

## 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 Stewart 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).