

EXPEDITED ARBITRATION PANEL

IN THE MATTER OF THE ARBITRATION
BETWEEN,

Employer

-and-

Griev: 4: Tom Top

Union

BEFORE: Karen Bush Schneider, Arbitrator

CONTRACT YEAR: 1998-2000

TYPE OF GRIEVANCE: Discipline

AWARD SUMMARY

The grievance is denied.

Karen Bush Schneider, Arbitrator

ISSUE PRESENTED

Did the Employer have just cause to issue Grievant, Tom Top, a Letter of Warning dated March 26, 2001, for irregular attendance?

The Employer responds, "Yes."

The Grievant and Union respond, "No."

Since this matter involves discipline, the Employer has the burden of proof.

STIPULATED FACTS

The parties stipulated that the absences/tardies specified in the Letter of Warning dated March 26, 2001, are accurate and are not in dispute.

EMPLOYER'S CASE

The Employer maintains that it had just cause to issue Grievant a Letter of Warning on March 26, 2001, for irregular attendance. Within a six month period, Grievant had at least four instances of sick leave occurring on January 22, March 5, March 6, and March 7, 2001, two instances of emergency annual leave occurring on February 14 and 16, 2001, and seven occasions of tardiness occurring on October 19, October 23, and November 13, 2000, and January 27, February 6, February 24, and February 26, 2001. (See Joint Exhibit's "3" and "6.")

Grievant was hired by the Employer in 1999 as a clerk in the Someplace, facilities. In the fall of 2000, Anne Box became the Supervisor for Customer Service and, accordingly, Grievant's immediate supervisor.

In the fall of 2000, Ms. Box advised the Union that she intended to meet with all of the employees under her supervision to review their attendance. Ms. Box testified that she met with Grievant on or about December 7, 2000 (see Employer's Exhibit "1") to discuss his attendance. Ms. Box advised Grievant that their meeting was an "official discussion" because she found Grievant to have been irregular in his attendance. During the meeting, she allowed Grievant to provide information that would excuse or mitigate his irregular attendance. Ms. Box also permitted Grievant to change the start time of his work schedule. (See Employer's Exhibit "2.")

Grievant's attendance did not improve following the official discussion of December 7, 2000. He was absent and charged 8.0 hours of sick leave on January 22, March 5, March 6, and March 7, 2001. Further, he was tardy on January 27, 2001 (.01), February 6, 2001 (.67), February 24, 2001 (.27), and February 26, 2001 (.10). Additionally, he took emergency annual leave on February 14 and 16.

Ms. Box met again with Grievant on March 9, 2001. This was a pre-disciplinary meeting. She provided Grievant with the opportunity to explain his irregular attendance, offer mitigating circumstances, and provided him with FMLA paperwork if he desired to qualify some or all of the absences for FMLA purposes. When Grievant did not return the FMLA documentation, Ms. Box and issued the Letter of Warning – Irregular Attendance on March 26, 2001. (See Joint Exhibit "3.") The letter cites violations of EMPLOYMENT MANUAL Sections 511.43, 666.81 and 666.83.

The Employer had just cause to issue the Letter of Warning to Grievant since Grievant, admittedly, was irregular in his attendance during the afore-described period, had been given the opportunity to correct his attendance following

an official discussion, and had failed to provide any excuses or mitigating circumstances which would warrant the Service's leniency. A Letter of Warning is the lowest step of discipline the EMPLOYER can issue. In this case, it was intended to give Grievant written warning that his attendance needed to improve or he would face further, more serious disciplinary action.

UNION AND GRIEVANT'S CASE

While the Union and Grievant concede that the attendance irregularities cited by the EMPLOYER occurred and are accurate, they argue that the Employer nonetheless did not have just cause to issue the March 26, 2001 Letter of Warning. Before Ms. Box became Grievant's supervisor, employees in Someplace had not been disciplined for irregular attendance in years. Although Grievant met with Supervisor Box in late 2000, to discuss his attendance, Supervisor Box did not designate the meeting as an "official discussion." Grievant thought the meeting was merely routine, since Supervisor Box was meeting with all employees under her supervision at the time.

Supervisor Box' notes reflecting that dates on which she held discussions with employees is suspect because it reflects that she met with Grievant on December 7, 2000. December 7 was a Sunday, a day admittedly that Ms. Box did not work. (See Employer's Exhibit "1.")

Grievant testified that he suffers from back problems. He is currently seeking to have some of his absences qualified as FMLA absences. However, Grievant could not recall whether any of the FMLA paperwork he had submitted covered the attendance irregularities in question.

The Union asserts that there were procedural irregularities in connection with the Grievant's Letter of Warning. Among those procedural defects were the failure of the EMPLOYER to hold a "official discussion" before issuing the Letter of Warning, failure to provide Grievant with a Union Steward when he requested one on March 9, 2301, and failure to provide him with forewarning of the probable disciplinary consequences of irregular attendance.

The Union and Grievant request that the Letter of Warning be rescinded and that Grievant be made whole.

OPINION

The Arbitrator has carefully reviewed the testimony of the witnesses, the documentary evidence, and the arbitral precedent submitted by the parties. In this Arbitrator's opinion, the grievance should be denied.

The parties admit that the absences/tardies cited in the Letter of Warning occurred. Thus, it is not disputed that Grievant was irregular in his attendance in violation of EMPLOYMENT MANUAL §§511.43, 666.81, and 666.83.

Thus, the Union's case boils down to whether procedural errors occurred sufficient to overturn the discipline. In this regard, the testimony of Supervisor Box and Grievant is at odds.

The Arbitrator is persuaded to credit the testimony of Supervisor Box regarding the official nature of the discussion she held with Grievant on or about December 7, 2000. It was clear that Supervisor Box's "agenda" was to improve attendance amongst the employees under her supervision. To this end, she held meetings with all of the employees, some of which were conducted as "official discussions" versus "reviews"

when the employee's attendance record revealed attendance problems. Through the meetings, she clearly put employees, including Grievant, on notice that their attendance would be scrutinized and that it had to be brought into conformity with Employer regulations which require regularity in attendance. Supervisor Box's notes, even despite date errors, confirms the nature of the meeting she held with Grievant. (Employer's Exhibit 111)

Despite Supervisor Box's meeting with Grievant and the clear notice he was given, Grievant continued to experience attendance irregularities during the months of January, February, and March of 2001. These attendance irregularities occurred despite the fact that he was allowed to change the start time of his schedule, he was encouraged to provide medical information to qualify absences for FMLA purposes, and was given an opportunity to present any mitigating circumstances which would excuse his irregular attendance. If any of his absences had been occasioned by a serious medical condition, he could have verified that through the submission of FMLA documentation. He failed to do so for the absences/tardies in question.

The issue of irregular attendance has been a problem which has plagued employers and labor organizations for decades. Arbitrators who have examined attendance issues have been guided by a universal truism: employers have the right to expect that their employees will report for work as scheduled, except for legitimate reason within a certain tolerance level. In other words, regular attendance is the guide post. While a certain amount of absenteeism is expected (and tolerated), irregular attendance,

regardless of the cause or the excuse, leads to disciplinary consequences.

The Employer is charged with the weighty responsibility of moving and delivering product and services on a timely basis. It cannot discharge that responsibility unless it employs individuals who are seriously committed to the task. That cannot be done when individuals unexpectedly fail to report for work as scheduled, are tardy, or leave early. Irregular attendance does nothing but impede service, increase costs, and lower the morale of employees who must "pick up the slack" when one of their co-workers fails to meet their appointed schedule.

AWARD

The grievance is denied.

Karen Bush Schneider, Arbitrator