

IN THE MATTER OF THE ARBITRATION BETWEEN:

Ampco System Parking

And

**ARBITRATION OPINION
AND AWARD**

**International Brotherhood of
Teamsters, Local Union No. 120**

FMCS Case No. 10-60322-33

Arbitrator

Richard A. Beens

Appearances

For the Employer:

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For the Union:

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Date of Award

February 14, 2012

JURISDICTION

This arbitration arises pursuant to a collective bargaining agreement (“CBA”) between Ampco System Parking (“Employer”) and International Brotherhood of Teamsters Union Local 120 (“Union”).¹ Abdu Syed (“Grievant”) was employed by Ampco System Parking and a member of Local 120.

The undersigned neutral arbitrator was selected by the parties to conduct a hearing and render a binding arbitration award. The hearing was held on January 4, 2012 in Minneapolis, Minnesota. The parties stipulated that the matter was properly before the arbitrator. Both were afforded the opportunity for the examination and cross-examination of witnesses and for the introduction of exhibits. Written closing briefs were filed by email on February 10, 2012. The record was then closed and the dispute deemed submitted.

ISSUE

The parties stipulated to the following issue:

Did the Employer have just cause to terminate Grievant and, if not, what is the appropriate remedy?

FACTUAL BACKGROUND

Ampco System Parking contracts with the Metropolitan Airport Commission to

¹ Joint Exhibit 1.

provide parking services at the Minneapolis/St. Paul International Airport.² They staff and operate various airport parking facilities, including an underground valet parking garage at the main terminal. Grievant worked as a car runner in the valet garage for about 12 years.

The entrance to the valet garage is via a single lane ramp starting midway down the taxi lane in front of the Minneapolis-St. Paul Airport's Lindberg Terminal.³ About 23 car lengths from the entrance, the single access lane widens into two drive aisles which lead to the "hiker station," the point where Ampco "car runners" first meet their customers. The car runners perform a variety of tasks:⁴ they fill out a parking ticket and inspect the customer's vehicle for any pre-existing damage. Most importantly, they are responsible to make sure the patron has left the keys for his vehicle. Failure to secure vehicle keys can lead to major disruption of the valet garage's orderly work flow. Additional incoming traffic needs to work around the stranded vehicle. If the customer cannot be successfully paged to return to the garage, the vehicle has to be pushed or towed out of the access lane or drive aisle. This process obviously delays processing incoming garage patrons. Valet garage patrons are often rushed due to the imminent departure of their flights.

During particularly busy periods a vehicle stalled in the valet access lane can cause backups extending all the way out and into the taxi lane. This can severely affect the airport taxi operators. Taxis servicing airport passengers must first check in at a holding area on Post Road, 1.5 miles from the main terminal. As spaces in the taxi

² Joint Exhibit 1.

³ Employer Exhibit 1.

⁴ Employer Exhibit 3.

loading zone in front of the terminal open up, taxis are dispatched from the holding area and have six minutes to reach the automated gate that grants entry to the taxi loading area. If they do not reach the gate within six minutes, they are forced to return to the end of the holding area line. Valet garage waiting lines, if blocked by keyless vehicles, can back up sufficiently to disrupt and block the taxis' access to the automated gate.

Because of the problems caused by vehicles left without keys, the Employer's training manual sets out rules making it the car runners' responsibility to ensure keys are left by the customers.⁵ The necessity of obtain customer's keys is also stressed in the Employer's Monthly Safety Communication.⁶ Grievant acknowledged receiving and understanding both publications.

Grievant, Syed Abdu, has worked at MSP airport parking facilities since 1995 and is a member of IBT Local 120. Starting as a cashier, he transferred to the valet garage in 1998 and worked there until his discharge on June 17, 2010.⁷ The specific incident leading to his termination occurred on the morning of June 16, 2010. Employed as a car runner, he was working the "B" shift which runs from 6:00 AM to 2:30 PM. It was an extremely busy morning with cars backed up to the beginning of the drive aisle waiting for admission to the valet garage. Grievant was checking vehicles in at the hiker station when a regular customer, the local manager for Delta Airlines, approached and demanded a ticket for his vehicle. Grievant noted that the patron's car was behind several other vehicles and positioned near the beginning of the drive aisle. Grievant asked if the customer had left keys in his car. Although the customer responded, "yes", grievant gave

⁵ Employer Exhibit 3.

⁶ Employer Exhibit 2.

