Montana Arbitration and Labor Relations Conference
October 2024

Just Cause Hypotheticals

1. The Case of the Double Exposure

Grievant is a 5-year employee of State General Hospital ("the Hospital") and licensed radiology technologist ("tech") who performs X-rays on patients in accordance with a physician's order. He was discharged in connection with an 'incident' described below.

As a tech, Grievant had authority to determine that an X-ray is "diagnostic," meaning that the X-ray was taken in accordance with the doctor's orders or to request that an X-ray be deleted if it was *not* diagnostic. If deleting an X-ray, Grievant was required to complete an image removal form providing the reason the X-ray should be deleted. The Hospital randomly audited image removal forms but had no policy as to when or how often the image removal forms were audited.

The Hospital has a policy providing that a tech must file a report to the Hospital (in writing via email to his supervisor) in the case of: "an occurrence concerning medical staff or caregiver behavior that may, or does, adversely impact patient care…" It also provides that "no retaliatory or disciplinary action is taken against any individual(s) who completes and submits a factual event report in good faith..."

The ethical rules that apply to techs require that they only expose a patient to radiation in an amount that constitutes ALARA, which stands for "As Low As Reasonably Achievable." The Hospital's policy requires an overexposure of radiation to be reported via email to the supervisor.

There are two different software systems that Grievant used in his work. Grievant frequently reported his frustration concerning glitches that sometimes occurred with those systems, to not only his supervisor, but also his manager, and the CEO of the Hospital.

Two months before the incident in question, Grievant received a Step 3 final written warning for failing to renew his license on time and then X-raying ten (10) patients before renewal. Grievant did not grieve this warning. As far as actual work performance and competence, grievant's record was excellent.

In November of 2023, a student intern was "shadowing" Grievant as he worked his normal shift. It was a busy day and Grievant was "rushing" to get the X-ray orders completed.

Grievant checked one of the software systems and saw that a chest X-ray order had apparently not been completed for an emergency room patient. Grievant took the X-ray of the patient per the doctor's order, only later learning from a co-worker who checked the second system that the patient had already been X-rayed about 16 minutes earlier.

Upon learning this, grievant completed an image removal form for the second X-ray but did not specify the reason why the X-ray should be deleted. Grievant's supervisor's name was on the image removal form. Grievant did not report the overexposure of radiation to his supervisor via email. The supervisor found out what happened after the intern reported the incident, about four days later. The supervisor checked and discovered the Grievant's image removal form did not state *why* the image should be deleted.

During the investigation of the incident, an audit report by the employer showed that Grievant had not checked the second system. During his investigatory interview, Grievant told the Employer that he had checked both systems, and that the patient did not tell him that he had already been X-rayed. At the hearing, Grievant testified that he knew he was required to report an overexposure to radiation, and that he assumed that because the supervisor's name was on the image removal form, that would constitute a "report."

The Hospital terminated Grievant based on this incident, taking into consideration his prior written warning in determining the level of discipline that should be issued.

The union argues that (1) the discharge was retaliation for the Grievant's prior complaints about system problems; (2) while the second X-ray was "regrettable" and should have been reported, it did not endanger the patient and Grievant assumed this "relatively minor" issue had been "reported" through the removal form; (3) the Grievant had expressed regret over the incident; (4) there was unrebutted testimony that in two prior cases of overexposure by a tech, no discipline had been imposed; and (5) the Grievant's performance record and fact that he was "rushed" and under "significant pressure" while dealing with systems known to have glitches meant there was no just cause for the discharge.

The employer argues that the Grievant knew or should have known that the removal form would not automatically go to the supervisor and thus did not constitute the required written report. It also argues that Grievant was dishonest in claiming he had checked both systems and this, on top of the prior warning re: the late license renewal justified his discharge.

Did the Hospital have just cause to terminate Grievant? If not, would a lesser disciplinary measure have been justified?

2. The Case of the Unmuted Slur

This case involves a grievance by the National Union of Technical Employees ("NUTE") on behalf of the grievant, Colton Prettyman, who was discharged by employer Bigcast, a major cable and cell provider. On June 28, 2023, Colton, who is white, logged onto a Bigcast virtual team meeting during work hours, and multiple employees heard him shout: "F**k, f**k, motherfu**ing, N-word, f**k." Several meeting attendees informed Colton that he was not on mute, and he quickly disconnected from the call. Shortly after, Colton texted his managers, apologizing and saying that he had been singing along to a rap song unaware he was unmuted and that he realized Bigcast's Code of Conduct forbids the use of racial slurs. As a result of his use of a racial slur while waiting for the business meeting to begin, Bigcast terminated his employment.

At the arbitration hearing, the company argues there is no dispute that Colton engaged in the misconduct alleged, and that the use of such language, in particular the 'N-word,' in the workplace, is inappropriate and unacceptable behavior. They further assert that the use of that language violated Bigcast's Code of Conduct and several company policies in its Employee Handbook. The company further notes the CBA provision stating that "termination for cause" is in the "sole function" of the company. They also argue that upholding the grievance would "violate federal law, state law, and public policy against racial harassment."

The union puts on testimony from Colton's African American brother-in-law, as well as Colton himself, that he had been singing along to a rap song that the brother-in-law had shared with him. NUTE notes that he had immediately apologized for his conduct and that, in his 28-year history with Bigcast, Colton had received many customer compliments and positive evaluations with no complaints.

Was there just cause for the termination? If not, what should be the remedy?