

**Grissom #9**

**VOLUNTARY LABOR ARBITRATION**

**TERMINATION APPEAL PROCEDURE**

IN THE MATTER OF THE ARBITRATION BETWEEN:

EMPLOYEE

AND

EMPLOYER,

Termination Appeal 8-5-02

David W. Grissom

Arbitrator

**ARBITRATION OPINION AND AWARD**

This Arbitration, convened under Employer's Termination Appeal Procedure, took place on June 12, 2003 at the HOTEL A in City A, Ohio. The Hearing was concluded on the above noted date. Pursuant to the receipt of the Transcript, this Arbitration Opinion and Award is rendered.

**FACTS**

This Arbitration involves the Appeal of Ms. Employee who was terminated from employment in July 2003 for Insubordination. Ms. Employee, who had been an employee at the STORE A (No. 143) for about six (6) years, was a Greeter assigned to the First Shift - 8:00 A.M. to 4:30 P.M. On July 22, 2002, Ms. Employee was suspended and subsequently discharged for Insubordination. On August 5, 2002, Ms. Employee filed her Appeal pursuant to Employer's Termination Appeal Procedure alleging that her discharge was not for just cause and requesting reinstatement with back pay (Joint Exhibit #2).

On August 26, 2002, Human Resource Communications Services Representative Person 1 responded as follows (Joint Exhibit #2):

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

In advancing the Employer's position that the termination was for just cause, Mr. Person 2, Night Store Team Leader (Store No. 143), testified as follows: In reference to a diagram of the Store and its surrounding parking areas, Mr. Person 2 pointed out the Guest parking lot in front of the Store in relation to the Employees' parking lot to the Southeast of the Store. He testified that all employees are required to park their vehicles in the S.E. Lot with the exception of Third Shifters who work at night (TR. 22-24).

Mr. Person 2 testified further as follows: On Monday, July 22, 2002, at about 8:00 A.M., he was asked by Store Director Person 3 to find Ms. Employee to tell her to move her parked car. Shortly, he saw Ms. Employee at the South Entrance Greeter stand, her normal station. He asked her if she had clocked in and Ms. Employee immediately became angry and said that if this was about her car, she did not want to talk about it. She was loud and agitated. According to Mr. Person 2, when he asked her where she had parked, Ms. Employee replied, "In the middle way back." Mr. Person 2 testified that having asked her once to move her car, he did so again whereupon she stated that she would rather quit than move her car; that no one else moved their cars and that other employees parked out front also (TR. 25-28).

Mr. Person 2 testified further as follows: Continuing the verbal transactions, he informed Ms. Employee that refusing to move her car from the Guest parking lot was a serious matter and that he could not make it more clear that she had to move it; that he was authoritative in tone and demeanor but that she still refused to move her car. He told Ms. Employee six (6) or seven (7)

times to move her car but she continued to reply that she would not do so. These instructions having been to no avail, he called Store Director Person 3 who arrived at the scene within a minute or so. Mr. Person 2 concluded his testimony by stating that Ms. Employee never told him that she was parked in the Employee parking lot. A few hours after the described discussion, Mr. Person 2 prepared a written Incident Report (Employer Exhibit #1). His testimony conformed to the contents of this document (TR. 29-34).

Store Director Person 3 testified as follows: Employees are required to park in the area southeast of the store with the exception of the Third Shift Night crew. Ms. Employee as a Greeter was under the supervision of Ms. Person 4, Team Leader of the Loss Prevention Department. Ms. Person 3 referred to the Team Member Employee Handbook which states on page 34 under Access to Stores that, "We park in a designated area away from the store entrances to free preferred areas for our Guests" (Employer Exhibit #2). It is not in dispute that Ms. Employee had previously been given a copy of the Handbook (see Receipt - Employer Exhibit #3) (TR. 37-39).

