

## **EXERCISE**

### *Labor Arbitration*

#### **I. OBJECTIVES**

- A. To familiarize you with the arbitration process.
- B. To give you practice in presenting a case before others.
- C. To examine issues relating to contract administration.

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#### **THE ISSUE**

Was the grievant discharged for just cause? The company claimed the employee's negligence of duty resulted in the discharge, and the union claimed poor performance was the issue. If the union is right, what should be the remedy?

#### **PERTINENT PROVISIONS OF THE UNION AGREEMENT**

##### **Article I. Purpose of the Agreement**

1.3 The management of the company and the direction of the working force, including the right to plan, direct, and control operations, the right to hire, suspend, transfer, or discharge for just and sufficient cause, to relieve employees from duties because of lack of work or for other legitimate business reasons, and the right to introduce new or improved methods or facilities of production, is vested exclusively in the company; provided, however, that such rights shall not be exercised for the purpose of discriminating against any employee, and such rights shall not conflict with the provisions of this agreement.

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##### **Article 33. Discipline and Discharge**

33.1 In cases of poor job performance, the following procedure dealing with discipline will be accomplished with written notification to the union:

- a. Formal written warning in the first instance with copy to the employee.
- b. In subsequent instances, formal written warning and/or suspension without pay for a period not to exceed five working days.
- c. In the event three or more instances occur, one of which results in a suspension, within any two-year period, discharge for just cause will be accomplished.

33.1.1 For purposes of this article, job performance shall include consideration of the following factors:

- a. Attendance record, including absenteeism, tardiness, and proven abuse of sick leave.
- b. Adherence to industrial safety rules.
- c. Adherence to company house rules.
- d. Ability to perform assigned tasks satisfactorily.

33.2 In cases of personal misconduct, the disciplinary action taken, including discharge, will be consistent with the gravity of the offense.

## **BACKGROUND**

The grievant was employed as a service technician for the ABC Petroleum/Gas Company from August 2003 to April 2009. On January 26, 2009, grievant was dispatched to a customer who reported a strong odor of gas. Grievant's service report showed that he spent 26 minutes on the call, that no leaks were found, and that no repairs were made. The grievant did not take a pressure/manometer test.

Later that same day, in response to a second call, another technician was sent to the customer's home. The second technician checked the gas tank and gauge readings, added some gas, used the track, and did the pressure/manometer test. He tested the lines and isolated the source of the gas odor at a leak in the heater connector after the shutoff valve on the heater. The leak was located less than two feet from the pilot light on the water heater, which was lit. The technician replaced the heater connector and put the old one in the back of his truck. Subsequently, the grievant's immediate supervisor talked with the second technician and examined the damaged heater connector.

On January 28, 2009, the supervisor met with the grievant and informed him that he was being suspended, pending an investigation. The reason for the suspension was "Negligent in responding to report of gas odor on January 26, failure to perform leak investigation according to company procedures, leaving party with hazardous condition." By letter on April 16, 2009, grievant was notified that he was being terminated based on the company's findings indicating that "the incident was of such serious nature that we would be remiss in continuing your employment as a technician."

## **THE COMPANY'S POSITION**

The company contends that the grievant failed to follow normal procedures necessary to determine whether there was a gas leak, and that leaving the customer in a hazardous condition constituted just cause for discharge. The grievant's failure to find or repair the gas leak was not poor performance but negligence of duty. The company defined poor performance as involving a lack of skills or intelligence and that the grievant's behavior was not caused by a lack of skills or innate inability. The company specifically refers to Article 1.3 that permits the company to discharge an employee for "just cause" and that, under Article 1.3, no prior warnings are required. The company also noted in its presentation that the employee was previously suspended for five days in 2004, and that he has been reprimanded on numerous occasions for various infractions.

## **THE UNION'S POSITION**

The union contends that the grievant should have been disciplined under Section 33.1 for poor job performance. The union contends that grievant performed three of the four tests usually performed and that, at worst, used poor judgment in not pressure testing the system. Further, the union contends that the company failed to give grievant adequate notice of the rule or the consequences of his action. The grievant did not have knowledge that he could be discharged for negligence in performance of his duties. Further, the union claimed that the company did not conduct a proper investigation and relied solely on the report of the second technician sent to the customer's home. The company made no attempt to visit the job site to determine firsthand if grievant had followed company rules.