

VIOLATION OF PLANT RULES

Under the common law master-servant relationship, the master was free to promulgate whatever rules and regulations he deemed fit for the well-being of his organization. Today, however, this prerogative is somewhat limited by state and federal legislation, collective-bargaining agreements, and public sentiment. Labor has been granted certain rights which will prevail should they come into conflict with the plant regulations of the employer.

Management may discipline or discharge for clear violations of plant rules,¹ occurring on the company grounds,² even though the propriety of the rule violated may be questionable. The decisions are nearly uniform in holding that such a defense is not proper,³ although one decision indicates, in dictum, that such a defense might be apropos if compliance with the rule might be dangerous to the employee.⁴

I. MITIGATING FACTORS

Keeping in mind management's prerogative of discharge and discipline there are certain factors which may exist that compel the arbitrator, in all fairness, to say that the penalty imposed by management is too severe or in many cases completely unwarranted.

A. Management's Failure to Sustain the Burden of Proof.

When management's imposition of discipline for any particular violation of company rules has been questioned by the em-

1. In re Stockham Pipe Fittings Company and United Steelworkers of America (CIO), 1 ALAA ¶67,013 (1945); In re Cameron Mfg. Co. and United Electrical, Radio & Machine Workers, Local 605, 1 ALAA ¶67,413 (1946); In re Bryant Heater Co. and United Automobile, Aircraft and Agricultural Implement Workers, Local 337, 1 ALAA ¶67,491 (1946).

2. In re Pioneer Gen-E-Motors Corp. and United Electrical, Radio and Machine Workers, Local 1150, 1 ALAA ¶67,391 (1946).

3. In re South Carolina Electric & Gas Company and International Brotherhood of Electrical Workers, Local B-772, 1 ALAA ¶67,217 (1945); In re Standard Products Co. and United Automobile, Aircraft and Agricultural Implement Workers, Local 912 (CIO), 1 ALAA ¶67,458 (1946); In re The Federal Machine & Welder Co. and United Electrical, Radio and Machine Workers, Local 730 (CIO), 5 LA 60, 1 ALAA ¶67,488 (1946); In re Ampco Metal, Incorporated and Employees' Mutual Benefit Association, 3 LA 374 (1946).

4. In re Woodward Iron Co. and United Mine Workers, Dist. 20 (AFL), 1 ALAA ¶67,485 (1946).

ployee involved, management has the burden of proof in convincing the arbitrator that its action was not ill-advised. How much evidence must be presented is not clearly shown by any of the decisions reviewed. On the other hand, it appears from the cases that somewhat less than a preponderance of the evidence will suffice, although this will vary with each individual arbitrator. When the evidence fails to sustain the charge made, the employer's action will be altered.⁵ It is interesting to note that, at the arbitration hearing which is somewhat unlike, and much more informal than, a judicial proceeding, should the arbitrator feel that the employee has acted improperly in some phase of the alleged violation, even though management may have failed to sustain its burden of proof as to the violation in its entirety, he may impose a lesser penalty than that originally meted out.⁶

In situations where the employee has been discharged for being a "bad actor"⁷ or "frequent" and "willful" violator of company rules,⁸ the arbitrator will not sustain the company action when it appears that the witness-supervisor has strong personal feelings against the employee. To the writer these decisions are merely additional examples of situations where the company has failed to sustain the burden of proof.

When management's action has been predicated upon evidence illegally obtained, such evidence is not proper and results in the employer's failure to sustain its action by the burden of proof. In *In re Campbell Soup Company*,⁹ it was held that evidence of possession of a knife in violation of company rules

5. *In re Isle Transportation Company, Inc. and Amalgamated Association of Street, Electric Railway & Motor Coach Employees of America (AFL)*, 6 LA 958 (1947); *In re National Tool Co. and United Electrical, Radio and Machine Workers, Local 735*, 1 ALAA ¶67,390 (1946).

6. *In re Quaker Shipyard and Machine Company and Industrial Union of Marine and Ship-building Workers of America, Local 56 (CIO)*, 3 LA 490 (1946); *In re The Glenn L. Martin Company and United Automobile, Aircraft and Agricultural Implement Workers of America, Local 738 (CIO)*, 6 LA 500 (1947); *In re Adler Manufacturing Company and United Brotherhood of Carpenters and Joiners, Local 3160 (AFL)*, 4 LA 700 (1946); *In re Allen Industries, Inc. and International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, Local 857 (CIO)*, 6 LA 884 (1947).

