

High #2

BEFORE THEODORE K. HIGH, IMPARTIAL ARBITRATOR

In the Matter of Arbitration Between

Employer, Inc.

and

Employee

Grievance of Employee

This case came on for hearing before Theodore K High, Impartial Arbitrator, on July 22, 1999 at City A, State A.

STATEMENT OF THE CASE

The Claimant, who was hired by the Employer on May 22, 1997, was, at the time of her discharge, employed as an hourly team member in the seafood department of Store 124 in City A, State A.

On January 19, 1999, the Claimant was discharged for leaving her assigned place of work two hours early without management approval on January 12, 1999. The Employer considered this conduct as "walking off the job." The Employer also discharged her for disregarding a closing manager's direct instructions to remain at work until the end of her shift that night. As a result of this discharge, the Claimant invoked the Employer's Peer Review and Arbitration Procedure for hourly team members. The Claimant's case was taken through the steps of the Peer Review, including a review by a Peer Review Panel. Results of that Panel's recommendation were not satisfactory to the Claimant and she, therefore, invoked the election to arbitrate

provision of II (B) of the Peer Review Arbitration Procedure. The parties have stipulated that the appropriate steps have been taken and that the case was properly before the Arbitrator at the hearing on July 22, 1999.

At the hearing, both parties presented evidence and witnesses. The Claimant sought to call a witness during the hearing who was not present. The witness, Person 1, could not be located and it was agreed between the parties and the Arbitrator that the parties would meet with Ms. Person 1 and take her statement, which would consist of the Claimant's representative asking questions and counsel for the Employer also asking questions. This was done and it was agreed that this statement go into evidence and be considered by the Arbitrator. The Arbitrator has given consideration to this statement along with the other evidence in the case. It was agreed that the parties would file post hearing briefs postmarked no later than 15 days after the availability of the transcript. The transcript was received August 3, 1999 and the postmarked date was August 18, 1999. The Employer filed a timely post hearing brief, but the Claimant has filed none and is deemed to have waived a post hearing brief.

ISSUE

The issue for decision is whether the Employer had just cause to discharge the Claimant?

DISCUSSION

The evidence shows that upon her employment, the Claimant received a copy of the Employer manual entitled "Policies and Procedures". It also shows that she signed a document acknowledging receipt of the team handbook and also acknowledging that she had read and understood all of the guidelines contained therein. On page 59 of that handbook, the following paragraph appears:

"Any team member leaving work without being expressly excused by a team leader or store director-in-charge, other than normal quitting times, lunches or breaks, is considered to have 'walked off the job.' It is also considered walking off the job if any team member leaves work without authorization after a team leader has extended their shift."

The Employer introduced into evidence two notices which a management employee testified were posted in the Store. The Claimant does not dispute this. One notice entitled "Notice to All Team Members Regarding: Walking off the Job" provides as follows:

"A team member leaving work without being expressly excused by a first assistant or "team leader-in-charge" for other than normal quitting times, lunches or breaks, is considered to have "walked off the job." It is also considered walking off the job if a team member leaves work without authorization after a first assistant has extended their shift.

A team member who "walks off the job" will have their employment "terminated for reason."

We hope this notice will help to eliminate any confusion in the future about a team member's job status if they choose to leave work without a first assistant's approval.

If you have any questions please contact your first assistant.
Employer"

The other notice provides as follows:

Did you know? During 1997, 116 team members were terminated for leaving work without leadership approval. Get the green light from leadership before leaving work.

LEAVING WORK WITHOUT LEADERSHIP APPROVAL WILL PUT A "STOP" TO YOUR CAREER AT EMPLOYER.

The latter of the two notices indicates 116 team members were terminated for leaving work without leadership approval. This, presumably, means Employer-wide. The testimony at the hearing was that at the time of the hearing there were approximately 150 such team members whose employment was terminated for leaving work without leadership approval.