Store Director Person 3 testified further as follows: Departmental, staff Management and Team Leader meetings are regularly conducted where it is emphasized to employees that they are to park in the Employee parking area southeast of the Store. Further, about a month prior to July 22, 2002, she had occasion to address Ms. Employee on the matter of parking her car in the Employee - designated area. They had both arrived at work at the same time and were walking into the building. Ms. Employee was not parked in the Employee parking area; she was parked on the opposite side of the Store. Observing this, she (Ms. Person 3) reminded Ms. Employee that she must park in the Employee parking lot and Ms. Employee replied that she was aware of that and would do so. Shortly, she instructed Team Leader Person 4 to also tell Ms. Employee to

park in the lot designated for employees (TR. 40-45). Store Director Person 3 testified regarding the July 22, 2002 incident as described below.

At 7:55 A.M., she arrived at work and parked in the Employee lot near the Garden area. She saw Ms. Employee off in the distance. She had parked in the middle of the Guest parking lot. When she came into the store and was near the entrance, she (Ms. Person 3) called out to her stating that she was not parked in the Employee parking area. According to Ms. Person 3, Ms. Employee responded by stating that she was not going to park there. Then she went to punch in. Ms. Person 3 testified that she proceeded to her office and momentarily saw Mr. Person 2. She asked him to please tell Ms. Employee to move her car to the Employee parking lot and to inform her that if she did not, she would be considered as being insubordinate. Ms. Person 3 testified that not long thereafter, Mr. Person 2 called her to advise that Ms. Employee would not move her car and that this is when she went to the Greeter stand area and personally told Ms. Employee to move her car. There, she instructed Ms. Employee to move her car no less than five (5) times. But Ms. Employee in an agitated state replied each time that she would not move her car. Ms. Person 3 further testified that she told Ms. Employee that they had covered the same subject before and that Ms. Employee responded that she was aware of that discussion (TR. 45-53).

Store Director Person 3 testified further as follows: Ms. Employee never gave a logical reason for her refusal to move her vehicle but said that she was being discriminated against and that other employees did not park in the designated lot. She did not name any such employees. Ms. Employee also did not raise any safety concerns as a reason for refusing to park in the Employee lot. Ms. Person 3 testified that she finally told Ms. Employee that she was being insubordinate and could be terminated if she did not comply with her directives. Then, she asked

her again to move her car and Ms. Employee replied – No. Ms. Person 3 testified that Ms. Employee further stated that it really did not matter because she was now quitting her job. Ms. Person 3 testified that at this, she informed Ms. Employee that she was accepting her resignation but momentarily, Ms. Employee advised that her verbal resignation could not be accepted unless the acceptance was in writing. Ms. Person 3 told her that she disagreed with that assessment. It is not in dispute that Ms. Person 3 then suspended Ms. Employee for Insubordination. She thereafter discussed the matter with Team Leader Person 4 and contacted OMP Relations Specialist Person 5 who reviewed the case and recommended termination (TR. 54-65). On the morning of July 22, 2002, Store Director Person 3 prepared a written Incident Report (Employer Exhibit #4). Her testimony in these proceedings conformed to the contents of this document.

OMP Relations Specialist Person 5 testified that he discussed the incident with Store Director Person 3, reviewed all pertinent documents and consulted with OMP Administrator Person 6. They concurred in the determination to discharge Ms. Employee for Insubordination. Mr. Person 5 also testified that if Ms. Employee maintained legitimate concerns about not parking in the Employee parking lot, she was at liberty to move her car and then seek a meeting with Employer representatives under Employer's Open Door Policy (Employer Exhibit #5) (TR. 68-77).

This concluded the Employer's presentation.

Appellant Employee testified on her own behalf as follows: On July 22, 2002, Store Director Person 3 approached her and told her to move her car. According to Ms. Employee, she had parked her car in the Southeast area designated for employees but some distance from where Ms. Person 3 had parked her car. Ms. Employee acknowledged that she told Mr. Person 2 that

she would quit her job before she would move her car. She testified that she felt she was being "singled out" (TR. 85-102).

On cross-examination, Ms. Employee confirmed that she had never encountered any safety problems in the Employee parking area but insisted that other employees did not park there without naming any such individuals. According to Ms. Employee, Team Leader Person 4 and Store Director Person 3 "had it in for me" and were trying to make her quit her job (TR. 103-113).

