

CASES

CASE 1. *The Reluctant Security Guard*

David Tuff, 24, is a security guard who has been working for the past 17 months for the Blue Mountain Company in Minneapolis, Minnesota. Blue Mountain manages and operates retail shopping malls in several midwestern states. The company has a security services division that trains and supplies mall security guards, including those for the Village Square Mall where Tuff has been employed.

Minnesota state and local laws require that security officers be licensed and approved by the county police department. Security officers are required to obey the police unit's rules. Tuff completed the required training, passed the security guard compulsory examination, and was issued a license. Tuff has consistently carried out his guard duties conscientiously. Previously a four-year military policeman in the U.S. Marine Corps, his commanding officer had praised both his service and his integrity.

Part of his job training at Blue Mountain required that Tuff learn the procedures found in the *Security Officer's Manual*, which uses military regulations as a model. Two sections of this manual are worded as follows:

Section V, subsection D.

Should a serious accident or crime, including all felonies, occur on the premises of the licensee, it shall be the responsibility of the licensee to notify the appropriate police department immediately. Failure to do so is a violation of the provisions of this manual.

Furthermore, the manual permits the following action if the provisions are violated:

Section XI—disciplinary and deportment**A. General**

1. The Private Security Coordinator may reprimand a licensee as hereinafter provided. In cases of suspension or revocation, the licensee shall immediately surrender his identification card and badge to the County Police Department. . . .

B. Cause for Disciplinary Action

13. Any violation of any regulation or rule found in this manual is cause for disciplinary action.

The reverse side of a security officer's license bears these statements:

Obey The Rules and Regulations Promulgated By The Superintendent Of Police.

We will obey all lawful orders and rules and regulations pertaining to security officers promulgated by the superintendent of police of the country or any officer placed by him over me.

Given this language, Tuff believed that his license could be revoked or suspended for any failure to report illegal behavior such as drunk driving and selling narcotics. He had sworn to uphold these regulations at the end of his training and had later signed a statement acknowledging that he knew a police officer could ask for his badge if a conflict should arise.

Fourteen months after Tuff joined the company, Blue Mountain issued new rules of procedure outlining certain assigned duties of its security guards. These rules required security officers "to order and escort intoxicated persons, including persons driving under the influence of alcohol, off its parking lots and onto the public roads." The rules did not instruct

security officers to either arrest the drivers or to contact or alert the police.

Tuff immediately, and publicly, opposed the company's new policy. Over the ensuing months, he expressed his dissatisfaction to every company officer he could locate. He complained to his immediate superiors, sometimes several times a day, that he was being asked to set a drunk out on the road who might later kill an innocent person. Tuff described to these supervisors imagined scenarios in which a drunk clearly violated the law, and he then asked them what he would be expected to do in these circumstances under the new rules.

His immediate supervisor, Director of Security Manuel Hernandez, told him that if any such situation arose he should contact the supervisor in charge, who would make the decision. Hernandez noted that most drunks do not weave down the road and hit someone. Tuff was not satisfied and used abusive language in denouncing the rules. Hernandez became angry and told Tuff that his complaints irritated his supervisors and that they could tolerate only so much of his behavior. Hernandez also cautioned him that he should worry less about his license and more about his paycheck. Neither man put any complaint in writing. Tuff never received a written warning or reprimand from any company official. Tuff maintained that he considered the policy to be illegal, violative of the rules he had sworn to uphold, and dangerous to the maintenance of his license. Neither his supervisor nor the company manager agreed with his interpretation. They encouraged him to continue his job as usual, but under the new rules.

Tuff then contacted a volunteer organization working to prevent drunk driving. At first he simply sought the organization's interpretation of the law, but later, he voiced a specific complaint about the Blue Mountain policy. His supervisors were approached by some representatives of the volunteer organization, who

expressed strong opposition to Blue Mountain's policy for security guards and treatment of drunk drivers.

In the following weeks, Tuff discussed the company policy with several other concerned security guards. He met with security officers Fred Grant and Robert Ladd at a restaurant after work. They discussed the company procedure and its conflict with their licensing requirements and sworn commitments. They considered going to the local newspaper with their grievances against the company policy.

Tuff then contacted a local television news station and a local newspaper. He talked to four reporters about several drunk driving incidents at Blue Mountain parking lots. The reporters pursued Tuff's complaint by talking to company officials about the policy. The reporters proved to their editors' satisfaction that Tuff's complaints to the media were not given in reckless disregard of the truth and were, in fact, entirely truthful.

Hernandez called Tuff into his office to discuss these disclosures to the newspaper. Hernandez asked Tuff to sign a document acknowledging that he had spoken with news reporters concerning Blue Mountain company policies, but he refused to sign. Hernandez reminded him of a company policy prohibiting an employee from talking to the media about company policies. This policy is mentioned on a list of company rules distributed to all employees that states that violation of the rules could result in dismissal or in disciplinary procedures. Tuff knew the company rule but did not consider his revelations a violation, because he had not spoken with the press on company time.

