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Ignorance of Policies – Drug and Alcohol Testing

While it is the duty of a union to adequately and vigorously defend a grievor, that duty must be balanced by the union's shared responsibility with the employer to ensure a safe workplace for all.

The Arbitration

In *Lafarge Canada Inc. v. International Brotherhood of Boilermakers, Local Lodge D331* (Treutler Grievance), [2012] A.G.A.A. No. 4 (Beattie), the Grievor, who operated a 65 tonne truck at the company's limestone quarry in Exshaw, Alberta, was terminated after he reported for work following a night of drinking. Upon arriving at work and attending a routine "tailgate" meeting with other quarry operators, the Grievor, a 53 year old with 6 years' employment with the company, allegedly made threatening comments about the person responsible for scheduling. Such comments being uncharacteristic of the Grievor, it was also noted that the Grievor exhibited signs of impairment, including glazed and bloodshot eyes and the smell of alcohol on his breath. At an investigation meeting held shortly thereafter, the Grievor indicated that he had consumed alcohol at intervals the previous evening and up to 2:00 a.m. that morning, before reporting for work at 7:00 a.m., and it was determined that he would be required to submit to a drug and alcohol test in accordance with the company's Drug and Alcohol Policy (the "Policy"). The Policy was introduced in 2009, along with training sessions and subsequent refresher sessions, copies of the Policy were readily available in common areas, and each employee received a copy with one of his or her remittance statements. Reference to the Policy was also included in the Collective Agreement.

Union counsel was contacted and advised the Grievor to submit to the test; an off–site nurse was summoned to the quarry to administer the test. The Grievor and the Union representative present at the investigation meeting signed an Acknowledgement Form in advance of the testing. Upon receiving the results of the test, which indicated that at 8:00 a.m. and 11:15 a.m. the Grievor's blood alcohol level was 0.57 mgs and 0.54 mgs, respectively, and in conjunction with the threatening statements made earlier at

the "tailgate" meeting, the company decided to terminate the Grievor's employment for cause.

The Union grieved the termination. The principle issue at the hearing was whether the company was justified in demanding the Grievor be subjected to a drug and alcohol test, and whether, based on the results of that test, the company was justified in terminating the Grievor's employment.

At the hearing, the Grievor professed to be unaware of the details of the company's Policy, despite being given ample opportunity to acquaint himself with it. He stated that he believed the Policy only related to the consumption of drugs or alcohol while *at work* and, as he did not take drugs and would never drink at work, he did not see any need to read the Policy. It was noted at the hearing that the Grievor had an impaired driving charge some years prior and thus should have been aware of the concept of blood alcohol limits. The Union President claimed that he himself had not received any training on the Policy nor did he educate himself about the Policy. Further, the Union and Grievor claimed they only gave their consent for alcohol testing and not a drug test, which they saw as a violation of the Grievor's rights and an insinuation by the company that the Grievor used drugs, despite signing an Acknowledgement Form they admitted at the hearing that they did not read.

Throughout the hearing, the Grievor continued to maintain he was not impaired at work, refused to acknowledge that drinking *before work* was as culpable under the Policy and common sense as drinking *at work*, and disputed the expert testimony regarding his likely impairment. As well, the Grievor did not show remorse for the comments made at the "tailgate" meeting.

The Decision

The Arbitrator noted that, "The Union's and grievor's position regarding any effort to understand the [drug and alcohol] test is very similar to their effort of acquainting themself [sic] with the Policy. It seems they are under the impression that they can close their eyes and claim ignorance" (para. 150). The Arbitrator concluded that:

In the present case the grievor's "threat", in itself, certainly does not warrant termination but it is a factor which was appropriately taken into consideration by the Company in assessing discipline. From my perspective the grievor's subsequent denial of the "threat" as well as his unwillingness to accept that he had more to drink than he represented in his evidence, and his unwillingness to acknowledge that he was not in any condition to operate the quarry truck, all mitigate against any consideration of substituting a lesser form of discipline. The bottom line is that the grievor demonstrated at the time, and continued to demonstrate at the Hearing, a serious lack of judgment, particularly for one in such a safety-sensitive position. (para. 173)

The Arbitrator determined that the company did not violate the Grievor's rights regarding the drug and alcohol testing as the Policy clearly set out the terms and consequences relating to drug and alcohol use. Professed ignorance of the Policy did not vitiate the termination. By reporting for work and insisting he was able to drive a large truck while still intoxicated, the Grievor posed a danger to himself and to others; the importance of safety in the workplace was affirmed. The grievance was denied and the termination upheld.

Analysis

Arbitrators very seldom allow a defence of ignorance of company policies that are incorporated into a Collective Agreement. Employees are deemed to understand what is in their Collective Agreement. Policies that are well publicized and enforced must be understood by employees and not ignored. Arbitrators also show little tolerance for employees who endanger other employees or are deceitful. Employees are expected to admit their errors and redeem themselves or risk termination of their employment.