

**Martin #4**

**IN THE MATTER OF THE ARBITRATION**

Between

EMPLOYER

And

EMPLOYEE

EMPLOYEE DISCHARGE

**REPORT AND DECISION OF ARBITRATOR**

In these proceedings, an adverse peer review decision was appealed to arbitration by the employee, Employee. The hearing was held on February 28, 1995, in City A, State A, at which the parties were fully heard.

Both the Grievant and the Employer had the opportunity to file briefs in this case. The Employer filed its brief, received by the Arbitrator on April 11th, and the Grievant did not file a brief.

**ISSUE**

Was the discharge of the Grievant, Employee, for just cause? If not, what is the remedy?'

**NATURE OF CASE**

In the Spring of 1994, Store #133 was under construction in City B. Mr. Person 1 was the store director, and on March 17, 1994, hired the Grievant to be store secretary. During the first few months, prior to the Employer gaining occupancy of the site of Store #133, she worked with an experienced store secretary in City C, State B, attended training sessions in Michigan, and

then worked at Store #129, where Mr. Person 1 was conducting his interviews prior to occupancy of Store #133. The position of Store Secretary is probably the most critical of the hourly team member positions, with substantial confidential information being handled by that person. Additionally, that position included the duties of arranging for, and scheduling, interviews with applicants for positions at the new store, probably numbering near or over 1000. Over 850 team members were actually hired. Absences in that position cannot be easily replaced, because it would involve spreading information which is to be held confidential across a number of other replacements, which destroys any reasonable certainty of confidentiality. Further, the scheduling which was being done by the Grievant could not easily be picked up by a replacement, especially on short notice. During her seven months of employment, the Grievant was absent from work 15 or more times. A majority of those absences were connected either with late notice of absence, or failure to notify Mr. Person 1 of her pending absences. Compounding this problem was the excuse of the Grievant that she had often called and left messages, but somehow could not reach Mr. Person 1. Evidence was to the effect that the stores had multiple layers of access to reach Mr. Person 1. He had a direct phone line, there was a paging system in the stores, there was a voice mail setup, and he was also equipped with a beeper. The Grievant on a number of occasions claimed to have tried to reach him, but there was never an explanation of why these multiple systems had failed to get a message to Mr. Person 1.

Finally, during the week of October 3rd, the Grievant was absent all week. She testified that her absence was due to laryngitis. No message of any kind was left with the Employer until Wednesday, when her mother called and informed Mr. Person 1 that the Grievant would not be at work that day. The statement was made by the Grievant's mother that she had attempted to reach Mr. Person 1 on Monday, but was unable to reach him. Again, no reason was given why

the multiple layers of communications were unsuccessful in allowing her to make contact with Mr. Person 1. Thursday and Friday, the Grievant was absent without any notice whatsoever, and on Friday night, Mr. Person 1 suspended the Grievant pending investigation. After consultation with higher management, the Grievant was discharged on October 11, 1994.

The Grievant's work was satisfactory or better, to the point where she was given an increase in wages on her six month review, but was also given a warning that her attendance was far below satisfactory, and a continuation of that absentee rate would not be tolerated. The following month was the week of absence with only a Wednesday notification.

## **CONTENTIONS**

According to the Grievant, Mr. Person 1 was frequently difficult to reach, and she always had a good reason for being absent. She worked many hours of overtime during the months of her employment, and family problems also added to the attendance problem. The discharge was not fair, and she should be reinstated to her employment.

According to the Employer, the Grievant's frequent absenteeism and failure to notify Mr. Person 1 when she was going to be late or absent made her unsuitable for the important position of store secretary. While many employees could be easily replaced upon proper notice, the position occupied by the Grievant was not such a position, and her failure to give proper notice of impending absences made replacement impossible. She averaged over ten percent absenteeism during her seven months with the Employer, a high rate of absenteeism for anyone, but especially high for a key employee whose job duties are unique and important, and one who cannot easily be replaced. The position of store secretary is one requiring trust and confidence from the store manager, and that trust and confidence was badly damaged by the Grievant's frequent claims of being unable to reach Mr. Person 1, despite the multitude of means available

to reach him. The discharge of the Grievant was unfortunate, but necessary, and it should be sustained.

## **DISCUSSION**

The evidence in this case demonstrates a far beyond the normal tolerance on the part of the Employer of not only excessive absenteeism, but a remarkable number of cases of no call/no show. It also requires a finding that the Employer's judgment was correct in determining that the Grievant was not filling the position of store secretary, and of terminating her from that position.

The testimony of Mr. Person 1 made it quite clear that he was well pleased with the performance of the Grievant in her job, when she was present. Her attendance was poor, and it was grossly aggravated by the extraordinary number of no calls/no show instances of absenteeism, the most deadly form of all. While it is possible to accept the Grievant's statement that all of her absences were unavoidable, and that she was sick a far greater number of times than normal, it is impossible to accept her excuse for failing to notify of her impending absences because of her inability to reach Mr. Person 1. It is asking for credulity to be stretched far beyond reason to expect the claims of inability to reach Mr. Person 1 to be believed. While it is possible that Mr. Person 1 was not easily reached, it is not possible that messages were left which were never received, when Mr. Person 1 sought out those messages. It is not necessary for the store manager to be available to employees at all times; it is nevertheless necessary for employees to make every effort to get messages to him, or to leave messages for him. The evidence was overwhelming that neither was really done, although the claim was made that it was. Making such a finding, and I do, creates two problems for the Grievant. First, she did not notify, or even attempt to notify, her supervisor of her pending absences, and was guilty of any number of no

calls/no show absences. Secondly, it reflects a valid reason for a lack of credibility, when she was in a position which required the confidence and trust of her supervisor.

Under these circumstances, the finding must be made that the decision to terminate the employment of the Grievant was a reasonable one, and was done with just cause. While it is possible for an employee to be too ill to work regularly enough to maintain his job, and a discharge under those circumstances would be appropriate, that type of discharge is not connected in any way with fault. In this case, with its many no call/no show absences, and its excuses for not calling being unaccepted as the truth, a just cause situation exists, and the Employer's actions must be sustained.

#### **AWARD**

That the Grievance shall be and hereby is denied.

James P. Martin

Labor Arbitrator

May 24, 1995