

Case 81**Discharge for Job Abandonment?****Company** Coca-Cola Enterprises, Inc.**Union** Teamsters, Local 414**BACKGROUND**

The grievant in this matter was a route driver employed by Coca-Cola. The grievant's regular workweek was Monday through Friday, with a start time of 6:00 A.M. The grievant volunteered to work an overtime shift on Saturday, January 3, 2004. The grievant failed to report for work for the overtime on Saturday, and subsequently missed his next two regularly scheduled shifts on Monday, January 5, and Tuesday, January 6.

The grievant had been arrested early Saturday morning January 3, 2004, for domestic battery. He was taken to jail, from where he called his father, collect, and asked him to call his employer and report that he would be unable to report for work for a couple days due to a "family emergency." The grievant's father subsequently called Coca-Cola and reported what his son had asked him to report. The grievant was arraigned on Tuesday and that afternoon posted bail and was released from jail. Upon his release from jail, the grievant called his supervisor informing him that he had been in jail and that he had a court appearance scheduled for January 7, 2004. The supervisor informed the grievant that he was not to report to work for the remainder of the week.

In a letter dated January 12, 2004, the grievant was informed he was terminated for having been absent for "three consecutive working days without notifying the Company." Section 4.10 c. of the parties' collective bargaining agreement states that "Seniority and the relationship of the Company and employee shall be considered broken and terminated when . . . an employee is absent three consecutive working days without notifying the Company." The company also has a unilaterally promulgated attendance policy which states that employees will be subject to progressive discipline for failing to report for work without notifying the employer prior to the start of their shift. The first offense is subject to reprimand, the second to a three-day suspension, and the third offense to discharge.

The grievant filed a timely grievance—which was denied—as were subsequent appeals through the parties' negotiated grievance procedure. The parties stipulated that the present matter was properly before the arbitrator.

POSITION OF THE COMPANY

The company's position was that the grievant's seniority had been broken pursuant to Section 4.10 c. of the parties' collective bargaining agreement. The company contended that the issue of just cause for the discharge was only relevant should the arbitrator find that the grievant did not violate Section 4.10 c.

The company's position with respect to Section 4.10 c. was that the notification requirement had a well-established practice of requiring there to be personal notification by the employee that he would not be coming to work. The company offered the testimony of several management personnel indicating that they had always required personal

notification. The company also argued the grievant's personally reporting an absence a week before this incident indicated his knowledge and acceptance of this practice.

The company further contended that should the arbitrator not find a violation of Section 4.10 c. the discharge was still proper. The record shows that the grievant failed to call in prior to his absence on Saturday, thereby earning a reprimand. He failed to call in Monday for his second offense under the company's attendance policy. Finally, the grievant failed to call in Tuesday, thereby earning his discharge under the attendance policy. Therefore, employing the just cause standards under the company's attendance policy there is still proper cause to remove this grievant.

Further, the company contended that there are no reasons to mitigate this penalty, and that the union failed to prove its contentions that there was disparate treatment of this grievant. The company therefore urged the denial of this grievance.

POSITION OF THE UNION

The union contended that Section 4.10 c. did not apply to this matter and that there was no just cause for the discharge of this grievant under the company's attendance policy. The company had failed to show that the grievant violated either.

With respect to Section 4.10 c., there was nothing in the written language of the contract or in the bargaining history which even suggested that notification of the absences to the company had to be in any particular form, let alone communicated personally by the employee. Even management's own witnesses testified that they were unaware of a single employee being discharged because the notice of their absences weren't in a particular form under Section 4.10 c. The arbitrator is bound to apply the clear and unambiguous language of Section 4.10 c. which states notice must be given, and this grievant twice informed his employer within the three-day window that he was not able to attend work.

The union also contended that the disciplinary rules also did not apply in this case. The employer's own witnesses all testified that a written reprimand is never issued to an employee until after their fifth absence. This grievant had not reached his fifth absence in a year's period of time and had not earned the first level of discipline under the company's attendance policy.

The facts are not in dispute and the language of both the contract and attendance policy is clear and nowhere requires personal notification. The arbitrator is bound by that clear language and must sustain this grievance and order the grievant reinstated with full back pay and benefits.

QUESTIONS

1. Is Section 4.10 c. clear and unambiguous with respect to notification of the employer? If so, does it require personal notification?
2. Is there any requirement in the attendance policy that the grievant personally notify his employer of his absences?
3. Was there any evidence that past practices existed in this matter? If so, what are they? How do they affect the applicability of the contract or attendance policy? Explain.
4. Did the grievant abandon his job? Was there just cause for his discharge?