

IN THE MATTER OF ARBITRATION BETWEEN

AMPCO SYSTEM PARKING,)	
)	
Employer,)	ARBITRATION
)	AWARD
and)	
)	MOSAZGHI
)	TERMINATION
)	GRIEVANCE
INTERNATIONAL)	
BROTHERHOOD OF)	
TEAMSTERS, LOCAL 120,)	
)	
Union.)	FMCS Case No. 080519-56233-3

Arbitrator: Stephen F. Befort

Hearing Date: October 23, 2008

Briefs Received: December 19, 2008

Date of decision: January 23, 2009

APPEARANCES

For the Union: Martin J. Costello

For the Employer: Richard A. Ross

INTRODUCTION

Teamsters, Local 120 (Union) is the exclusive representative of a unit of employees employed by AMPCO System Parking (Employer) at the Minneapolis-St. Paul International Airport. The Union claims that the Employer violated the parties' collective bargaining agreement by terminating grievant Amanuel Mosazghi without just

cause. The grievance proceeded to an arbitration hearing at which the parties were afforded the opportunity to present evidence through the testimony of witnesses and the introduction of exhibits.

ISSUES

1. Did the Employer have just cause to discharge the grievant?
2. If not, what is the appropriate remedy?

RELEVANT CONTRACT LANGUAGE

ARTICLE 4

Notice of Discharge or Layoffs

Section 1. The Employer shall give one (1) week's advance written notice to the Union office of its intention to discharge or lay off any employee except in cases warranting immediate discharge, including, but not limited to fighting, impairment from alcohol use or under the influence of illegal drugs, possession of weapons, alcohol or drugs, dishonesty, disorderly conduct and insubordination. The question of whether or not such dismissal is without just cause may be grieved and subject to the grievance and arbitration proceedings as provided in Article 27 hereof. In the event it is determined that such dismissal was without just cause, the employee shall be reinstated in accordance with the decision of the Arbitrator.

ARTICLE 19

Damage to Property

Section 1. In the event of any accident involving property damage to a motor vehicle or vehicles caused by an employee in the performance of his duties as such and inflicted upon the property of patrons of the Employer, such damage shall be the basis for immediate discharge, without notice as follows:

- 1) If the amount of such damage is less than \$1,650 then two or more such incidents totaling in excess of \$1,650 with any ninety (90) day period shall result in the Employee's discharge.
- 2) If the amount of such damage sustained exceeds \$1,650, then the Employee shall be discharged based upon such sole incident. The amount of damage shall be determined by using a professional estimate of damage. The estimate must be given to the affected employee.

In the event an Employee causes damage to a vehicle when driving the vehicle outside of the valet parking garage, the Employee shall be subject to the above discipline only in the event that the Employee was at fault in causing the accident.

The Employer may take the Employee's years of prior service at the Airport into consideration in determining whether immediate discharge or some lesser discipline is appropriate. In the event the Employer decides to issue some lesser discipline under this provision, such discipline shall not be precedent for any future violations and may not be considered in any subsequent grievance or arbitration.

FACTUAL BACKGROUND

The Employer manages the parking facilities at the Minneapolis-St. Paul International Airport. Among the services offered by the Employer is a heated valet parking facility located underneath the main airport terminal.

The grievant, Amanuel Mosazghi, has worked as a car runner at the airport facility for the past ten years. As a car runner, he parks, washes, and retrieves vehicles in the valet parking area.

On September 24, 2007, Mosazghi accidentally backed a customer's vehicle into a concrete support post in the valet parking area. Mosazghi admits that he caused the damage to the customer's vehicle. Pursuant to standard operating procedures, Operations Manager Mark Marquis suspended the grievant pending the results of a drug test. The drug test came back negative, and the Employer permitted Mosazghi to return to work. Mosazghi continued to work as a valet car runner without incident for the next seven months.

On the same day as the accident, the Employer issued Mosazghi a documented verbal warning for poor performance. The document provided to the grievant stated as follows:

Subject: Poor Performance

Details: On September 24, 2007 at 6:30 a.m. While operating a vehicle you caused damage to said vehicle by coming in contact with a stationary pillar in the valet. You are responsible for all vehicles you are operating. As a professional valet driver this is unacceptable.

You are hereby issued a:

Documented verbal warning.