Hernandez considered Tuff's interpretation of the rule's scope ridiculous. He consulted with the company's Council of Managers that afternoon. Every manager agreed that Tuff's interpretation of the rule showed a blatant disregard for company policy and that Tuff's excuse was an ad hoc rationalization. They also agreed that Tuff had shown himself to be a

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complainer and a man of poor judgment, qualities that rendered him unsuitable to be a Blue Mountain security guard. The discussion of this problem at the meeting took little more than five minutes. Council members instructed Hernandez to give Tuff a few days' leave to reflect on the situation. Hernandez duly reported this conclusion to Tuff, who then departed for his home. The number of days of leave he should take was not specified, but both men agreed in an amicable though tense setting that they would be in touch.

Three days later an article about the company's policies appeared in the local newspaper, along with a picture of Tuff in the mall, about to report for work. This story prompted an editorial that was critical of the company on a local television station. The story relied entirely on data provided by Tuff, some of which had been copied from his nightly shift reports.

The newspaper had also interviewed Sergeant Shriver of the county police department. He corroborated Tuff's interpretation that any failure by a security guard to report those driving while intoxicated or those under the influence of drugs constituted a violation of the security manual and the specific terms of the officer's license. He also confirmed Tuff's statement that police officers routinely inspect security officers' activities and that the police have instructions to look for failures to comply with license requirements.

After the television editorial, Blue Mountain began to receive phone calls at a rate of approximately 15 per hour, with over 90 percent of the callers expressing opposition to the company's policies. Several callers indicated that they would no longer patronize the malls mentioned in the newspaper story.

The Council of Managers immediately reconvened to consider this escalation of the problem. Its members agreed that Tuff had to be fired for his violation of the company rule

against disclosures to the news media. The managers considered Tuff's revelations an unforgivable act of disloyalty. They discussed whether the proper and precise reason for Tuff's dismissal was his disclosure of confidential information or his approaching the media. Their decision on this point required a sharpening of a vaguely worded corporate rule; a careful process of interpretation revealed that approaching the media is grounds for dismissal even if no disclosure of confidential information is made.

Five working days later, Tuff was called into the company manager's office and dismissed. The manager informed him that the reason for this dismissal was his discussions with the press, a violation of company policy.

Tuff then issued a public statement. He explained that his complaints against Blue Mountain Company's procedures had stemmed from his concern to protect the public and other security officers. Tuff had discussed the policy with the company's other security guards, who had all expressed some degree of concern over the policy because it forced them to violate their licensing requirements and subjected them to possible license suspension or revocation. Based on these encounters, Tuff believed that he was acting on their behalf as well as on his own.

Tuff also disclosed a legal argument he wanted to pursue: He contended that his admissions to the media and his complaints about company policy were protected activities. The company interfered with, restrained, and coerced its employees in the exercise of their rights, as protected by the National Labor Relations Act of 1935, by suspending and eventually dismissing Tuff for his disclosures to the press, which violated company policy.

Tuff brought his case to the National Labor Relations Board (NLRB), whose members determined that Blue Mountain was within its

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legal rights to fire him. The board found that whistleblowers are legally protected only if they engage in "concerted activity" together with their fellow workers. Because Tuff had acted alone for the most part, he was not protected. However, a NLRB spokesperson said the board made no moral judgment on either the employer's or the employee's conduct. The parties' moral behavior, he said, was not at stake in the NLRB decision.

Questions

1. Was the security guard right to take the action he did? Would you have taken the same action? Why or why not?
2. Is this a case of an unjust dismissal?
3. Should there be a law to protect employees from losing their jobs for this kind of activity?
4. Think of some creative ways other than dismissal to handle this situation.

CASE 2. *A Matter of Principle*

Nancy Smith was hired May 1, 1988, as the associate director of Medical Research at a major pharmaceutical company. The terms of Ms. Smith's employment were not fixed by contract, and as a result she is considered to be an "at-will" employee. Two years later Ms. Smith was promoted to Director of Medical Research Therapeutics, a section that studied nonreproductive drugs.

One of the company's research projects involved the development of loperamide—a liquid treatment for acute and chronic diarrhea to be used by infants, children, and older persons who were unable to take solid medication. The formula contained saccharin in an amount that was 44 times higher than that the Food and Drug Administration permitted in 12 ounces of an artificially sweetened soft drink. There are, however, no promulgated standards for the use of saccharin in drugs.

The research project team responsible for the development of loperamide unanimously agreed that because of the high saccharin content, the existing formula loperamide was unsuitable for distribution in the United States (apparently the formula was already being distributed in Europe). The team estimated that

the development of an alternative formula would take at least three months.

The pharmaceutical's management pressured the team to proceed with the existing formula, and the research project team finally agreed. Nancy Smith maintained her opposition to the high saccharin formula and indicated that the Hippocratic Oath prevented her from giving the formula to old people and children. Nancy Smith was the only medical person on the team, and the grounds for her decision was that saccharin was a possible carcinogen. Therefore Nancy Smith was unable to participate in the clinical testing.

