

Terminating an Employee

Grievance Arbitration

In a Union Setting

An abstract graphic at the bottom of the page consisting of several overlapping, semi-transparent blue and grey geometric shapes, resembling a stylized, low-poly landscape or a series of interlocking planes.

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I. Investigating an Intoxicated Employee

Introduction: Arbitration has been used by the United States for over 70 years. In the past, the most common use of arbitration was for an employment dispute in a union setting.ⁱ The following example will give the reader an idea of how arbitration works when the employer and the union have contract language that states the rules for disciplinary action.

Facts: Let's say that Erin was drinking beer in her car during her lunch period. Her supervisor, Sam, walked by her car and saw Erin. Sam then called the Assistant Director of Human Resources, Helen, and informed her of the situation. Helen told Sam she would be there in five minutes.

By the time Helen arrived Erin was lying on the hood of her car drinking another cold beer, singing loudly and smoking a cigarette. Sam and Helen walked up to Erin and confronted her about the beer. Erin's first comment to them was, "Hey you want a beer. I've already had four but there are a couple left in the six pack!" Then poor Erin let out a loud burp.

Investigation: What happens next?

Well, typically the contract (CBA)ⁱⁱ states that if there is an investigation that could lead to discipline Erin may have a union steward present.ⁱⁱⁱ The purpose of the union steward is to make sure that Erin's rights under the CBA are protected.

At the investigation (investigatory interview) Helen will ask Erin specific questions about the drinking incident. Helen will be careful to obtain

all the information she can because she will use this information to determine the level of discipline that Erin will receive.

During the investigation Helen will make sure that Sam or someone else is taking notes for her so that she has a record of Erin's comments. The steward will also take notes.^{iv}



ⁱ Arbitration is now used in every industry in the United States. Contracts for services providing everything from cell phones to construction include agreements to use arbitration rather than litigation.

ⁱⁱ CBA = Collective Bargaining Agreement. This is the contract between the employer and the union.

ⁱⁱⁱ This right is called a Weingarten Right.

^{iv} Neither side may see the other side's investigation notes unless a witness uses them at arbitration on the witness stand. Detailed notes are important in order to prepare properly for arbitration. They are the building blocks of every case.

II. Deciding the Discipline for Sad (but not sober) Erin



After the investigation Helen (from Human Resources) has to decide the level of discipline that she will recommend for Erin. Helen will review the following before she makes her recommendation:

1. Erin's length of time with the employer.
2. Erin's disciplinary history with the employer.
3. How other employees were treated for the same offense by the employer.
4. Whether or not there were any mitigating circumstances. (For example, did Erin just break up with her boyfriend?)

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5. The number of rules or policies that were violated by Erin and the seriousness of the violations.
 6. What the CBA says about alcohol at work. Some CBA's have a "*no tolerance policy*" that requires the employee to be terminated if caught with alcohol or drugs at work.
 7. Arbitration awards that the employer may have from prior similar situations in its work place
 8. Arbitration awards on the GVSU web site that have a similar fact pattern.

III. Research Results

Helen does her research and finds out that Erin has only been with the company two years but has a perfect disciplinary record. Helen also finds out that every employee who has been caught with alcohol has been terminated and that arbitrators have upheld the discharges except for once when the employee had worked for the employer for twenty years.

In that situation the employee also had a perfect disciplinary record for the entire twenty years he worked for the employer. At the arbitration hearing the employee explained he began drinking after his wife died of cancer. The arbitrator in that case deemed that the employee deserved another chance because of his previous spotless record and the mitigating circumstance of his wife's death.

Helen decides that Erin's case is more similar to the employees whose discharges were upheld by the other arbitrators; so she decides to terminate Erin.

IV. Below is the Memo of Discharge

Date: October 12, 2012

To: Erin Hatfield

From: Amy Kim, Director of Human Resources

Subject: **Letter of Discharge**

This letter is to notify you that you have been discharged from your employment as of today's date, October 12, 2012. The reason for your discharge is as follows:

On October 8, 2012 at 12:30 PM you were witnessed drinking a beer while sitting on the top of your car and smoking a cigarette in the employees' parking lot. You were loudly singing the words: "When I die I want to go to heaven because you won't ever, ever be there!"