Mr. Person 7, a personal friend, testified in moral support of Ms. Employee. It was his opinion that signs should have been situated in the parking lots and that Ms. Employee should have been given a Written Warning as opposed to being terminated (TR. 113-117).

This concluded the Appellant's presentation.

### **ISSUE**

Was the discharge for just cause?

### **DISCUSSION**

A careful review of the evidence in this case finds that on July 22, 2002, Appellant Employee was culpable of Insubordination by repeatedly refusing the directions of her supervisors, to move her car to the Employee parking lot. It has been established that on that morning prior to the commencement of her 8:00 A.M. to 4:30 PM. shift as a Greeter, Ms. Employee had parked in the middle of the Guest parking area located in front of the store. The evidence further establishes that shortly after 8:00 A.M. near her Greeter station, Night Store Team Leader Person 2, first implored her, then directed her no less than six (6) times, to move her vehicle. Each time she refused in no uncertain terms and even told Mr. Person 2 that she would quit her job before she moved her car. Mr. Person 2 prepared a contemporaneous Report

of the incident later on the morning on July 22, 2002. His testimony conformed to the contents of that document (Employer Exhibit #1).

Further on the evidence, after Mr. Person 2's unsuccessful attempts to get Ms. Employee to move her car from the Guest parking lot to the Employee parking area, Store Director Person 3 told her five (5) times to do so – to no avail. Even when Ms. Person 3 informed her that her refusals meant that she was being insubordinate and that she could be terminated, Ms. Employee unequivocally continued to resist those orders. Her only rationale for her continuing deliberate failure to respond to these instructions, was that other employees were not adhering to the parking Policy. She did not identify any such individuals. In this connection, the Team Member Handbook at page 34, states as follows (Employer Exhibit #2):

#### ACCESS TO STORES

We park in a designated area away from the store entrances to free the preferred areas for our guests.

It has also been established that about a month prior to July 22, 2002, pursuant to Store Director Person 3's observation that Ms. Employee had not parked in the Employee-designated area, she reminded her that she was required to park there and could not park in the Guest parking lot. Loss Prevention Leader Person 4 followed up with the admonition. Notwithstanding, as denoted, on the morning of July 22, 2002, Ms. Employee repeatedly refused the reasonable and appropriate directions of Mr. Person 2 and Ms. Person 3 to move her vehicle to the Employee parking area. These actions on the part of Ms. Employee squarely constituted Insubordination and were just cause for discharge.

The evidence finds that if Ms. Employee manifested concerns that her supervisors' actions were inappropriate, she was at liberty under Employer's Open Door Policy to contact the

Personnel Department or the OMP Office to lodge a Complaint; this, after she had complied with instructions. Ms. Employee elected not to avail herself of the Employer's Open Door Policy.

The principle involved here, well established in Arbitration, is that it is the responsibility of an employee to "work first and grieve later" and that failure to do so will constitute Insubordination and will be just cause for discharge, United States Pipe and Foundry Co., 69 LA 732, 734 (Jedel, 1977); County of Genesee, 72 LA 564 (Kanner, 1979); Margolis, McTeran, Scope and Epstein, 81 LA 740 (Rickman, 1983).

Accordingly, Ms. Employee was required in the first instance to follow the directions of Team Leader Person 2 and certainly, having been given the opportunity to reconsider her position when Store Director Person 3 renewed the instructions, to comply with those direct orders. However, Ms. Employee continued to refuse to move her car until it became necessary for Ms. Person 3 to cite her for Insubordination and effectuate her suspension. There is no evidence of discrimination or retaliation in this case.

Pursuant to this evidentiary analysis, it is determined that Appellant Employee's actions on the morning of July 22, 2002, constituted Insubordination and that her termination was for just cause. The Appeal is denied.

### **AWARD**

The termination of Appellant Employee was for just cause and is upheld. The Appeal is denied.

David W. Grissom

Arbitrator

July 18, 2003