

High #3

BEFORE THEODORE K. HIGH, IMPARTIAL ARBITRATOR

In the Matter of the Arbitration Between

EMPLOYER

And

EMPLOYEE

Discharge of Employee

This case came on for hearing before Theodore K. High, Impartial Arbitrator, on July 8, 1997 at City A, State A.

STATEMENT OF THE CASE

This case came on for hearing pursuant to the Employer's Employer Peer Review and Arbitration Procedure for hourly employees in State A.

The Grievant was first employed by the Employer on July 22, 1994 and began in the Employer's Security Department as a greeter. Before going to work, she attended a two day orientation session, which all new employees attend, called "Traditions". At the orientation session there was an emphasis on Employer's policies and procedures and every attendee received a handbook. It appears that subsequent to the Grievant's employment a revised handbook was issued by the Employer and employees, including the Grievant, attended a Department meeting where the Manager had the employees attending read, taking turns, from the new handbook. The entire handbook, it appears, was read aloud.

On August 7, 1995 the Grievant transferred to the Systems Department of the Employer store on Road A in City A, where she was employed as a Pricing Coordinator under the

supervision of a team leader named Person 1. The Grievant's duties as a Pricing Coordinator included making sure that items in the store are priced correctly. In order to do this, the Pricing Coordinator goes through a department with a hand held scanner, scans the UPC codes on items and checks those items to see if the prices marked on the shelf are the same as that which appears in the computer. On those occasions where the price on the shelf does not agree with that shown in the computer, the Pricing Coordinator either changes the price shown on the shelf, or has someone else in the Department do it.

During November and December of 1996, the Grievant was assigned work in the Stationery Department. The Grievant worked exclusively in that Department for about a month and scanned every item in it. On December 3, 1996, the Grievant was working in the Stationery Department when she saw some books with photographs of grapes on the covers. It appears that these books, or journals, had a thirteen digit vendor UPC code and the price of \$3.55 printed on a label on the back cover. The Grievant saw another journal which was identical, except that there were strawberries on the cover and the journal was missing the plastic packaging and the Employer's UPC sticker. Also in that Department were address books which were not packaged in plastic and which did not have any printing on the covers, as did the journals. The address books were marked three for \$2.00. The Grievant proceeded to scan, with her hand held computer, the eleven digit Employer UPC stickers on the grape journals and they came up with the price of \$3.55, matching the price on the sticker. She also scanned the address books and they scanned three for \$2.00, or \$.67. When she scanned the thirteen digit vendor UPC code printed on the back cover of the strawberry journal, it came up "not in table" on her scanner. The "not in table" means that there was no price in the computer for that particular UPC code.

The Grievant took the journal with the strawberries on the cover to the Systems Office, where Ms. Person 1 saw it and asked the Grievant why she had it there. The Grievant replied that it had come up "not in table" and that she was going to call the "help line" in order to get a price for that journal. The Grievant testified at the hearing, however, that she never did call the "help line". On December 5, 1996 the Grievant purchased the journal with the strawberries on the cover. She went to the checkout line and a cashier named Person 2 rang up the purchase. When the cashier scanned the back of the strawberry journal, it came up "not in table". There was then a conservation between Person 2 and the Grievant, the substance of which is in dispute. The result, however, was that the sale was rung up as \$.67.

The Grievant took the journal home with her and a few days later brought it to the Systems Office. Ms. Person 1 saw the journal in the Systems Office and this time it had a sticker on it with the Grievant's name and address. This sticker was there pursuant to the Employer's policy of requiring stickers on Employer merchandise which employees purchase and which are kept in the office. The policy also requires that the employee keep a receipt with the item, with the purchase price of the item circled. Ms. Person 1 checked the journal and found the receipt taped inside the back cover with one item circled. Ms. Person 1 noticed that the circled item was \$.67 and it seemed to her lower than it should be for that particular journal. Ms. Person 1 then went to the Stationery Department to check the price and found other journals which she judged to be identical except for the grapes on the cover, which were marked \$3.55. Ms. Person 1 then saw a Store Detective and asked her what she should do about it, to which the latter replied that she, the detective, would conduct an investigation. She requested, however, that Ms. Person 1 do "item inquiry" on the computer for the journals. Ms. Person 1 then put in the eleven digit UPC

code from the journals with the grapes covers on the computer and confirmed that the price was \$3.55.

The Store Detective interviewed the Grievant and wrote out a report of the interview. The results of the investigation were then turned over to a "Team Relations Specialist" who reviewed the report and the recommendation of the Store Detective.