7. *In re Douglas Aircraft Company, Inc. and International Association of Machinists, Aeronautical District Lodge 720*, 10 LA 607 (1948).

8. *In re San Diego Electric Railway Co. and Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, San Diego Trainmen & Bus Operators, Division 1309 (AFL)*, 10 LA 119 (1948).

could not be used as a basis for discharge because it was obtained by an illegal method, *id est*, the unilateral entry of a company guard into the employee's personal locker and purse in violation of her personal rights.

B. Knowledge and Understanding by the Employee of the Rule Violated.

Management, in order to discipline for the infraction of a plant rule, must convince the arbitrator that the employee was informed of the details of the rule.¹⁰ Generally such information is imparted orally, or by the use of bulletin boards or employee handbooks, and at least one case shows that the fact that the rule involved is common practice in the industry lends support to the company's argument that the alleged violator did have the requisite scienter.¹¹ Further, knowledge acquired by union officials in their official capacity will satisfy the requirement of knowledge, even though the rule may not have been publicized the necessary length of time as provided for in the contract between the company and union.¹²

Failure to adequately inform employees of all rules may leave management without a "scapegoat" when the company has been placed in an embarrassing position. Thus in *In re Four Wheel Drive Auto Co.*,¹³ an employee, discharged for the propagation of his candidacy for sheriff by means of leaflets distributed on the company grounds, was reinstated despite the fact that it was financially wise for the company to maintain a "middle-of-the-road" attitude with reference to politics, because the company failed to show that their "unwritten rule" forbidding political action on plant premises had been sufficiently publicized among the rank and file employees.

9. *In re Campbell Soup Co. (Central Div.) and Food, Tobacco, Agricultural and Allied Workers Union of America, Local 194 (CIO)*, 2 LA 27 (1946).

10. *In re Chrysler Corporation and United Automobile, Aircraft and Agricultural Implement Workers of America, Local No. 371 (CIO)*, 5 LA 420, 2 ALAA ¶67,568 (1946).

11. *In re Ford Motor Company and United Automobile, Aircraft and Agricultural Implement Workers of America, Lincoln Local 900 (CIO)*, 2 LA 35, 1 ALAA ¶67,268 (1945).

12. *In re International Shoe Company and United Shoe Workers of America, Local 116A (CIO)*, 2 LA 295 (1946).

13. *In re Four Wheel Drive Auto Company and Associated Unions of America, Office and Professional Workers Local 15, 4 LA 170, 1 ALAA ¶67,409 (1946)*.

Even though the employee may know of the existence of a particular rule, it would seem manifestly unfair to punish him for its violation unless he has understood its meaning and consequences. Thus, one case¹⁴ has held that a three day disciplinary lay-off was an improper penalty for an employee who allegedly violated his employer's order forbidding return of machinery to the tool room more than five minutes before closing time, by disconnecting his machinery and readying it for checkout ten minutes before the end of the shift. The evidence indicated that the rule was not properly understood by the alleged violator.

C. Failure to Warn Employee Concerning Previous Conduct.

A careful perusal of the arbitrators' decisions dealing with failure to warn employees of previous conduct amounting to an infraction of company rules soon reveals the fact that generalization is not too helpful because of such varying factors in each case as contract provisions and plant practices. Nevertheless it is felt that value may be derived from a close inspection of the more usual type of situations.

Where management attempted to discharge an employee for displaying an uncooperative attitude, it has been held, and rightly so, that such a penalty is improper without the employer having first warned the violator that his conduct has not measured up to the standard required in the organization.¹⁵ Where the contract permitted discharge for just cause, but required the employer to give employees reasonable warning before discharge, it was held that discharge for an employee's first insubordinate act was too severe, since the contract reference to "warning" implied that the first offense should be followed by warning or a disciplinary measure less severe than discharge.¹⁶ Under a contract permitting discharge for "flagrant violation" of safety rules, the arbitrator refused to agree to management's contention that an employee, who had admittedly violated such rule once, was a "flagrant violator" because as to other alleged violations he had never received written

14. In re Boeing Aircraft Company and International Association of Machinists, Aeronautical Industrial District Lodge 751, 8 LA 302 (1947).

15. In re Capitol Counter Display Company, Inc. and United Furniture Workers of America, Local 76-B (CIO), 6 LA 976 (1947).