Your supervisor, Sam Stevens asked you to stop singing. You turned to him and asked him if he wanted a "cold one." You asked the same of Asst. Human Resource Director, Helen Hayes. Both supervisors declined a beer. When Helen Hayes asked you to put down the beer and cigarette you did so immediately. You then followed the two

supervisors to the break room where an investigatory interview commenced.

Prior to the interview you requested a union steward and Mike Mann, the steward for your work area, was contacted. Mr. Mann sat with you during the interview and took notes of the meeting.

At the interview you stated that you were drinking because had just found out that you failed your "334 midterm exam." You stated that you had "studied hard but that witch (the professor) flunked me!" You then began to cry and admitted that you had four beers during your lunch break. You also stated that trying to finish college and raise a child was "just too damn much!" You then commented again how unreasonable your professor was and how you "hated her guts damnit!"

When Helen Hayes asked you where you found the beer you said, "Oh, I bought a six pack before work and I intended to drink it after I got off my shift....but when I opened Dropbox on my cell and saw my grade I just went out of my head. I am so sorry!"

Your actions October 8, 2012 constitute a violation of Employment Rule #8 which prohibits "any use of alcohol or illegal drugs on the employer's property." You are therefore terminated from your employment as of October 12, 2012.

Please return any property of the employer to your supervisor, Mike Mann today. Your failure to do so may result in criminal prosecution.



After Erin was discharged she decided she wanted her job back. She went to her steward Mike Mann and he told her the CBA allowed her to grieve the termination. Mike met with the union president and the grievance committee and they decided that the union would file a grievance for Erin.

A grievance is a claim that the CBA has been violated. In this case the CBA states that an employee may not be disciplined except for just cause. So the union will claim in its grievance that the employer lacked just cause to terminate Erin.

V. The written grievance is on the next page

UNION GRIEVANCE STEP 2

Date: October 18, 2012

Grievance Number: 45

Grievant's Name: Erin Hatfield

CBA Sections Violated: Sec. 4, Management's Rights; Sec. 8, Discipline, Section 15, Discrimination and Harassment

Reasons for Grievance:

The grievant, Erin Hatfield, has been an employee for two years. During that time she has never had any discipline. She has however had excellent performance reviews.

On October 12, 2012 the grievant was terminated from her employment because she had been drinking at work. While the grievant understands that this was in violation of employment rule #8 it is obvious the discipline was not fair. Therefore, the employer did not have just cause in accordance with Sec. 4 and Sec. 8 of the CBA. Both of these contract sections require just cause for termination of an employee.

The discharge is too severe because there were mitigating circumstances. The employee has been working hard to receive her undergraduate degree, work full time AND raise a baby on her own. She expected to graduate in December but on the day she was caught drinking alcohol she had just found out that she was failing a class. She was devastated. The stress of her life in tandem with the unfortunate news led her to make a mistake. One she will never make again.

The discipline is also unreasonable and discriminatory because a male employee was caught drinking at work yet he was put back to work by an arbitrator. He too was an excellent employee and the arbitrator recognized that people under great stress make mistakes. The employer subsequently put the male employee back to work. The employer's failure to also return a female employee back to work for the same rule violation is a breach of Section 15 of the CBA which prohibits discrimination based on sex.

The grievant requests that she be returned to work because of the reasons mentioned in this grievance. She also requests that she receive back pay for all the work days she has missed due to this breach of the CBA.

Grievant's Signature:

Date:

Union Steward Signature:

Date:

Date Received by Employer:

Signature of Supervisor who Received this Grievance:

After the employer received the written grievance from the union it was required by the CBA to reply. Below is the reply sent to the union by the employer:

Employer's Reply to Grievance

Grievance #: 45

Grievant's Name: Erin Hatfield

Date: October 20, 2012

The employer denies this grievance because it had just cause to discharge the employee.

Signature of Director of Human Resources:

Signature of Union Representative Who Received this Grievance:

So now what happens?



Well, to learn more go to:

<http://prezi.com/xsoahmtqqb91/steps-of-the-grievance-process/>