

Jones #1

IN THE MATTER OF ARBITRATION BETWEEN:

Employer

AND

Union

BACKGROUND

The Neutral Referee was appointed to the Arbitration Board identified herein when the parties were unable to resolve a grievance concerning the discharge by the Employer of an employee for "reporting to work showing signs of use of intoxicants". After the Neutral Referee was appointed, a hearing concerning the grievance involved in this arbitration was held on May 26, 1993.

Each party was ably represented at the hearing, and although the hearing was informal, each party was provided an opportunity to support its position with respect to this arbitration by the testimony of sworn witnesses, exhibits and oral arguments. Moreover, each party made a closing argument.

The grievance involved in this arbitration was filed on June 23, 1992 by the Employee. The uncontroverted evidence relevant to this grievance shows that prior to June 23, 1992 the Employee was employed by the Employer as a Stores Clerk. Among the Rules of Conduct applicable to Employee and other employees is a Rule of Conduct which is identified as Rule 28. This rule provides that "reporting to work showing signs of use of intoxicants" is prohibited. On June 23, 1992, the Employer made a determination that the Employee had violated Rule 28 by

"reporting to work showing signs of use of intoxicants"; and that as a result of the determination made by the Employer, the Employee was discharged on June 23, 1992.

The grievance involved in this arbitration may be considered to allege that the Employee was not discharged for just cause or otherwise in accordance with the Agreement on June 23, 1992.

The remedy requested is that the Employee be returned to his former employment with the Employer and be made whole.

ISSUES

The parties agreed at the hearing upon the issues to be resolved by the Arbitration Board in connection with the grievance filed by Employee on June 23, 1992. These issues are as follows:

Was the Employee discharged by the Employer for just cause on June 23, 1992?

If not, what remedy is directed?

POSITIONS OF THE PARTIES

The position of the Employer with respect to the substantive issue identified above is that the Employee was discharged by the Employer for just cause on June 23, 1992, because he reported to work showing signs of use of intoxicants. Reporting to work showing signs of use of intoxicants was a violation by the Employee of a Rule of Conduct of the Employer; and this violation of a Rule of Conduct was just cause for the discharge of Employee on June 23, 1992.

The position of the Union with respect to the substantive issue identified above is that the Employee was not discharged by the Employer for just cause on June 23, 1992, because he did not report to work on June 23, 1992 showing signs of use of intoxicants. The Employer denied

Employee the opportunity to take a blood alcohol test which would have shown that there was no use of intoxicants.

RELEVANT PROVISIONS IN THE AGREEMENT

The parties agree that the Agreement required that the Employee be discharged for just cause and that whether he was discharged for just cause depends upon whether he violated a Rule of Conduct posted by the Employer.

POSTED RULES OF CONDUCT CE-5 PERSONAL CONDUCT

28. Using or possessing intoxicants, i.e., liquor, beer, wine, etc., while on duty, or reporting to work showing signs of use of intoxicants is prohibited.

DISCUSSION

The position of the Employer with respect to the issue identified above is based upon three contentions of the Employer. The first contention is that reporting to work showing signs of use of intoxicants is prohibited by Rule 28 of the Rules of Conduct of the Employer. The second contention is that a violation of Rule 28 by an employee is just cause for the discharge of the employee. The third contention is that Employee did violate Rule 28 on June 23, 1992 by reporting to work showing signs of use of intoxicants.

The position of the Union in this arbitration is primarily based upon the argument that the third contention of the Employer is false, because the evidence does not show that Employee reported to work on June 23, 1992 showing signs of use of intoxicants and because the Employer denied

the Employee the opportunity to demonstrate that there had been no use of intoxicants by denying him the opportunity to take a blood alcohol test. In spite of the argument by the Union, there are several reasons that the substantive issue identified above must be resolved in accordance with the position of the Employer.

The first reason is that the evidence shows that the determination by the Employer that the Employee had reported to work on June 23, 1992 showing signs of use of intoxicants was the result of an analysis of the conduct of the Employee at work by two supervisors using a structured alcohol investigation procedure to identify signs of use of intoxicants.¹ The second reason is that in accordance with the investigation procedure, the two supervisors identified signs of use of intoxicants shown by the Employee on June 23, 1992 when he reported to work such as the smell of alcohol, slurred speech, and glassy, red or dilated eyes.²

The third reason is that the evidence does not show that Rule 28 or the investigation procedure was not applicable to the Employee. The fourth reason is that the evidence also does not show that the Employer refused to allow the Employee to have a blood alcohol test prior to his discharge which might have shown that there had been no use of intoxicants by him which could cause him to violate Rule 28.³

¹ The evidence shows that this procedure was distributed by the Employer to maintenance operations management under a cover letter dated March 3, 1991 and that it describes in detail the procedure to be followed by a supervisor when he or she receives information indicating possible use of intoxicants by an employee. There is no evidence showing that this procedure does not serve to provide an evaluation of employees which can be just cause for discipline to be given the employee.

² The evidence shows these are signs of use of intoxicants identified by the procedure for use in connection with any employee being evaluated.

³ The evidence shows that Employee refused repeated requests by supervision that he go to a medical facility selected by the Employer for a blood alcohol test. It also shows that he may have agreed to the test after he was discharged. However, the evidence as a whole shows that the Employee was discharged because of those signs of intoxication described in an earlier footnote rather than because of any conduct in connection with refusing or agreeing to a blood alcohol test.

The fifth reason is that the evidence shows that on November 14, 1991, an Arbitration Board having Nicholas H. Zumas as Neutral Referee concluded that in the absence of a blood alcohol test, observations by supervisors such as those described in the second reason provided valid proof that an employee had reported to work showing signs of use of intoxicants.⁴ The sixth reason is that there is no evidence which shows that the parties have reached any agreement which would render the Zumas award no longer valid as an identification of that just cause required by the Agreement.

Thus, for all the foregoing reasons, the evidence does not show that the Employer did not have just cause to discharge the Employee in accordance with the Agreement. Accordingly, the issue identified above must be resolved by a majority of the Arbitration Board with the conclusion that the Employee was discharged by the Employer for just cause on June 23, 1992. In view of the conclusion with which the substantive issue must be resolved, it is unnecessary for the Arbitration Board to consider the issue with respect to remedy identified above.

AWARD

It is the Award of the majority of the Arbitration Board that Employee was discharged by the Employer for just cause on June 23, 1992. Accordingly, the grievance filed by Employee is denied.

⁴The Zumas Award used factors such as being unsteady on her feet and slurred words as a basis for the conclusion that an employee was under the influence of intoxicants.