⁷ Union Exhibit 3.

him a ticket but did nothing to confirm the response. When it came time to move the customer's vehicle a few minutes later, Grievant discovered the customer had not left keys in the vehicle. Grievant immediately informed his supervisor of the fact and had the patron paged through the MSP terminal intercom system. The customer returned to drop off his car keys about five minutes later.

This proved to be the fourth time Grievant had violated the same work rule in less than seven months. He received a written warning on December 2, 2009,⁸ a Final Written Warning on January 13, 2010,⁹ and a one day suspension without pay on March 17, 2010.¹⁰ Following the fourth incident on June 16, 2010 described above, Grievant was discharged.¹¹ In each of the four instances, Grievant failed to ensure that a customer had left his or her car keys before leaving the valet garage area. In both the first and last instances, Grievant took a customer's word, rather than personally verify, that keys were left in their cars. The Union grieved the discharge on June 17, 2010.¹²

APPLICABLE CONTRACT PROVISIONS¹³

ARTICLE 18 Discharge and Discipline

Section 1. *It is the intent and desire of the Employer to provide a fair day's pay for a fair*

⁸ Employer Exhibit 4.

⁹ Employer Exhibit 5.

¹⁰ Employer Exhibit 6.

¹¹ Employer Exhibit 7.

¹² Union Exhibit 6. The unusual age of this grievance, almost nineteen months, is explained as follows: The prior CBA expired on July 31, 2009. The parties worked under a "status quo" agreement until a new, retroactive CBA was signed on April 11, 2011. Grievances arising during the "status quo" agreement could not be arbitrated until after the new contract was signed. Hence this June 17, 2010, grievance could not be brought to arbitration until after April 1, 2011.

¹³ Joint Exhibit 1.

day's work; to maintain safe and proper working conditions; to treat all employees fairly and without discrimination; and to maintain a normal level of discipline. However, in the event an employee engages in conduct warranting discipline, the following procedure will, unless otherwise provided, apply.

- 1) The severity of disciplinary action will depend upon the nature of the offense, the past record of the employee, and other circumstances involved.*

- 2) With the exception of specific disciplinary measures identified elsewhere Within this Agreement, including tardiness, absenteeism, over/shortage policy, offenses requiring disciplinary action but do not require immediate discharge will be subject to the following action;*

- 1st offense, First Written Warning.*
- 2nd offense, Second Written Warning.*
- 3rd offense, final written warning and/or a one (1) day unpaid suspension*
- 4th offense, discharge.*

.....

Section 2. Examples of offenses, which warrant disciplinary action, may include but are not limited to the following. (sic) It is specifically understood and agreed that because the list is examples, failure to list an offense, will not be the grounds for a grievance.

...

2) Poor cooperation.

...

4) Unsatisfactory work.

OPINION AND AWARD

The Discipline and Discharge Article of the CBA does not contain a specific “just cause” provision. However, its existence is implied in the Seniority Article and, further; the Employer stipulated that “just cause” was the standard by which this discharge should be measured. Even without their stipulation, I would follow the lead of the vast majority of arbitrators who imply the standard where it is missing. To do otherwise would render

the work protection clauses of the CBA meaningless.¹⁴

A “just cause” consists of a number of substantive and procedural elements. A review of discipline for alleged employee misconduct requires an analysis of several factors. First, has the employer relied on a reasonable rule or policy as the basis for the disciplinary action? Second, was there prior notice to the employee, express or implied of the relevant rule or policy, and a warning about potential discipline? A third factor for analysis is whether the disciplinary investigation was thoroughly conducted. Were statements and facts fully and fairly gathered without a predetermined conclusion? Finally, did the employee engage in the actual misconduct as charged by the employer?

The rule involved in the present case is clearly reasonable. The Employer’s Procedure Manual states, “***Make sure the Patron has left the keys. It is your responsibility to make sure the keys are in the vehicle for each and every vehicle you issue a ticket to.***” (Emphasis theirs.)¹⁵ The rule is reiterated in a Monthly Safety Communication, “*Give the customer their portion of the claim ticket with any damages annotated, in exchange for their key(s).*” (Emphasis theirs)¹⁶

Obtaining customer’s car keys is essential to a valet parking business. The Employer is totally responsible for a vehicle once it’s in their possession. After the customer checks in, the employees must safely move the vehicle to a parking spot and return it undamaged when the customer returns hours or days later. If the patron can’t be paged and no keys can be obtained, incoming traffic backs up and employees need to

¹⁴ Elkouri & Elkouri, *How Arbitration Works*, Sixth Edition (2003), Chapter 15.2.B.i

¹⁵ Employer Exhibit 3, p. 10.