16. In re WLEU Broadcasting Corporation and American Communications Association (CIO), 7 LA 150 (1947).

warning.¹⁷ In *International Minerals and Chemical Corporation*,¹⁸ the arbitrator held that the discharge of an employee without previous reprimand for alleged loafing on the job should be reduced to a two week disciplinary lay-off without pay in view of the fact that it was the usual company practice, although not required by contract, to give employees warning.

D. Consistency of Enforcement.

One of the most universally accepted principles of arbitration in the field of violation of plant rules is that management, in order to discharge for the infraction of its rules, must have been consistent in its enforcement of these regulations;¹⁹ and this is true even though the rule involved is one prohibiting smoking in a plant where the danger of conflagration is great.²⁰ Continued condoning and overlooking of prohibited conduct by the employer may lead the employee to believe that such conduct is sanctioned by the employer. After such a period of laxness, and where employees may rely upon the continued inaction of the employer with respect to some prohibited conduct, it is arbi-

17. In re West Virginia Pulp and Paper Company and International Brotherhood of Pulp, Sulphite and Paper Mill Workers of the United States and Canada, Local 508 (AFL), 10 LA 117 (1947).

18. In re International Minerals & Chemical Corp. and International Union of Mine, Mill & Smelter Workers, Local 415. 1 ALAA ¶67,415 (1946).

19. In re Allis-Chalmers Manufacturing Company and United Farm Equipment and Metal Workers of America, Local 119 (CIO), 8 LA 177 (1947); In re Bethlehem Steel Company, Chicago Wire Goods Division and United Steelworkers of America, Local 3542 (CIO), 6 LA 570 (1947); In re Bethlehem Steel Company, Inc., Cornwall Ore Mines and United Steelworkers of America, Local 2657 (CIO), 12 LA 167 (1949); In re Douglas Aircraft Company, Inc. and United Automobile, Aircraft and Agricultural Implement Workers of America, Local 201 (CIO), 1 LA 350 (1945); In re Norwich Pharmacal Company and Drug Trade Salesmen's Union (CIO), 5 LA 536 (1946); In re Jacob Rabinowitz & Company, Inc. and International Union of Playthings, Jewelry & Novelty Workers, United Wire and Metal Workers Union, Local 36 (CIO), 6 LA 762 (1947); In re Alan Wood Steel Company and United Steelworkers of America (CIO), 3 LA 557 (1946); In re Isle Transportation Company, Inc. and Amalgamated Association of Street, Electric Railway & Motor Coach Employees of America (AFL), 6 LA 958 (1947); In re Metal Auto Parts Company and International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, Local 226 (CIO), 6 LA 443 (1947); In re Borg-Warner Corporation, Mechanics Universal Joint Division and International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, Local 225 (CIO), 3 LA 423 (1944); In re United States Spring & Bumper Company and United Automobile, Aircraft and Agricultural Implement Workers of America, Local 509 (CIO), 5 LA 109 (1946).

20. In re Samuel L. Schlanger and Sadye Schlanger doing business as Baltic Metal Products Company and United Electrical, Radio and Machine Workers of America, Local 475 (CIO), 8 LA 782 (1947).

trary and unfair for the employer to attempt suddenly to enforce the rule involved. The arbitrator, confronted with such a situation, will reinstate the discharged worker,²¹ and under some circumstances, allow back pay.²² However, should the employer, after a period of non-enforcement, wish to revert to a policy of enforcement, he may do so by giving an unequivocal warning to all employees that in the future such conduct will bring disciplinary action.²³

E. Uniformity of Penalty.

Although management, in punishing employees for the infraction of certain rules, may not contemplate the establishing of a precedent as to the amount and kind of punishment that may be inflicted for the same offense in the future, that result has followed. The arbitrators consistently hold that employees may justifiably interpret company rules and the attached penalties in the light of previous enforcement, and may expect that they will not be dealt with more severely than those previously punished.²⁴ Thus, in *In re Curtiss-Wright Corporation, Airplane Division*,²⁵ the discharge of two employees for loitering in the rest room and smoking in violation of plant rules was commuted to a one week lay-off in view of the fact that other employees had received lesser penalties for the same offense.

Not only must the penalties administered for prohibited conduct be approximately equal to those given previously for the same offense, but in *In re United States Spring and Bumper*

21. *In re Bethlehem Steel Company, Inc., Cornwall Ore Mines and United Steelworkers of America, Local 2657 (CIO)*, 12 LA 167 (1949); *In re Isle Transportation Company, Inc. and Amalgamated Association of Street, Electric Railway & Motor Coach Employees of America (AFL)*, 6 LA 958 (1947).

