

High #1

BEFORE THEODORE K. HIGH, IMPARTIAL ARBITRATOR

In the matter of the Arbitration between

EMPLOYER,

and

EMPLOYEE

Grievance of Employee

This case came on for hearing before Theodore K. High, Impartial Arbitrator, on December 1, 1995 in City A, State A.

STATEMENT OF THE CASE

The Grievant has brought this case before this Arbitrator pursuant to Employer's Termination Appeal Procedure. The Grievant "as a store detective intern in the Loss Prevention Department at Employer Store #116 in City B, State A. The Grievant was first employed by the Employer on November 21, 1994 as an intern. Interns attend a 120-hour basic store detective training class taught over a period of 15 days. The Grievant attended such a course at City C, State A, which terminated on Sunday, June 4, 1995.

During this course the store detective interns come from various other areas than City C and are housed in motels and, apparently, the actual instruction takes place at a facility through arrangement with UNIVERSITY A. The Grievant, along with other store detective interns, was housed during this course at a HOTEL A in City C. The evidence shows that on the first day of class the interns were informed that while staying at hotels during training, they are representatives of the Employer and must follow guidelines established in their Loss Prevention

Code of Conduct. When the Grievant was hired he also signed an acknowledgment that he had received a copy of the Loss Prevention Code of Conduct and had read and fully understood it. That Code states that loss prevention associates are in an unusual position in the Employer because they are employed, one, to protect the assets of the Employer, two, to enforce the policies and procedures of the Employer; and, three, to act as an example to other associates as to what is proper conduct for a Employer employee. Among those kinds of conduct for which a store detective may be disciplined is conduct unbecoming a loss prevention associate such as damage or destruction of Employer property or the property of others or any other conduct which is detrimental to or demonstrates a disregard for Employer interests.

The Loss Prevention Manager and Store Detective Regional Trainer was responsible for the first day of the class, which the Grievant attended. On the first day the Grievant and the rest of the class were informed that they were representatives of the Employer while staying at the hotel during the training class and would be held accountable for their actions at the hotel. They were specifically advised that misconduct occurring while at the hotel during the course of training could result in discipline up to and including termination.

On June 3, 1995, the last night before the last day of training, the Grievant spent the night in his room at the HOTEL A in City C, State A. The following day he checked out of the motel. A member of the housekeeping staff came to clean the room and discovered that it was in a very unusual state. The housekeeper was called and it was derided that, since the room was not needed for Sunday night, it would be left in the way it was found until Monday morning, when the manager would be at the motel. The manager of the HOTEL A came to work on Monday morning, June 5, and inspected the room and found it to be in considerable disarray. She testified there was toilet paper draped all over the room, there was food on the floor and beer bottles and

caps lying all around the room. The manager testified that the condition of the room was the worst that she had ever seen in her time as a manager of a motel. After inspecting the room, the manager called the Employer's travel department, with whom she had dealt in making arrangements for the Employer's employees to stay at the HOTEL A. The manager reported what she had found in the Grievant's room to the Employer official. The latter was very concerned because the HOTEL A was a place used frequently by the Employer and had received favorable breaks for the cost of its employee staying at that motel. He also was concerned because of a shortage of motel rooms in the City C area, which meant that should the HOTEL A no longer accommodate the Employer's employees as the manager threatened during the telephone conversation, the Employer would experience a great difficulty, and probably increased expense, in accommodating its employees for these training courses. The evidence shows that the HOTEL A supplied approximately 800 rooms during 1995 at a \$12 discount per room. The Employer official testified that he expected to need more than 1,000 rooms in 1996.

After speaking with the HOTEL A manager, that official called the administrative support supervisor at the Employer's City D office and instructed her to go view the room in an attempt to give reassurances to the hotel manager that the Employer would investigate the matter. When the administrative support supervisor arrived at the room, she testified, she found toilet paper all over the room, beer bottles and beer cans, cigarette butts and trash lying on the floor of the rooms and pizza boxes with dried-up pizza all around. She then took photographs of the room, which photographs were introduced into evidence at the hearing. After taking the photographs, the motel manager gave the supervisor a copy of the receipt for the room which identified the Grievant as one of the occupants. The motel manager testified that after the supervisor left, she helped the head housekeeper to clean the room. She did this, even though she

ordinarily does not do that work because of the extent of the mess which she found in the room. Some material, such as bags of garbage and phone books that were soaked had to be discarded. She testified that with the housekeeper and herself cleaning it took longer to clean that room than it ordinarily takes one person to clean a room.