He then concluded that the Grievant had knowingly purchased the strawberry journal at a lower price and recommended that the Grievant's employment be terminated. As a result of this recommendation the Grievant's employment was terminated and she processed the grievance through the Employer's Peer Review and Arbitration Procedure, which brings it before this arbitrator for decision.

ISSUE

The issue is whether there was just cause for the Employer's termination of the employment the Grievant.

DISCUSSION

The Grievant in her grievance (called a Peer Review Request) indicated in the section entitled Discharge Complaints, that she was discharged because she forgot something due to intimidation and harassment of her team leader Ms. Person 1. In another section of the form entitled Discrimination Complaints the Grievant has indicated as alleged that she was discriminated against because of her grammar. The Employer, relying on the employee handbook, points out that the handbook requires that employees have a certain level of conduct. Among these are basic principles of integrity, honesty, and treating people with dignity and respect. It further relies upon the handbook provisions indicating that the Employer will not tolerate dishonesty, theft or taking unauthorized mark downs on a product. It is the Employer's

position this provision of the handbook was violated by the Grievant by knowingly purchasing a \$3.55 journal for \$.67.

It is the Grievant's position that everything went well with her as an employee of the Employer, until she came under the supervision of Ms. Person 1. The Grievant's position is that her immediate supervisor was "out to get her", with the result that there was an atmosphere of harassment and tension which caused the Grievant's problems in this case.

As noted above, there was a dispute in the evidence as between the Grievant and the cashier, Person 2, with respect to the conversation that took place at the checkout counter. The Grievant testified that she gathered some other stationery material which she wished to purchase and took it with the book in question to the checkout lane, which was the one at which Person 2 was working. She testified that when the book was checked out it came up "not in table". She testified that Person 2 asked her about it and that she testified that there were some back there that were two for \$3.00, but that Person 2 had better check with the department. Cashier Person 2 testified that when the Grievant came through her lane the latter said that she had been working in the Stationery Department marking items down. Person 2 testified that this suggested that the Grievant knew the price of the book in question and that when the book scanned "not in table", the Grievant told her the price was two for \$3.00 and to ring it up under Key #740. Person 2 testified that the Grievant never expressed any doubt about the price or suggested that the cashier call the department to check on the price.

The Store Detective with whom the Grievant spoke after the incident in question testified that the Grievant told her that she told Person 2 that the latter could check the price if she wanted to, not that she should call the department to check the price. This testimony was supported by the written report prepared by the Detective at the time of the interview of the Grievant. This

written statement was read to the Grievant, according to the Detective, and that the Grievant reviewed it and voluntarily signed it.

In support of her claim of harassment, the Grievant testified that on one occasion she had to go get an estimate for repair of an accident to her automobile and got permission from Ms. Person 1 to do so. She testified that when she came back Ms. Person 1 accused her of lying about the matter. Ms. Person 1 testified that when the occasion occurred she asked the Grievant, when she saw that the automobile had not been repaired but that her hair had been done, if she went to the hair dresser, rather than to get the automobile repaired. Ms. Person 1 further testified that when the Grievant told her that the purpose was to get an estimate for the repair of the automobile that she, Ms. Person 1, accepted that excuse and the matter was closed. The Grievant also testified about an incident where she had been auditing a certain department and there had been a fifteen percent (15%) error in the audits. She testified that she went to see the Store Manager because she thought the fifteen percent (15%) figure was wrong. She testified that she did not wish to work in that department anymore as result of what was found. She also testified that the day of the incident when she came to work at eight in the morning Ms. Person 1 had told her she was going to have to shape up or she would be fired. Ms. Person 1 testified that she had a conversation with the Grievant on the 2nd of December in which she advised the Grievant of how she should be doing her work more effectively and how to schedule her time. She testified that she subsequently wrote the substance of that conversation out and had a second meeting with the Grievant in which she told the Grievant what was expected of her and presented her with the paper upon which she had written up the substance of the conversation on December 2nd.

The Grievant testified that all of these matters had put her under a lot of pressure and indicated to her that Ms. Person 1 was "out to get" her. She attributes the precipitating incident as

a matter of things going wrong because of all of the pressure that was on her. This pressure had to do, she testified, with Ms. Person 1 being "out to get her".