On August 14, 1998, a Friday, the Claimant telephoned the acting Store Director-in-Charge. She called him from one of the check out lanes and asked if she could go home early. The acting Store Director-in-Charge told her that the store was very busy and he needed her to stay and help close the seafood department. The acting Store Director-in-charge, named Person 2, testified that his assignment as Store Director-in-Charge was to supervise the managers of various departments who reported directly to him. He testified that after he had told the Claimant that she could not go home, because she was needed to close up the seafood department, he received a telephone call from someone in the meat department asking where the Claimant was. He testified that he checked the time card and found that she had clocked out. He testified that he then overrode the clock out. He testified that he then prepared a report of the incident and indicated that the Claimant was needed because of the coverage of the seafood department and she was insubordinate because she left after being told that she must stay. He testified that the Claimant told him that she was having physical and emotional problems and that she had written some bad checks to the Store. Thereafter, on August 15, 1998, she prepared a written "Incident Report" in which she said that after she was told not to leave, she stood there for a few minutes and then clocked out and left.

In her statement, she said that she regretted leaving and knew it was wrong. The statement indicates that because of her financial problems, she needed time to think and that she left the job after being told not to in order to do so. She added that she loved her job and found it difficult to believe that she had risked it for a few hours. Mr. Person 2 testified that in view of the problems the Claimant indicated that she was having he decided, despite never having before administering any discipline other than discharge for an employee walking off the job, to give the Claimant another chance. As a result of this, an Interview Report was prepared by Mr. Person

2 dated August 21, 1998. In that report, Claimant was advised that her leaving, despite having been instructed not to, was a direct violation of Employer policy and that the next occasion of this nature would result in her suspension and termination. It ended by indicating that she was to serve a one-day suspension without pay on August 24, 1998. A similar Interview Report, also dated August 21, 1998, was prepared by Mr. Person 2 indicating that the Claimant was guilty of a violation of the Employer's honesty policy. This, according to the report, was because she told Mr. Person 2 that team leader Person 3 told her to cut her hours and go home early. She subsequently admitted that she was not told this during her interview with Mr. Person 2 on August 15, 1998. As a result of this violation, she was given one day off without pay on August 27, 1998. The report ended with the admonition "if you are found to be dishonest in the future you will be suspended up to and including termination."

With respect to the August 14 incident and the two interview reports, the Corporate Team Relations Specialists for that Store, reviewed the facts of the incident and recommended that the Claimant's employment be terminated because of walking off the job and in accordance with the stated policy of the Employer. It was after this recommendation was made that the personal problems of the Claimant were taken into account, as well as her good work record up to that point, and the Claimant was given a "second chance."

On January 12, 1999, the Claimant was scheduled to work in the seafood department from 7:00 p.m. until the 11:00 p.m. close of the Store. As it happened, the Claimant was scheduled to come in that day at 2:00 p.m. to do some clean up work for four hours. She was, however, still scheduled to work until the close of the seafood department at 11:00 p.m. The schedule for that day shows that the Claimant was the only person scheduled to work the closing shift in the seafood department that day. The closing Manager for the Grocery/Supermarket area

that evening, named Person 4, was scheduled to work until 11:00 p.m. She testified that it was her responsibility to check with all of the department team leaders in the supermarket to verify that the staffing and closing times were covered. She testified that that evening she reported to the Store Director-in-Charge, who was responsible for the entire store. She testified that she worked from 1:00 p.m. to 11:00 p.m. that day and was the grocery and supermarket closer, which means that she was responsible for closing the Grocery Department in the Store. She testified that she checked the seafood department at 8:00 p.m. and found that the lights were out and that the merchandise in the case was covered. The seafood department, she testified, was completely closed down. She identified photos of the seafood department in the condition of being open and of it being closed. In the latter photographs, it would be apparent to customers that the department was closed and they were unable to make purchases there. She testified that she found the Claimant and told her that she had to turn on the lights and open up the seafood department. She testified that the Claimant replied that the roads were icy and that no one was coming into the department. Ms. Person 4 testified that she told the Claimant that the department was to be opened until 11:00 p.m. and that the Claimant said that she would stay until the close. Ms. Person 4 testified that at about 8:30 p.m. she went by the seafood department and found that it was still closed. She testified that she then talked to the Claimant and instructed her to remove the papers from the top of the merchandise and to turn on the lights. She testified that the Claimant said that she would. Ms. Person 4 testified that at 9:00 p.m. she checked all of her departments again and saw the Claimant's store jacket hanging there and that the department had been closed. She paged the Claimant and found that the Claimant had clocked out. She identified the Claimant's time card for that evening which was placed into evidence and which shows that the Claimant punched out at 8:58 p.m.

