

of Article XXIII. The company had the discretionary right under Article XXIII to deny the union's request to use the plant bulletin boards to disseminate this type of information-based memorandum, since other alternative means of communication were available to the union.

In regards to the above, the company pointed out that it had informed the union that it would have agreed to post a notice about a "Union Meeting on Long-Term Disability." However, the company refused to post the memorandum as it was submitted, because it only contained information and data about the long-term disability plan, and it was neither a "notice" nor an "educational affair."

The company requested the arbitrator to dismiss the union grievance.

QUESTIONS

1. Why would the company deny the union its request to post the "Long-Term Disability Facts" sheet on plant bulletin boards and eventually go to arbitration over the issue?
2. Why would the union press this issue, first to the NLRB and then to arbitration? (Speculate why the NLRB deferred the union's complaint to the parties' grievance-arbitration mechanism).
3. Could this case have been settled in a manner acceptable to both parties without going to arbitration? Discuss.
4. How should the arbitrator decide this case? Explain your reasoning.

Case 54

Terminated for Possessing a Gun

Employer City of New Haven, Connecticut

Union American Federation of State, County, and Municipal Employees, Council 4, Local No. 3144

BACKGROUND

Matthew Kress¹ had been employed for 14 years by the Water Pollution Control Authority (WPCA) in the city of New Haven. At the time of his discharge, he held the title of Wastewater Supervisor I, and he was assigned to the third shift (midnight to 8 A.M.).

On May 8, 1986, WPCA had distributed to all employees a policy concerning weapons on the premises. It included the following:

Effective immediately—No weapons of any sort shall be allowed on WPCA premises, including lockers and private vehicles parked on WPCA property. No exceptions shall be made to this policy. Anyone caught with a weapon on WPCA property in violation of this policy shall be subject to immediate discharge.

Matthew Kress had received a copy of this policy and signed an acknowledgment form to that effect.

On November 17, 1992, Kress brought a gun onto WPCA premises. Kress had a state permit to carry a weapon. He had previously stated that the neighborhood in which he lived had caused him to purchase and carry a gun for his personal safety. On November 17, he removed his gun from his briefcase and showed it to a co-worker. Two other employees later testified that they also saw the gun that night.

On November 18, 1992, Roger Schienvar, general manager, initiated an investigation of the gun incident. The employees who had seen Kress display the gun stated their observations to WPCA investigators.

In addition to the gun incident investigation, Schienvar reviewed Kress's work history at WPCA. Schienvar found and reported in a memorandum dated November 20, 1992, including as follows:

There have been a series of continuing and ongoing incidents of failure to perform duties in an appropriate manner, failure to follow orders, failure to follow and apply policies and procedures, failure to display appropriate level of care and judgment to the position of Waste Supervisor I.

Several of these previous incidents had involved difficulties and confrontations with other employees. Concerning Matthew Kress's disciplinary history, Schienvar found and wrote in his memorandum:

¹ The names of all individuals are disguised.

He has been given verbal warnings to written warnings to suspensions in increasing terms, and the last discipline prior to this particular incident was a 30-day suspension that was invoked in early July of 1992.

On January 6, 1993, WPCA management provided Kress with a pretermination conference during which he had union representation. After this January 6 conference, management reached a decision to terminate Matthew Kress. In a termination letter to Kress, Roger Schienvar included the following statement:

There was a request—appeal, if you will—from the union for leniency. But for a number of factors, primarily the seriousness of the offense and the definitive and clear nature of the policy, it was our decision to follow through on the termination.

The union filed a grievance on behalf of Matthew Kress, which was carried to arbitration. The issue was framed as:

Was the discharge of Matthew Kress for just cause?² If not, what shall the remedy be?

POSITION OF THE EMPLOYER

It was WPCA's position that Matthew Kress had been discharged for just cause. Kress had admitted he knew the policy prohibiting bringing weapons to work. He admitted bringing a fully loaded weapon to work, and he admitted showing the gun to at least one employee. Such acts were clear violations of rules and of the contract, and they were extremely dangerous. WPCA could not allow such actions on the part of any employee. Therefore, the discharge of Kress was for ample just cause, and WPCA asked that the grievance be denied.

POSITION OF THE UNION

It was the union's position that WPCA's policy was not posted anywhere in the authority's facilities. Matthew Kress had a permit to carry a weapon issued by the state of Connecticut. He obeyed the law concerning his gun. Except for this one incident of showing the gun to another employee, Kress had kept the gun out of sight in his briefcase. He promised never to bring the gun to work or onto the work premises again. Kress had never threatened anyone with the gun. Kress had kept the gun with him because of the high-crime area in which he lived. He couldn't keep it in his car at work because of the numerous break-ins of cars in the parking lot. In this case, the WPCA and the City had overreacted. Their decision to terminate a long-service employee was arbitrary and unreasonable, and it did not meet a just cause standard. The union asked that the grievance be sustained, and that Matthew Kress be reinstated to his position and made appropriately whole.

² See the appendix for relevant contractual provisions.

Appendix

Relevant Provisions of the Agreement

Article 16—Discharge and Discipline

Section 2. (a) Disciplinary action shall be consistent with the type of infraction or malfeasance which is the subject of the discipline.

(b) Discipline should be progressive in nature, but where circumstances warrant termination, it need not necessarily have been preceded by lesser disciplinary actions.

QUESTIONS

1. Evaluate the employer's and the union's respective arguments. Which do you find the most and which the least persuasive?
2. Should Matthew Kress's prior disciplinary record be a major or minor consideration in the arbitration decision? Explain.
3. Is there a conflict between the statutory right of an employee to obtain a permit to carry a gun, and the employer's policy of no weapons on the premises? Discuss.
4. How should the arbitrator decide? Why?