With respect to the differences in the testimony of the Grievant and employee Person 2, I am inclined to credit the testimony of employee Person 2 to the extent that it is inconsistent with that of the Grievant. The reason, apart from the Grievant having an interest in saving her job, is that there has been no motivation shown in the evidence as to why Person 2 would say something that was incorrect. Furthermore, she seemed consistent in what she said and seemed to have a good recollection of the events in question. It is clear that the points of inconsistency, namely whether the Grievant urged Person 2 to check with the department for the price or whether, as Person 2 testified, the Grievant merely said that "the books back there- were three for \$2.00 and that Person 2 should use a certain key, taken with the introductory statement of the Grievant that she had been working in that department, all led Person 2 to believe that the Grievant was accurate and correct in relating the price of three for \$2.00. The Grievant, having shortly before that time worked in reviewing prices in that department, it would be reasonable for Person 2 to assume, that she would have much better knowledge of the prices than Person 2, when it came up "not in table" on her computer. This assumption was aided to fact that the cashiers have the right to accept a customer's representation of shelf prices, so long as the representation is of a price within \$5.00 of the correct price. The Grievant's version of the conversation with Person 2 is further undermined by the version of the incident which she gave to the Store Detective. When she was initially interviewed by Store Detective Person 3, the Grievant told her that she had told Ms. Person 2 what the price of that specific journal was and that she told Person 2 that she could check the price if she wanted to, not that she should be sure to check the price. This appears both in written report of Detective Person 3 and her oral

testimony at the hearing. In the written report, Ms. Employee wrote "It again scanned not in table. At this time I told the cashier that the books were scanning three for \$2.00. I told her she could check it with stationery if she wanted." From the foregoing, I conclude that the Grievant gave Ms. Person 2 the incorrect price of the journal, causing her to ring it up as \$.67.

The evidence shows that the Grievant had been working exclusively in the Stationery Department for at least a month prior to the purchase. It was only two days prior to the purchase in question that she checked the prices on journals and other books in the Department. In doing so, she scanned journals with grapes on the cover, which scanned the correct price of \$3.55. The Grievant must have observed that the grape journals were the same as the strawberry journal, which did not have the plastic wrap and the Employer UPC. The strawberry journal was the same otherwise and it is difficult to see how she could be confused as between the strawberry journal and the address books, which are very different. Copies of the grape journal and of the address books were placed in evidence and I find that they are quite dissimilar. Ms. Person 1, on the other hand, testified that when she saw the strawberry journal in the Systems Office and saw the receipt for \$.67 she immediately recognized that the price was too low, which began the investigation into the matter. She noticed it was too low, even though it had been at least two weeks since she had participated in an audit of the Stationery Department and looked at those journals, as contrasted with the Grievant's scanning them two days earlier. In her interview with Detective Person 3, the latter testified that the Grievant denied that she had talked to Ms. Person 1 about the journal or that she had taken it to the Systems Office. When Person 3, according to her testimony, told the Grievant she had information indicating that the Grievant had taken the journal to the Systems Office, the Grievant remembered that she did take to the Office because she wanted to buy it. Person 3 then advised her that Ms. Person 1 had said that the Grievant

brought the book to the office to call the hot line and get a price for it. The Grievant claims that she did not remember that and Person 3 asked her why Person 1 make that claim if it were not true, at which point the Grievant remembered that she did tell Person 1 she was going to call the hot line. Person 3 then pointed out that there would be no need to call the hot line if the price of the journal had scanned three for \$2.00 as she had insisted previously in the interview. After claiming some confusion, the Grievant admitted that the strawberry journal had, in fact, scanned "not in table".

In view of the foregoing, it is difficult to see any other reason why the Grievant's testimony would conflict with that of Supervisor Person 1, cashier Person 2 and Detective Person 3 and be internally inconsistent in doing so other than that she had intended to purchase the strawberry journal for \$.67, rather than \$3.55. I cannot conclude, therefore, that the incident was not caused by pressure on the Grievant or discrimination against her because of her grammar.

The Employer's employee handbook describes the level of honesty which the Employer expects of employees. In the guidelines in the employee handbook the Employer indicates that it will not tolerate dishonesty, theft or taking unauthorized mark downs on a product. There is no dispute that the Grievant was aware of this provision of the handbook both at the time of her initial employment and at the time that the handbook was revised and that members of supervision went over it with groups of employees, including the Grievant. The Grievant was on notice that an unauthorized mark down caused her to risk discharge. In view of the foregoing, it is my conclusion that the Employer had just cause to terminate the employment of the Grievant.

AWARD

Grievance denied.