

High #5

BEFORE THEODORE K. HIGH, IMPARTIAL ARBITRATOR

In the matter of the Arbitration between

EMPLOYER

and

EMPLOYEE

THE GRIEVANCE OF EMPLOYEE

This case came on for hearing before Theodore K. High, Impartial Arbitrator, on November 19, 1993 at City A, State A.

STATEMENT OF THE CASE

This case came on for hearing pursuant to the Employer's Termination Appeal Procedure.

On April 29, 1993, the Grievant was working as a store detective at the Employer's Store No. 66 at City B, State A. The evidence shows that store detectives receive a great deal of training with respect to procedures used with subjects who are suspected of shoplifting. It consists of a 120 hour training class and two to three days of annual recertification classes. At the time of his discharge the Grievant had held the position of store detective for about four years and was most senior detective at Store No. 66.

On April 29, 1993, at about 4:55 p.m., the Grievant and store detective Person 1 were following two subjects they suspected of concealing several cartons of cigarettes on their persons. They followed the subjects to the checkout area of the store, where the two split up. The Grievant went to the north lobby of the store, just in front of the exit from the store, to wait for

the two persons suspected, while Ms. Person 1 went to the women's department to watch them as they went through the checkout lane to determine whether or not they purchased the cigarettes they had concealed. When Person 1 became satisfied that the two had not paid for the cigarettes and that they were in the process of leaving the store, she signaled to the Grievant. As the subjects left the checkout area and went to the door to the parking lot, the Grievant stepped in front of them and directed them to stop. At this point, Ms. Person 1 was not yet in the lobby between the sale floor and the door to the parking lot. The Grievant identified himself as a store detective and, apparently as this was being done, Person 1 came through the doors between the sales floor and the lobby. The Grievant then directed the two subjects to enter the store and he and Person 1 accompanied them to the Loss Prevention Office.

While in the office, the Grievant called the police and before they arrived, one of the two subjects said she wished to go to the restroom. Before the police arrived, the Grievant directed Person 1 to escort the subject to the women's restroom. The evidence shows that the Grievant, being the senior detective, was in a position to give such directions and Person 1 was expected to follow them.

Thereafter, while both of the subjects were back in the Loss Prevention Office, word came that there were two other people who wished to get some property in the possession of the two subjects. The Grievant then went to the checkout area and escorted the two other people to the Loss Prevention Office and opened the door and, while one of those persons stood in the door, the other came into the room to retrieve her property.

Later the same evening the Grievant wrote a one and one half page report concerning the events concerning the two subjects, but omitted to refer to the fact that Person 1 was not within six to eight feet of the subjects within time of apprehension, that one of the subjects went to the

restroom without proper identification and that the two other persons were permitted into the Loss Prevention Office at the time the subjects were being held.

All of the foregoing, the Employer contends, constituted a violation of the Employer's rules and the correct procedures for the store detectives. As a result of these violations, and the Grievant's previous disciplinary record, the Grievant was discharged. It was this discharge which has given rise to the invocation of the Employer's Discharge Appeal Procedures and which brings the case before the Arbitrator.

ISSUE

The issue for disposition is whether the discharge of the Grievant was for just cause and, if not, what should the remedy be?

DISCUSSION

The Employer rules with respect to store detectives are designed to effect apprehension of persons suspected of shoplifting, but, at the same time, to prevent injury to the subjects, the customers of the store and employees. The evidence shows that a store detective was stabbed and killed while attempting to make just such an apprehension. The evidence shows that the training guidelines require that two store detectives be used to effect an apprehension.

One store detective is to step in front of the subject or subjects while the other takes a position about six to eight feet behind them. The purpose of this is to give the subject a sense of being surrounded and for the backup detective to hear what is said between the subjects and the other detective and to come to the first detective's assistance in the event there is trouble.

The second guideline is that once, as here, the subjects have been escorted to the Loss Prevention Office, they are not to leave that room until the police arrive. In the event that a

subject requests to leave the room, including a trip to the restroom, this is not to be permitted unless the subject has provided identification with a picture on it to the detectives. This was not done in the case of the subject going to the restroom in this case. A third guideline violation is that the two other persons, in addition to the two subjects, who requested that they be permitted to take property belonging to them in the possession of one of the subjects were permitted into the Loss Prevention Office. The rule requires that no one other than the subjects and the detectives are to be in the Loss Prevention Office until after the police arrive.