22. *In re Alan Wood Steel Company and United Steelworkers of America (CIO)*, 3 LA 557 (1946); *In re Douglas Aircraft Company, Inc. and United Automobile, Aircraft and Agricultural Implement Workers of America, Local 201 (CIO)*, 1 LA 350 (1945).

23. *In re United States Rubber Company, Winnsboro Mills and United Textile Workers of America, Local 1800 (CIO)*, 10 LA 50 (1948).

24. *In re Central Boiler & Manufacturing Company and United Steelworkers of America, Local 3874 (CIO)*, 11 LA 354 (1948); *In re Indiana Railroad, Div. of Wesson Co. and Amalgamated Association of Street, Electric Railway & Motor Coach Employees of America, Local 1069 (AFL)*, 1 ALAA ¶67,434 (1946); *In re Shell Oil Co. and Oil Workers International Union, Local 367, 1 ALAA ¶67,405 (1946)*.

25. *In re Curtiss-Wright Corporation, Airplane Division, Columbus Plant and International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, Local 927 (CIO)*, 9 LA 77 (1947).

Co.,²⁶ the fact that the employer failed to uniformly punish all members of a group, when all were equally guilty of violating a plant rule prohibiting gambling, was one of the factors influencing the arbitrator to hold that management's action in discharging a few of the group was discriminatory.

F. Length of Employment and Capability of the Employee.

Length of employment and capability of the employee being two factors which are inextricably mingled, it is not possible from a review of the decisions, to say that the arbitrators in reality make any distinction between the two, but rather, either phrase seems to include the other. Bearing this point in mind, a few general conclusions may be drawn.

In no case discovered by the writer, was it held that long and capable service would, *per se*, reduce a disciplinary penalty of discharge. However, that such a factor, when coupled with other considerations, plays a large part in the mitigation of a discharge penalty cannot be doubted from a careful perusal of the cases.²⁷ One such case is *In re Spokane-Idaho Mining Co.*,²⁸ where a worker, who was summarily discharged for distributing communist literature at a mine, was reinstated with back pay. The arbitrator assigned as his reason the otherwise unblemished

26. *In re United States Spring and Bumper Company and United Automobile, Aircraft and Agricultural Implement Workers of America, Local 509 (CIO)*, 5 LA 109 (1946).

27. *In re Adler Manufacturing Company and United Brotherhood of Carpenters and Joiners, Local 3160 (AFL)*, 4 LA 700 (1946); *In re Joy Manufacturing Company, Sullivan Division and United Steelworkers of America, Local 2944 (CIO)*, 6 LA 430 (1946); *In re Riley Stoker Corporation and United Steelworkers of America, Local 1907 (CIO)*, 7 LA 764 (1947); *In re Joseph E. Seagram & Sons and International Association of Machinists, Lodge 27, 1 ALAA ¶67,386 (1946)*; *In re A. B. C. Steel & Wire Company and United Wire & Metal Workers Union, Local 36 (CIO)*, 1 ALAA ¶67,374 (1946); *In re Gardner-Richardson Company and United Paper-workers of America, Local 1009 (CIO)*, 11 LA 957 (1948); *In re Louis Marx & Co. and Playthings, Jewelry & Novelty Workers International Union, Local 149, 1 ALAA ¶67,383 (1946)*; *In re Allen Industries, Inc. and International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, Local 857 (CIO)*, 6 LA 884 (1947); *In re Coca-Cola Bottling Company of New York, Inc. and International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local 177 (AFL)*, 2 LA 130 (1946); *In re Pennsylvania Greyhound Lines, Inc. and Amalgamated Association of Street, Electric Railway & Motor Coach Employees of America, Division 1210 (AFL)*, 3 LA 880, 1 ALAA ¶ 67,396 (1946); *In re The Federal Machine and Welder Company and United Electrical, Radio and Machine Workers of America, Local 730 (CIO)*, 5 LA 60, 1 ALAA ¶67,488 (1946).

28. *In re Spokane-Idaho Mining Company and International Union of Mine, Mill and Smelter Workers, Local 18 (CIO)*, 9 LA 749 (1947).

record of the employee, and pointed out that the fact that the literature was communistic did not justify the imposition of a much more severe penalty than admittedly would have been proper for the offense of distributing literature of some other type.