The Employer maintains that the documented verbal warning served as placeholder discipline pending the receipt of a damage estimate from the customer. Pursuant to Article 19 of the parties' collective bargaining agreement, discharge is warranted if a professional estimate of damage indicates that damage to a customer's motor vehicle exceeds \$1,650. In this instance, the customer provided an initial written estimate on January 15, 2008 indicating property damage to the vehicle in the amount of \$1,416.43. Several months later, on April 30, 2008, the customer submitted an additional statement of \$458.66 for the cost of a replacement rental vehicle.

The Employer terminated Mosazghi on May 1, 2008. The new disciplinary document stated:

Details: On 9-24-2007 while operating a Toyota Sequoia you hit a pillar. The amount of the damage is \$1875.09; this amount exceeds the limits set forth in the Union Contract.

We are withdrawing the poor performance written warning of 09-24-200[7] and Terminating your employment with Ampco Parking effective immediately based on the following Article and section

Subject: Article 19, Section 1 Sub-section 2
Damage to Property

The Union filed a grievance challenging the termination decision on May 2, 2008. During the grievance steps, the Union invoked that portion of Article 19 providing that

“The Employer may take the Employee’s years of prior service at the Airport into consideration in determining whether immediate discharge or some lesser discipline is warranted.” The Employer denied the request, determining, in effect, that Mosazghi did not have an excellent record of service. The Union has now processed this dispute to arbitration.

POSITIONS OF THE PARTIES

Employer:

The Employer contends that it had just cause to discharge the grievant due to his negligent handling of a customer’s vehicle. In particular, the Employer maintains that the parties’ agreement in Article 19 to establish a \$1,650 damage threshold for discharge means that an accident causing damage in excess of that amount automatically constitutes just cause for termination. In this instance, the Employer asserts that the combination of property damage and rental replacement cost exceeded the \$1,650 amount.

The Employer additionally argues that the grievant was not subject to double jeopardy in terms of being subject to multiple disciplinary measures for the same incident. The Employer claims that its standard procedure is initially to issue some form of minor discipline, such as a documented verbal warning, pending the receipt of the customer’s damage estimate. If the estimate warrants a greater degree of discipline, the place-holder discipline is then withdrawn and replaced by the ultimate and sole form of discipline.

Union:

The Union argues that the Employer did not have just cause to terminate the grievant. The Union asserts three contentions in this regard. First, the Union claims that

Article 19 does not *per se* justify the termination of an employee who exceeds the \$1,650 damage threshold without an independent determination of the typical requirements of just cause. Second, the Union contends that the \$1,650 threshold, in any event, applies only to property damage and not to the cost of rental replacement. Third, the Union maintains that discharge is too severe of a penalty in light of the grievant's ten years of service in the car runner position.

As an additional claim, the Union argues that the May 1, 2008 discharge sanction constitutes an impermissible double punishment for the September 24, 2007 accident for which the Employer already had issued a documented verbal warning. The Union points out that the Employer's earlier discipline came with no reservation of rights or placeholder notation indicating that it was provisional pending further investigation.

DISCUSSION AND OPINION

In accordance with the terms of the parties' collective bargaining agreement, the Employer bears the burden of establishing that it had just cause to support its disciplinary decision. This inquiry typically involves two distinct steps. The first step concerns whether the Employer has submitted sufficient proof that the employee actually engaged in the alleged misconduct or other behavior warranting discipline. If that proof is established, the remaining question is whether the level of discipline imposed is appropriate in light of all of the relevant circumstances. *See Elkouri & Elkouri, HOW ARBITRATION WORKS* 948 (6th ed. 2003).

A. The Alleged Misconduct

The misconduct alleged by the Employer in this case is that the grievant caused an accident in the valet parking area on September 24, 2007 by driving a customer's vehicle

into a concrete pillar. The Union acknowledges the incident and does not deny that Mr. Mosazghi's actions caused the accident to happen. As such, this issue is not in dispute, and the Employer adequately has established the occurrence of the alleged misconduct in question.

B. The Appropriate Remedy

The Employer submits that discharge is warranted because the accident caused by the grievant resulted in a monetary loss to the Employer in excess of \$1,650. The Employer maintains that Article 19 of the parties' agreement expressly authorizes discharge under these circumstances without the necessity of any additional analysis of just cause or progressive discipline principles.

The Union claims that the discharge sanction is too severe for several reasons. These particular arguments are discussed in the following sections.