Upon learning that she was unwilling to participate in the clinical testing, the management removed her from the project and gave her a demotion. Her demotion was posted, and she was told that management considered her unpromotable. She was charged specifically with being irresponsible, lacking in good judgment, unproductive, and uncooperative with marketing. Nancy Smith had never been criticized by supervisors before. Nancy Smith resigned because she believed she was being punished for refusing to pursue a task she thought unethical.

This case was prepared by Norman E. Bowie on the basis of the appeal decision in *Pierce v. Ortho Pharmaceutical Corporation*, Superior Court of New Jersey, 1979.

Questions

1. Was Nancy Smith terminated, or did she resign voluntarily?
2. Should the pharmaceutical's management have the right to terminate Nancy Smith if she refused to participate in the clinical testing?
3. Under the circumstances of her "resignation," should she have the right to sue for reinstatement to her position as Director of Medical Research Therapeutics?
4. If you were the judge in such a court case how would you rule and on what grounds?

CASE 3. *Health and Genetic Screening*

During the past decade, biologists have made significant strides in the field of genetics. Media attention has focused on gene splicing, the creation of new forms of life, and the increase in the quality, size, and disease resistance of agricultural products.

However, this new technology is also enabling biologists to delve into complex genetic information. Soon DNA tests will be able to provide full physical and mental profiles of human beings. Apart from the issues that such testing will present for parents-to-be, complexities could develop in the workplace as well.

The Office of Technology Assessment of the House Committee on Science and Technology surveyed the five hundred largest U.S. industrial companies, fifty private utilities, and eleven unions and found that seventeen had used genetic testing to screen employees for the sickle-cell trait or enzyme deficiencies.

Genetic screening also could reveal an individual's tolerance for or susceptibility to chemicals used in the workplace. With health insurance costs increasing exponentially, employers are trying to improve employee health with routine medical screening, creation of smoke-free environments, and drug testing. Genetic profile tests could be used to hire only those individuals who meet certain minimum health requirements and are thus likely to keep health insurance costs down.

Insurers have used AIDS screening as a prerequisite for medical insurance coverage; similarly, genetic tests could predict susceptibility to heart disease and cancer. Genetic tests allow insurers to screen applicants and either deny coverage or create high-risk pools for those in high risk groups.

Scientist Robert Weinberg has stated:

A belief that each of us is ultimately responsible for our own behavior has woven our social fabric. Yet in the coming years, we will hear more and more from those who write off bad behavior to the inexorable forces of biology and who embrace a new astrology in which alleles rather than stars determine individuals' lives. It is hard to imagine how far this growing abdication of responsibility will carry us.

As a biologist, I find this prospect a bitter pill. The biological revolution of the past decades has proven extraordinarily exciting and endlessly fascinating, and it will, without doubt, spawn enormous benefit. But as with most new technologies, we will pay a price unless we anticipate the human genome project's dark side. We need to craft an ethic that cherishes our human ability to transcend biology, that enshrines our spontaneity, unpredictability, and individual uniqueness. At the moment, I find myself and those around me ill equipped to respond to the challenge.¹

Starting in 1972, DuPont screened its black employees for sickle-cell anemia, which affects one in every four to six hundred black Americans. Requested by the Black DuPont Employees

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Association to perform the genetic screening. DuPont administered the voluntary test not to deny jobs, but to offer employees relocation to chemical-free areas where the disease would not be triggered.

Critics of DuPont said the testing allowed the company to transfer workers rather than clean up its work environment. DuPont's medical director responded,

This is a very naive view. No one can operate at zero emissions, exposures—zero anything. There has to be an agreed-upon practical, safe limit. But there are some employees who are more susceptible to certain diseases than others. It's only common sense to offer them the opportunity to relocate.²

In the 1960s, certain workers at an Israeli dynamite factory became ill with acute hemolytic anemia, which causes the walls of the red blood cells to dissolve, thus decreasing the cells' ability to circulate oxygen throughout the body. The workers were transferred to other parts of the plant, but genetic screening revealed that all of them had a G-6-PD deficiency, which causes hemolytic

anemia upon exposure to chemicals. The information allowed the factory to place workers properly and led it to reduce chemical levels in the plant.³

Questions

1. What impact does genetic screening have on an employee's privacy?
2. In what ways should employers regard genetic screening as necessary?
3. Discuss how genetic screening might lead to discrimination.
4. Will genetic screening help employers increase safety in the workplace?

NOTES

1. Robert Weinberg, "Genetic Screening," *Technology Review* (April 1991): 51.
2. William P. Patterson, "Genetic Screening," *Industry Week* (1 June, 1987): 48.
3. Thomas H. Murray, "Genetic Testing at Work: How Should It Be Used?" *Personnel Administrator* (September 1985): 90-92.

Suggested Supplementary Readings

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