¹⁶ Employer Exhibit 2.

physically push the vehicle out of the drive aisles. Sometime this involves use of “Gojaks,” jacking devices on rollers which are placed under each wheel in order to move the vehicle.¹⁷ This process requires a minimum of three people and obviously interrupts normal work flow.

There can be no doubt Grievant was aware of the necessity of obtaining a patron’s car keys. He acknowledged receipt and understanding of both the Procedure Manual and Monthly Safety Communication. Further, after each of the three preceding disciplinary incidents, he was verbally counseled on the importance of obtaining patron keys by the valet garage manager.

There was little investigation involved or needed in this instance. The violation becomes self-evident when there are no keys for a given vehicle. Second, Grievant self-reported the violation to his manager in order to page the customer.

Finally, there is no question Grievant committed the action charged. He took the word of a customer in lieu of actually ensuring keys had been left in the vehicle.

I find that the Employer had just cause to discipline Grievant.

While an arbitrator has the power to determine whether or not an employee’s conduct warrant discipline, his discretion to substitute his or her own judgment regarding the appropriate penalty for management’s is not unlimited. Rather, if an arbitrator is persuaded that the discipline imposed was within the bounds of reasonableness, he or she should not impose a lesser penalty. This is true even if the arbitrator would likely have imposed a different penalty in the first instance. On the other

¹⁷ Employer Exhibit 5, p.7.

hand, if an arbitrator is persuaded the punishment imposed by management was beyond the bounds of reasonableness, he or she must conclude that the employer exceeded its managerial prerogatives and impose a reduced penalty. In reviewing the discipline imposed on an employee, an arbitrator must consider and weigh all relevant factors in the employee's length of service, his work record and the seriousness of the misconduct.

In the present case, Grievant had received three prior disciplinary actions for the same offense within the previous seven months. That is an unusually high number of offenses within a short period of time, particularly for an employee with 14 years experience.¹⁸ Taken individually, the offenses are troublesome, but not particularly serious. However, when viewed as a whole, they become a good deal more problematic. They reflect a pattern of either chronic inattention or disregard for the Employer's work rules.

The Employer and Union have agreed to a classic progressive discipline process in their CBA. Progressive discipline is a two-way street and serves the interests of both. Union members are given ample opportunity to correct deficient work performance without the fear of immediate, summary discharge for minor offenses. On the other hand, the Employer, who has the right to expect work reasonably free from error, is not required to endlessly endure sub-par work efforts. Both parties rightfully rely on the disciplinary process set out in the CBA.

In this case, the Employer meticulously followed the progressive discipline policy

¹⁸ The CBA applicable here contains an Amnesty Program which provides "*..that an employee's corrective action will be "dropped" after twelve (12) months.*" See Joint Exhibit 1, ARTICLE 18, Section 1 (4). As a result, any disciplinary actions against the employee more than one year old cannot be considered for progressive disciplinary purposes.

set out in the CBA. Each incident was documented and presented to the Grievant. He did not grieve the first three failures to obtain customer keys. As such, they constitute valid links in the progressive discipline chain. In each case, he received counseling about the importance of obtaining keys. He acknowledged awareness that future offenses could result in ever increasing disciplinary actions, up to and including discharge. His only defense to the final incident was that it involved a VIP regular customer whose word was previously reliable. While sympathetic on one level, these facts don't obviate his duty to ensure the customer has left keys for his car.

A car left without keys, whether by a first time customer or a VIP regular, blocks busy traffic and disrupts orderly work flow. The Employer's work rules make no VIP exceptions -- the valet must always make sure the customer has left his car keys.¹⁹ This is particularly true for an employee with three prior offenses, all for the same misconduct, within the previous seven months. While the Grievant's actions appear to be negligent rather than malicious, the Employer ultimately has the right to expect better.

Under the facts before me, I see no reason to overrule the Employer's decision to discharge Grievant. To do otherwise under these circumstances would eviscerate the parties' progressive disciplinary system.

¹⁹ Employer Exhibits 2 and 3.

AWARD

The grievance is DENIED.

Dated:

Richard A. Beens, Arbitrator