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vehicle) and was armed, he might engage in a carjacking. Officer A further testified of his oath to protect the public and his belief that the public was in danger from the suspect. Officer A also testified that his emergency lights and siren were not in operation while he followed the suspect, and he never attempted to close the gap on the suspect's automobile; thus, he was not in pursuit.

The city argued that Officer A had failed to obey the orders of two sergeants to terminate a pursuit and should be disciplined for his failure to obey their orders.

Source: Adapted from City of San Antonio, 95 ARB 5066.

QUESTIONS

1. Was Officer A in pursuit of the suspect's vehicle?
2. As an arbitrator, would you uphold or deny the grievance?
3. Would you change the punishment of Officer A from a one-day suspension to that of a written warning?
4. What is the value to the police command in disciplining Officer A?

Case Study 11-2 Sleeping On the Job

The grievant has been employed by the Company as a truck driver of an all-wheel drive, articulating dump truck which he operated in conjunction with other pieces of equipment. While sitting in a loading area at the preparation plant he was being loaded by a long-armed loader; he was observed by a supervisor leaning back with his head against the box behind the seat with his eyes closed and his mouth open. The truck was running, and it was out of gear with the safety brake on, as prescribed by the safety procedures. He was suspended in compliance with the labor agreement—a 24–48-hour meeting was properly held, and he was terminated on March 11, 2009, for sleeping on the job.

The Company contended that this was the third such incident involving the grievant. In the previous summer, the supervisor found the grievant asleep while sitting in his truck as it was being loaded. The motor was running, it was out of gear, and the safety brake was on. The supervisor had the loader bump the truck, and when the startled grievant eyeballed the supervisor, the supervisor shook his finger at him and shook his head to let him know he was caught sleeping and that it was not permitted.

On September 17, 2008, the grievant was observed sleeping for an extended period of time while being loaded by a backhoe. In this instance the supervisor physically mounted the truck and opened the cab door to a very startled awakened employee. Again, the motor was running, it was out of gear, and the safety brake was on. A written safety observation card which stated "EMPLOYEE WAS ASLEEP" was issued to the grievant. In addition, a counseling session was held with the grievant and his Union Steward. The Company and the Union Steward informed the grievant that if he were caught asleep again, he would be discharged. The Company informed him if he had physical problems, he should get a doctor's excuse and he stated he had no problems.

A third occurrence of the grievant being found sleeping on the job was evidenced on March 3, 2009, as the supervisor was walking past the grievant's truck while it was being loaded. The supervisor had walked completely around the truck and was not seen or noticed by the sleeping grievant. The cab of the truck has a clear 180-degree open view through its windows. The supervisor and the backhoe operator observed the grievant asleep for several minutes. The Supervisor reported the incident to Management, and the grievant was discharged for sleeping on the job.

The Company argued that a third sleeping on the job violation, while in the cab of a running piece of heavy equipment, is more than just cause for termination. This is a work area where there is high foot traffic and is frequented with numerous smaller vehicles and other equipment that is constantly on the move. Sleeping on the job is a very dangerous act.

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 418

progressive discipline 417

Review Questions

1. Why might both management and a union agree to a last chance agreement?
2. Explain a typical grievance procedure.
3. Describe how the concepts of authority and influence affect the grievance process.
4. Explain the steps of a grievance process. Why do these steps exist?
5. Discuss how disciplinary procedures affect the labor-management relationship.
6. What are the advantages and disadvantages of grievance mediation?
7. Why is progressive discipline used in misconduct cases involving minor offenses?
8. What serious misconduct offenses should always result in discharge?



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