1. The Just Cause Standard

The Union initially argues that the level of punishment must be analyzed in light of the just cause standard laid out in Article 4 of the parties' collective bargaining agreement. The Union maintains that even though Article 19 ostensibly authorizes discharge upon the occurrence of a specified level of property damage, that provision should be harmonized with Article 18 which states that an Employer normally should consider "the nature of the offense, the past record of the employee, and other circumstances" when imposing any discipline on an employee.

The parties presented this same argument to Arbitrator Christine Ver Ploeg in a prior case involving grievant Mebrahtu Tesfay. In her decision, Arbitrator Ver Ploeg disagreed with the Union's position, stating as follows:

I have considered this question and agree with the Employer that Article 19, Section 1's monetary threshold (\$1,650) is not rendered moot by Article 4, Section 1's just cause language. On the contrary, a well-established principal of contract interpretation holds that the specific (Article 19, Sec. 1) supercedes the general (Article 4, Sec. 1). From this it is clear that the parties have agreed that causing a vehicular damage of over \$1,650 constitutes a serious incident for which an employee can be immediately discharged; there is no expectation of progressive discipline.

AMPCO AirPark, FMCS Case No. 080128-53068-3 (Ver Ploeg, Aug. 25, 2008).

While I generally agree with Arbitrator Ver Ploeg, I would state the principle somewhat differently. That is, I believe that the specific language of Article 19 *informs* rather than supersedes the just cause standard set out in Article 4. As such, an accident causing damage in excess of \$1,650 per Article 19 automatically constitutes just cause sufficient to warrant discharge pursuant to Article 4 without the need for any additional just cause analysis.

2. Does the Damages Threshold Established by Article 19 Include Rental Replacement Cost?

Article 19 of the parties' agreement states,

If the amount of such damage sustained exceeds \$1,650, then the Employee shall be discharged based upon such sole incident. The amount of damage shall be determined by using a professional estimate of damage.

This is the true crux of this dispute. The Employer maintains that discharge is warranted since the combined cost of property damage and rental cost replacement borne by the Employer exceeded the \$1,650 threshold. The Union, on the contrary, argues that the \$1,650 threshold only encompasses property damage and not rental cost replacement.

I believe that the Union has the better of this argument. The "such damage" language of Article 19, Section 1 (2) obviously relates to Article 19's earlier reference to an accident involving "property damage to a motor vehicle or vehicles." In addition,

Section 1(2) states that the amount of “damage” is to be determined by a “professional estimate of damage.” Such language most logically refers to an evaluation of property damage as opposed to a car rental invoice. If the parties had meant the \$1,650 threshold to include both property damage and the rental cost of a replacement vehicle, it would have been easy to so state.

Article 19 authorizes the Employer to discharge an employee who causes property damage to a customer’s vehicle that is in excess of \$1,650. In this instance, the property damage caused by Mr. Mosazghi amounted to onely \$1,416.43. As a result, the Employer did not have just cause (under Article 4 as informed by Article 19) to discharge the grievant.

3. Is the Penalty Too Severe?

Since the Employer’s discharge sanction is not warranted by Article 19, the appropriate resolution is to reinstate the Employer’s initial sanction of a documented verbal warning. This is the penalty initially imposed by the Employer for the September 24, 2007 accident and the one that would have remained but for the rental replacement cost claim. Since that claim cannot be included in calculating the Article 19 threshold, a reinstatement of the earlier discipline returns the parties to their proper *ex ante* status.

4. Discharge as Double Jeopardy

Because the discharge in this matter is not sustained under Article 19, the Union’s contention that the delayed discharge of Mr. Mosazghi constituted a double punishment for a single incident need not be addressed. Nonetheless, I believe that it would be wise for the parties to discuss this issue in order to structure a mutually agreeable system for correlating discipline with the Article 19 damage estimate process.

AWARD

The grievance is sustained. The Employer is directed to reinstate the grievant and to make him whole for any resulting loss in pay and benefits less any compensation earned in mitigation. The Employer also is directed to reinstate the previous sanction of a documented verbal warning and to correct the grievant's personnel files to reflect these determinations. Jurisdiction is retained for a period of sixty (60) days from the date of this award to address any remedial issues as may be necessary.

Dated: January 23, 2009

Stephen F. Befort
Arbitrator