The Grievant testified that he had thrown a roll of toilet paper around the room and later realized that that was a mistake. He also testified that his wife was supposed to have cleaned up the room and that it was not his intention to leave it in that condition. He testified that he understood it was not acceptable to leave the room in the condition it was and that it was not in the best interest of the Employer. He testified that he understood that it was "unredeemable" toward the Employer reputation. The Grievant also acknowledged he was responsible for the room and participated in the behavior which caused the room to be in the condition that it was. An office management and professional relations specialist with the Employer reviewed all the evidence, including the photographs and the statements which were obtained from all of the parties who had been present in the Grievant's room. He reviewed the reports of the managers who investigated the incident and the Grievant's work record. Based upon his review, he decided to terminate the Grievant's employment with the Employer. He testified at the hearing that he had also discharged two other store detective interns because of their involvement in the same activity at the same time which lead to the room being in the condition that it was. He testified that he considered the discharge to be the appropriate resolution of the matter for three reasons:

1. The Grievant had been warned that misconduct of this type could result in termination,
2. As a loss prevention employee, the Grievant is held to a high standard of conduct; and
3. The Grievant's misconduct had serious implications for the Employer's reputation with the HOTEL A and in the City C community in general.

As a result of the discharge, the Grievant filed the instant grievance which is before the Arbitrator for disposition.

ISSUE

The issue for disposition is whether the Employer had just cause to terminate the Grievant's employment.

DISCUSSION

All of the foregoing facts are not in dispute.

At the hearing, it was agreed between the parties that post-hearing statements would be filed with the Arbitrator 30 days after the availability of the transcript. A copy of the transcript was supplied to the Grievant, but he has filed no statement. Furthermore, the Grievant has not been available in order to discuss whether or not he intends to file such a statement. Accordingly, the Arbitrator must proceed with a decision of the case without the benefit of any further statement from the Grievant.

The undisputed evidence establishes that the Grievant, upon his employment, was given a copy of the Code of Conduct and read it and that the Code of Conduct was among the initial items discussed in the training program he was attending at City C. This includes the specific misconduct of damage or destruction of Employer property or the property of others, which is labeled "Conduct Unbecoming a Loss Prevention Associate" It is further undisputed that in the training class, the class, including the Grievant, were advised that misconduct in violation of this portion of the Code could result in discipline up to and including termination The class was advised that unprofessional conduct, on or off the clock, could result in discipline up to and including discharge and, specifically that misconduct while at the hotel during the training session could result in discipline up to and including discharge. None of this is disputed by the

Grievant and, in fact, acknowledged in his interview with his manager during the investigation of the matter. The Grievant admitted that he had engaged in misconduct and that it was detrimental to the reputation of the Employer ("irredeemable" was the Grievant's term). It is further undisputed that the loss prevention associates function as a police department on the Employer properties and that their functions include the investigation of all violation of Employer policies and procedures, including damage to Employer property or other damage on Employer property. It is also undisputed that the manager of the hotel, initially, indicated that she wished to have no further relationship with the Employer and that it was only through extraordinary efforts on the part of several Employer officials that the relationship was reestablished. The evidence indicates that should the HOTEL A rooms become unavailable to the Employer, it would cause a financial loss to the Employer and a potential loss of reputation in the City C community.

It would appear that the Grievant is not sensitive to the rights of other persons to have their property free from damage and abuse. For example, the Grievant asked each of the Employer's witnesses if they had ever trashed a hotel room, and received a negative reply. In summarizing his position, the Grievant testified "and if everybody tells me that they have never trashed a hotel room, I think that's a crock." Clearly, this view of the responsibility of the Grievant to other person's property is inconsistent with the training which he had just been receiving. The Grievant did recognize that the room was in less than a good condition, since he testified that he had asked his wife to clean up the mess in the room. He did not, however, take the responsibility to make sure that the room had been straightened up prior to leaving.

In view of the foregoing, it is my conclusion that the Grievant's conduct on the evening in question was not acceptable conduct. Indeed, the Grievant concedes that his conduct was not acceptable. He objects, however, to the penalty of discharge. He does not argue that there is

disparate treatment between himself and other persons. There is no evidence of any other trashing incidents than the one which is the subject of the instant grievance. It is undisputed that no other employees in the loss prevention department who are attending the course participated in the "trashing" which took place in the Grievant's motel room and that they were discharged as well. Accordingly, I cannot find that the penalty of discharge is too severe for the admitted misconduct on the part of the Grievant on the date in question. It follows that the grievance is not well made and should be denied.

AWARD

Grievance denied.

Theodore K. High,

Impartial Arbitrator