Although inexperience does not seem to carry as much weight with arbitrators in the mitigation of punishment as does its opposite, experience, it is a factor that will be taken into consideration by the arbitrator and may help to tip the scales in favor of the employee.²⁹

G. Improper Punishment for Violation of Plant Rules.

When the punishment imposed by management for violation of plant rules in reality defeats the principle of the company seniority system, it cannot stand. In *In re Ford Motor Co.*,³⁰ the arbitrator held that the double penalty of a three day lay-off and transfer to another department was improper where the employee was charged with being absent from his job for the purpose of training a bird dog. The arbitrator allowed the three day lay-off to stand, but returned the employee to his former job because he felt that any transfer to reduce force should be made on the basis of seniority. In *In re Western Automatic Machine Screw Co.*,³¹ it was held that when punishment for violation of plant rules was delayed until the point where seniority rights really came into play, the entire seniority system was jeopardized. Such a situation was brought about by the employer, under a contract providing that seniority and ability should be considered in lay-offs, attempting to punish employees for past infractions in determining the workers' relative ability at the time of lay-off and dismissing them ahead of junior employees.

29. See *in re Boeing Aircraft Company and International Association of Machinists, Aeronautical Industrial District Lodge 751*, 8 LA 302 (1947); *In re Fruehauf Trailer Company and United Automobile, Aircraft and Agricultural Implement Workers of America, Local 99 (CIO)*, 1 ALAA ¶67,455 (1946).

30. *In re Ford Motor Company and United Automobile, Aircraft and Agricultural Implement Workers of America (CIO)*, 1 ALAA ¶67,029 (1944).

31. *In re Western Automatic Machine Screw Company and United Automobile, Aircraft and Agricultural Implement Workers of America, Local 101 (CIO)*, 9 LA 606 (1948).

H. Other Considerations Compelling Mitigation of Penalty.

That the demeanor of the employee before the arbitrator has considerable influence upon the arbitrator of the disagreement cannot be doubted. Obviously such a factor, being conveyed to the arbitrator as a mere impression of the employee's attitude gained during the short duration of the hearing, is more likely than not to be an intangible influence not recorded in the arbitrator's written opinion. However, two cases³² specifically admit that the employee's demeanor and attitude are factors influencing the decision.

In Fairfield Paper Co.,³³ the arbitrator held that an employee was improperly discharged for failure to report to work without prior notice to the company, when the evidence disclosed that such failure was due to circumstances beyond the control of the employee.

In keeping with the general attitude of fairness in the case last preceding, it has been held that the failure of management to prove that damage to property in violation of plant rules was caused through neglect or wilful intent of the employee, justifies an order of reinstatement with back pay and full seniority rights.³⁴ Further, the cases illustrate that where the employee is charged with "disobedience to proper authority,"³⁵ or disregarding an order,³⁶ management's failure to show wilful insubordination will contribute measurably in the mitigation of a penalty of discharge.

II. CONCLUSIONS

Having in mind the foregoing discussion, what conclusions can be drawn? (1) Although it has been limited by govern-

32. *In re Pennsylvania Greyhound Lines, Inc. and Amalgamated Association of Street, Electric Railway & Motor Coach Employees of America, Division 1210 (AFL)*, 3 LA 880, 1 ALAA ¶67,396 (1946); *In re Coca-Cola Bottling Company of New York, Inc. and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 177 (AFL)*, 2 LA 130 (1946).

33. *In re Fairfield Paper Co. and United Mine Workers of America, Local 12848, Dist. 50*, 1 ALAA ¶67,405 (1946).

34. *In re Potash Company of America and International Union Mine, Mill & Smelter Workers, Local 415*, 1 ALAA ¶67,389 (1946).

35. *In re The General Tire and Rubber Company, Mechanical Goods Division and Federal Labor Union 22403, Rubber Workers (AFL)*, 6 LA 918 (1947).

36. *In re The Glenn L. Martin Company and United Automobile, Aircraft and Agricultural Implement Workers of America, Local 738 (CIO)*, 6 LA 500 (1947).

mental regulations, and acquiescence to union demands, the employer's prerogative to discipline for the infraction of plant rules still remains as one of the basic rights of management. (2) In the exercise of this basic right, management must take cognizance of the factors herein discussed, which go to the mitigation of the penalty inflicted, or have its action altered by the arbitrator. (3) While the arbitration of disputes arising out of the violation of plant rules is still in a rudimentary stage, and while each case turns almost entirely upon its attending facts and circumstances, the writer believes that both management and labor may add great weight to their respective contentions in any given disagreement by the submission to the arbitrator of the trend and holdings of the factors heretofore discussed.

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