employee. He asked Mr. Employee to repeat after him that he did not wish to talk any further and suggested that he was humiliating himself by being dishonest with a stranger. This generated an impetus on the part of Mr. Employee to continue to talk in more truthful terms (TR. 154-166).

Mr. Person 3 testified further as follows: Momentarily, Mr. Employee asked that they take a break from the interview during which he made a phone call to a person he subsequently identified as his wife. His telephone statements were overheard, to wit: "You know that investigation at Employer with the contest and the Layaway thing? I just wanted you to know that I was dishonest with the Employer when I told them I didn't know about it" (TR. 167). Mr. Person 3 went on to testify that after about ten (10) minutes on the phone, the interview resumed during which Mr. Employee advised him that he owed it to his wife to tell her first. According to Mr. Person 3, Mr. Employee then told him that just after he had gotten into the car with the friend who had made the Layaway transaction, the friend tossed the Layaway receipt at him and said, "Hey, I took care of you" (TR. 169).

Asked by Mr. Person 3 why he had been dishonest with Store Director Person 2, Mr. Employee is purported to have stated that he had "counter punched" that is, lied immediately after being "accused" of being dishonest (TR. 170).

Mr. Person 3 also testified that he requested that Mr. Employee prepare a written statement but that he was non-committal. Mr. Employee said he would think about it. Finally, Mr. Person 3 advised that Mr. Employee asked whether he would be terminated to which he replied that such a decision was not his to make (TR. 170-171). Superintendent Person 3's written report to Mr. Person 4 recounting the above described admissions is in this record as Employer Exhibit #4.

On cross-examination, Mr. Person 3 acknowledged that Mr. Employee ultimately told him that he had no prior knowledge of the fraudulent Layaway but emphasized that throughout most of the interview, Mr. Employee had denied any knowledge of the improper Layaway before, during or after that August 23, 1997 occurrence (TR. 174-180).

Senior OMP Relations Specialist Person 4 testified on the various aspects of the subject investigation, his contacts with Mr. Person 2 and his request that Loss Prevention Superintendent Person 3 interview Mr. Employee. Mr. Person 4 advised further that Ms. Employee had contacted him on August 27, 1997 claiming that Mr. Person 2 had called him a liar and thereupon asked for a meeting. According to Mr. Person 4, when he telephoned Mr. Employee on Saturday, August 30, 1997, Mr. Employee stated that a meeting was unnecessary; that he had been interviewed by Mr. Person 3, had previously been dishonest and had become aware of the fraudulent Layaway shortly after it had occurred. Mr. Person 4 also testified that during the call, Mr. Employee acknowledged his awareness of the Honesty Policy and indicated that Store

Director Person 2 had told him that he would be terminated (see Person 4 notes – (Employer Exhibit #7).

After reviewing the Honesty Policy in conjunction with all pertinent circumstances surrounding the August 23, 1997 Layaway incident and Mr. Employee's actions in connection therewith, Mr. Person 4 recommended termination (TR. 195-264). As denoted at the outset, the discharge of Mr. Employee became effective September 3, 1997 (Employer Exhibit #3).

Mr. Employee elected not to testify in the matter at hand and rested his case after the Employer's presentation without calling any witnesses.

This dispute was brought on for Arbitration under Employer, Inc.'s Termination Appeal Procedure on May 28, 1998.

ISSUES

- 1) Whether Appellant Employee violated Employer's Honesty Policy in connection with the fraudulent Layaway perpetrated on August 23, 1997?
- 2) Was his discharge for just cause?

DISCUSSION

The elements in this case require the undersigned Arbitrator to move directly to the point. Employer, Inc.'s Honesty Policy unequivocally mandates that all employees to be "totally honest" without exception. "This long standing condition of employment has been and must continue to be applied and enforced throughout the Employer." This pronouncement in the opening paragraph of the Employer's Notice to All Team Members Regarding: Honesty, is followed by commensurate statements specifying that Honesty is a total commitment (Joint Exhibit #4). The Notice concludes with the foregoing warning:

If you should become aware of any one who is dishonest, it is your responsibility to notify a First Assistant or Loss Prevention... Failure to do this will result in termination of employment.

Further, under the Honesty provision at page 48 of the Associate Handbook, an admonition on Honesty is set forth as follows (also Joint Exhibit #4):

People who are not totally honest with the Employer or have knowledge of other individuals' dishonesty and fail to report this information, will be subject to discipline up to and including termination.

Pursuant to the above cited tenets of the Honesty Policy, it is abundantly clear that any employee who withholds personal knowledge of dishonesty on the part of others in connection with any facet of store operations and/or fails to disclose such material information, is subject to discharge. It has been squarely established in these Arbitration proceedings that Appellant Employee knew and understood the ramifications of the Honesty Policy.

With this indispensable background information in place, a succinct inquiry into the events surrounding the fraudulent Layaway carried forward on August 23, 1997; is in order. On the evidence, Mr. Employee, in two (2) interviews with Store Director Person 2 conducted on August 25 and 26, 1997, denied knowing anything whatsoever about the incident. These disavowals were repeatedly made notwithstanding Mr. Person 2's definitive requests to Mr. Employee to be honest and forthright regarding the entire matter. Moreover, Mr. Employee was warned that failure to be completely honest would subject him to termination. Mr. Employee however, continued to deny any knowledge of the Layaway transaction.

On August 29, 1997 during most of his interview with Loss Prevention Superintendent Person 3, Mr. Employee continued to claim that he was fully unaware of the untoward actions of his friends. Then in a rather startling turn of events after he had admitted his dishonesty to his

wife in a phone conversation, Mr. Employee acknowledged to Mr. Person 3 that he had lied. The bottom line is that Mr. Employee provided to Mr. Person 3 the following admissions: When he got into the car with his friends shortly after the Layaway transaction, one friend tossed him the Layaway receipt saying, "Hey, I took care of you." Thus, Mr. Employee at least knew about the fraud immediately after it occurred and purposefully declined to so advise Loss Prevention personnel or other Management representatives. This non-disclosure went on for five (5) days during which Mr. Employee was repeatedly untruthful with Store Director Person 2, Loss Prevention Superintendent Person 3 and less directly, to Senior OMP Relations Specialist Person 4. Only when he could no longer contain his dishonesty in the latter stages of the Person 3 interview, did Mr. Employee admit to having been dishonest. These acknowledgements, which went to the very heart of the Employer's Honesty Policy, were also made to Mr. Person 4 on August 30, 1997. After a full review of the circumstances surrounding the Layaway incident and Mr. Employee's actions, termination was recommended and became effective September 3, 1997 (Employer Exhibit #3). The termination is supported by evidence of numerous other employees who have been discharged for violating the Honesty Policy between February 15, 1993 and April 9, 1998 (Employer Exhibit #8).

This is truly an unfortunate chapter in the life of Mr. Employee whose career with Employer, Inc. has been cut short by virtue of his flawed judgment and a failure to recognize that his integrity under the Employer's Honesty Policy was the cornerstone of his employment. In this, it is concluded that Mr. Employee realized that in the face of his admissions, he could offer no substantive defense and therefore declined to testify in his own behalf. As such, the testimony of all Employer witnesses remains unrebutted and the overwhelming evidence that Mr. Employee violated the Honesty Policy stands on this record.

It is determined that Appellant Employee did violate Employer 's Honesty Policy by being untruthful in the matter of the fraudulent Layaway occurrence of August 23, 1997.

The discharge was therefore for just cause and is upheld. The Appeal is denied.

AWARD

The discharge was for just cause and is upheld. The Appeal is denied.

David W. Grissom

Arbitrator

August 25, 1998