

The Union argued that there was no record of the first "sleeping on the job" incident reported by the supervisor. The supervisor's statement that he believed it occurred sometime in the summer is insufficient to establish occurrence. If this is such a critical incident, which warrants immediate discharge, it seems unreasonable that in one instance it would be treated with just the shaking of a finger. This incident is unrecorded and should not be considered as evidence against the grievant.

There is no denial of the second incident as the grievant states he does not know if he was asleep or not. He was startled by the supervisor jumping on his truck and became disoriented as a result. He was arguably asleep, however, and was counseled by his Steward to be extremely careful in the future. It is easy to shut your eyes and relax for a few minutes while your truck is being loaded. The truck was locked out with the parking brake and cannot move; thus there is no immediate danger of any kind.

In the incident of March 3, 2009, the truck was parked at an odd angle with the left front of the truck angled down. In order not to slide off the seat, the grievant had to totally extend his left leg and brace it against the corner of the bottom of the left door. This put him in a reclining position forcing his head back against the black box mounted behind the seat. One must remember the seat in this vehicle is in the middle; thus the downhill angle of the truck forced the grievant to appear to be lying back in a reclining position. *Appearance of asleep is not asleep as charged.* Furthermore, the Union noted that the Company's treatment of the grievant for the previous similar incident was only a safety observation and counseling; no discipline was involved. The Union did not have the backhoe driver testify at the hearing.

Source: Adapted from *Dickenson-Russell Coal Company, LLC and United Mine Workers of America, Local Union No. 7950*, 126 LA (BNA) 517 (2009).

QUESTIONS

1. Should the Company's treatment of the grievant for the first two "sleeping on the job" incidents influence the outcome in this case? Explain.
2. Did the Company have just cause to dismiss the grievant for violating safety rules when in each instance cited, the truck was out of gear with the safety break on?
3. Is the union's argument that the grievant just "appeared to be sleeping" creditable in the absence of any testimony of support by the backhoe driver, a fellow union member?

Key Terms and Concepts

"5 Ws" rule 410

disciplinary procedures 419

employee misconduct (minor and serious offenses) 414

grievance 407

grievance mediation 422

grievance procedures 407

last chance agreement
progressive discipline

the advantages and disadvantages