She reported this to the Manager-in-Charge of the store. She testified about the notice to team members about walking off the job and the results the notices indicated would follow such activity. She testified that a few days later, Mr. Person 2 held a meeting regarding a meeting regarding the incident. She testified that at that meeting the Claimant said that she had come in early to clean the seafood case and when asked whether she had had permission to leave, the Claimant simply laughed the question off. Once at that meeting, Ms. Person 3 said that the Claimant had no permission to leave early. She quoted the Claimant as saying that she was tried and wanted to leave, but she did not say that she had any permission from anyone to leave.

There can be no question that the Claimant was aware of the consequences of walking off her job. She does not deny the posting of the notices concerning the seriousness with which, the Employer considered walking off the job, nor of the rule. She narrowly escaped that fate only because the Employer officials decided that there were extenuating circumstances and exceptions made in her case. She did, however, receive as part of the discipline, a written notice that another such incident would result in her termination. It was only the following January that the precipitating incident took place. As was seen, closing manager Person 4 twice told the Claimant that she was to work until 11:00 p.m. In her meeting with Ms. Person 4 and the Store Manager in Charge, she admitted that she knew that she should have called a manager for approval before leaving the store. Although the Claimant indicated that the person working in the meat department could cover her department, it was clear that she was the only employee assigned to the seafood department on the night in question. Obviously, whether someone else should have covered for the Claimant is for the Employer management to determine, not the Claimant. Finally, the Claimant simply left the store two hours early, rather than saying anything to Ms. Person 4. Ms. Person 4 was left to find out that she had departed after the Claimant had gone.

At the hearing the Claimant testified that she sought and received approval from Ms. Person 3 to come in early and leave early on the night in question. When asked whether Ms. Person 3 specifically told her she could leave before the end of her scheduled shift, the Claimant testified, "that's what I thought she meant...she didn't exactly say that." Ms. Person 3, on the other hand, testified that she did not give approval to leave early on the night in question to the Claimant. To the contrary, she told Ms. Person 4 that the Claimant would be closing the department that night and working until 11:00 p.m.

In view of the foregoing, I must conclude that the evidence demonstrates that the Claimant, on the night in question, did leave the store two hours before the end of her scheduled shift in specific violation of the order of her superiors. She did this despite knowing, both from the Employer rules and notices posted and, more importantly, from her own experience of the incident on August 14, that to do so would result in her discharge. Despite this, the Claimant left her job as the sole employee in the seafood department two hours before the end of the scheduled shift. Furthermore, I am unable to find that the penalty of discharge is inappropriate, in view of the fact that the Employer rules, the notices and the discipline growing out of the incident of August 14, 1998 made it clear to the Claimant that discharge would result from any other such incident. It is my finding that the incident of January 12, 1999 was a further such incident. I further must find that the penalty of discharge is not otherwise inappropriate in view of the fact that the evidence demonstrates that the Claimant, in leaving early on August 14, 1998, was the only person to receive a second chance. It should be noted here that the post hearing witness, Person 1, did not support the Claimant's contention that there was a Employer policy that when an employee reported for work early, that employee was entitled to leave early. Even if that

weren't the case, of course, the specific instruction of management to work until 11:00 p.m. would have vitiated any such policy.

In view of the foregoing, it is my finding that the Employer had just cause to discipline the Claimant and that the discipline of discharge was appropriate in the circumstances.

AWARD

Grievance denied.

Dated: October 6, 1999

Theodore K. High,

Impartial Arbitrator