Finally, the Employer takes the position that the Grievant was also in violation of its guidelines because the report he was required to make did not indicate the relevant facts concerning the trip to the restroom, the two other people coming into the Loss Prevention Office and the apprehension without the backup detective being within six to eight feet of the two subjects.

The Grievant in his testimony conceded that making the apprehension before his backup was in position was contrary to the training guidelines in making the apprehension in that manner. He also admitted that he was in violation of the training guidelines in permitting one of the subjects to go to restroom without the proper identification and before the police had arrived. And finally, he admitted that he was in violation of the training rules by failing to prevent the other persons from coming into the Loss Prevention Office while the two subjects were there with the detectives and before the police had arrived.

The Grievant argues that he, in the circumstances giving rise to this case, had to make split-second decisions. The Grievant takes the position that the Employer would be subject to substantial liability for holding the subjects in the Loss Prevention Office without the opportunity to go to the restroom. In addition to exposure to the risk of a law suit there might be

a great deal of media attention to it and that the decision of the Grievant was prudent under the circumstances.

The Grievant also defends on the ground that Ms. Person 1, the backup, was moving into position and would have been there in approximately thirty seconds. With respect to the point concerning the persons other than the subjects coming into the Loss Prevention Office the Grievant has no explanation, apart from not wishing to cause a scene at the checkout area.

I must find that the training guidelines are specific on these points. Whether the Employer is exposed to risk of bad publicity, considerable amount of aggravation and a law suit growing out of the refusal, had it taken place, to permit one of the subjects to go to the restroom and to permit the other two persons to come into the Loss Prevention Room to secure property from one of the subjects is a risk which lies with the Employer. It is clear from the evidence that the Employer has weighed this risk and following the training guidelines is more important to accomplishing the reasons for which it has store detectives and the degree of risk that it wishes to assume. Clearly, this is the problem of the Employer and not of the employee, in view of the fact that the guidelines are so clear. Furthermore, it is also clear that even though the backup was coming into position, the Grievant was not to make the apprehension until she was in position, even if this meant going out into the parking lot. The evidence indicates that the purpose of this rule is for the safety of the subjects and of the detectives. As we have seen, the purpose of having a backup is to give the subject or subjects the feeling of being surrounded and to have a person in position to assist should a weapon be produced by the subjects.

Accordingly, I must find that the Grievant was in violation of the training guidelines in the manner in which he handled the apprehension and detention of the subjects on the occasion

in question. He also was in violation in failing to include these shortcomings in his written report of the incident.

The Employer's Human Relations Specialist testified that each of the failures to follow the guidelines is considered a separate offense, in consideration of the Grievant's case. She testified that the Grievant's case was discussed with the Human Resources people at the home office in City C before the decision was made. In addition, she indicated that she reviewed the Grievant's personnel file. The Grievant's work record shows that since July 1992, the Grievant had some previous discipline. On August 18, 1992 he received an associate interview report concerning apprehending a suspect who no longer had stolen property. He received another associate interview report on August 18, 1992 for a training violation by not securing evidence properly. On January 18, 1993 he received another such report and a five day suspension without pay for negligence after losing a loss prevention radio worth 600 dollars and his key to the Loss Prevention Office, as well as his identification. He was also warned that he would be discharged if he was ever involved in another negligent act. On January 18, 1993 he received another such report for a training violation for making an apprehension without showing his Loss Prevention identification. On that same day a similar report was given him for filing an apprehension report late. On March 29, 1993, the Grievant received an oral reminder for tardiness after reporting one hour and six minutes late for work. On April 6, 1993, he received a written reminder for tardiness after reporting for work fifty eight minutes late. On April 16, 1993 he received another associate interview report for violating three general policies; working without punching in, a violation of the reporting accurate time policy, using profanity on the sales floor, a violation of the language policy, and attempting to buy an alcoholic beverage with a minor in violation of alcoholic purchases policy. He was warned at that time that any further of Employer policy

would result in his discharge. On April 21, 1993 the Grievant received a "decision making leave" which is a one day off work without pay for the tardiness in reporting for work twenty eight minutes late. He was warned that any further incidence of tardiness exceeding five minutes during the following year would result in his discharge.

In view of the Grievant's disciplinary record and the violations of the training guidelines, which are especially important for store detectives to follow correctly, I must conclude that the Employer had just cause and that the Grievant's record provided no basis for any mitigation of the penalty the Employer has given. It follows the Grievance is not well made and should be denied.

AWARD

Grievance denied.

Theodore K. High

Impartial Arbitrator

Date: 2/8/94