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Discipline grievances

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by JUDITH McCORMACK

When an employee believes she has been unjustly disciplined, and the grievance is not resolved, who decides if the grievance gets referred to arbitration? What are some of the considerations?

The daily diet of a union representative often includes deciding whether discipline grievances should be carried through to arbitration. [At HSA, this decision is made through a grievance committee consisting of the Executive Director (Labour Relations), HSA legal counsel, and other labour relations staff.]

In some cases, the answer is obvious: the grievor is blameless and the discipline is completely unjustified.

In other cases, however, the grievor may have done something wrong, but the discipline imposed by the employer seems too harsh. When this happens, the question often facing the union official is whether an arbitrator is likely to reduce the penalty.

Arbitrators come with a variety of different views, so trying to predict what they will do can be risky. At the same time, they frequently consider similar factors in arriving at their decisions.

The grievors length of service often plays an important role. Especially in a discharge case, long service may help convince an arbitrator to substitute a suspension.

A clear disciplinary record for the grievor is also very influential. If the grievors conduct was an isolated incident, an arbitrator is likely to take a more lenient view.

Provocation by the employer is another factor that the arbitrator may consider, depending on the circumstances.

Any special problems on the grievors part that led to the conduct can make a difference as well. Examples include medical, psychiatric, addiction or family problems.

Arbitrators will often examine the punishment handed out in similar cases. Sometimes this involves discipline imposed by the employer on other employees. Arbitrators will frequently look at previous arbitration decisions involving other employers and unions as well.

The economic or other hardship to the grievor is particularly likely to be considered in discharge cases. An older worker who may have difficulty finding another job may be dealt with more compassionately, especially if he or she has long service.

The grievors rehabilitative potential is often a factor in discharge cases. Arbitrators may consider whether the employment relationship has been fundamentally breached, or whether the grievor is "redeemable." For example, a grievor who understands the seriousness of his or her conduct and apologizes to the employer may have a better chance of success at arbitration in the right kind of case.

These points are merely a rough guide. Each case is normally decided on its own facts and there may be other factors involved.

But when you have to assess whether a grievor must face the music, it helps to know what tune is being played.

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