

EXPEDITED DISCIPLINARY ARBITRATION

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In the Matter of the Arbitration

- between -

THE STATE OF OHIO [DEPARTMENT
OF LIQUOR CONTROL]

- and -

UNITED FOOD & COMMERCIAL
WORKERS, LOCAL 880

ARBITRATOR'S OPINION
SECTION 11.09
PROCEDURE

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FOR THE STATE:

ANTHONY J. CELEBREZZE, JR.
ATTORNEY GENERAL OF OHIO
By: NATHAN GORDON, Esq.
Assistant Attorney General
2323 West Fifth Avenue
Columbus, Ohio 43266-0701

FOR THE UNION:

SCHWARZWALD, ROBINER
WOLF & ROCK, LPA
by: MARK A. ROCK, Esq.
and TODD C. PARK, Esq.
616 Bond Court
1300 East Ninth Street
Cleveland, Ohio 44114

DATE OF THE HEARING:

February 13, 1987

PLACE OF THE HEARING:

Offices of Schwarzwald,
Robiner, Wolf & Rock
Cleveland, Ohio

ARBITRATOR:

HYMAN COHEN, Esq.
Impartial Arbitrator
Office and P. O. Address:
2565 Charney Road
University Heights, Ohio
44118
Tel: 216-371-2118

[redacted] the Grievant, was suspended without pay from her duties as Assistant Manager at the Ohio Department of Liquor Control E-2 warehouse, located in Cleveland, Ohio, for a period of ten (10) working days, effective June 28, 1986 for "dishonesty, neglect of duty and failure of good behavior". The Grievant was charged with six (6) separate offenses. Each of these offenses will be discussed separately.

**OFFENSES 1 and 2- KNOWINGLY MAKING FALSE
STATEMENTS DURING INVESTIGATION OF THE
\$500 CASH SHORTAGE WHICH OCCURRED IN THE
E-2 WAREHOUSE ON NOVEMBER 27, 1985.**

In the Department's investigation of the \$500 cash shortage at warehouse E-2 on November 27, 1985 the Grievant was interviewed on January 15 and 17, 1986. On January 15 the Grievant failed to mention that she stayed late at the warehouse on November 27, 1985. In her written statement submitted to the Department on the same day she indicated that she left the warehouse at 4:30 p.m. or at the end of her shift. On January 17 the Grievant disclosed to the Department that she stayed late to wait on a customer and [redacted], an employee, remained at the warehouse with her to service a customer. After the Grievant was told that [redacted] received a ride home with Robert Manco, another employee, she changed her story once again and said that she remained alone at the warehouse until 4:50 p.m. working on the books. The ADT Alarm Company recorded that the E-2 warehouse was activated at 4:30 p.m. on November 27, 1985, which was the time that I have concluded the Grievant remained at the warehouse.

The Department's investigation took place almost one and one-half (1 1/2) months after the cash shortage was disclosed to the Department's officials. Memories may dim and certainly recollections may very well be inaccurate between early December 1985 and the middle of January, 1986. However, the various affidavits of employees working at the warehouse on November 27 all indicate that the Grievant either told the employees that she would stay late or they observed the Grievant remaining in the warehouse when they left at the end of their shift.

I have concluded that there is clear and convincing evidence that the Grievant knowingly made various statements on January 15 and 17, 1986 to purposely mislead the Department's officials in performing their official functions in violation of Ohio Revised Code 2921.13 (A).

**OFFENSE 3 ALLOWING AN UNAUTHORIZED PERSON
BEHIND THE COUNTER OF THE STORE, IN THE STORE
OFFICE OR IN THE STORAGE AREA ON NOVEMBER 27, 1985.**

The affidavits of [M], [L], and [G]
[employees at the warehouse], dated February 4, 1987, indicate that the Grievant was with her boyfriend in the cashier's office "during the day" or at the time the employees left on November 27, 1985. Furthermore, in two (2) of the statements furnished by employees at the warehouse to the Department on February 6 and 7, 1986 they indicate that at the time the employees left the warehouse, the Grievant was with her boyfriend in the cashier's office or she was

talking to her boyfriend in the doorway of the cashier's office. On cross-examination [D] acknowledged that he signed a statement on February 6, 1986 indicating that "I think her boyfriend was in the cash room at the table when we left". Moreover, he indicated that when he last spoke to counsel for the Union he said that it could have been a week before Thanksgiving when he saw the Grievant's boyfriend in the cashier's office. He also acknowledged, at the time that he said to Union's counsel, "I was not sure when he was there."

[G] indicated on cross-examination that the Grievant's boyfriend was with her when he left the warehouse on November 27 at the end of the day. However, he also acknowledged that when he met with counsel for the Union he stated that he could not remember whether the Grievant and her boyfriend were in the cashier's office.

[H] indicated on cross-examination that she did not remember what happened on November 27, 1985 or who was at the warehouse at the end of the day. In her affidavit signed February 4, 1987, [D] stated that the Grievant's boyfriend was in the cashier's office at the end of the day on November 26, 1985. The Grievant denied that her boyfriend was in the warehouse on November 27.

In light of the evidence in the record, I have concluded that the Grievant did not violate Regulation 3 of the store's Operations Manual that "No person other than employees are permitted behind the counter of the store, in the store office or in the storage area. In light of the evidence, there is no need to determine whether or not

regulation 3 was strictly enforced before November 27, 1985 or whether its enforcement was limited to the cashier's office.

**OFFENSE 4 FAILING TO DISCOVER CASH
SHORTAGE AT THE CLOSE OF THE BUSINESS DAY.**

In the Grievant's affidavit she indicated that since she first began to work at the E-2 warehouse in November 1982 "it had been the established practice" to wait until the next business morning before counting the previous day's receipts. Accordingly, she counted the money during the morning of November 29, 1985 (November 28 was Thanksgiving Day) and she noticed "an apparent cash shortage of \$500" which was noted on both the register tape and the transmittal card.

In the Department's pre-arbitration statement, the Department states that among other things it disagreed with the Grievant's reference to the "established practice" of counting the previous day's receipts during the morning of the next business day. I cannot conclude that the statement of the Department in its pre-arbitration statement outweighs the statement by the Grievant in her affidavit of the existence of the practice in question. Thus, I cannot conclude that the Grievant violated Regulation 3, Section E (4) of the store's Operations Manual that "all cash shall be accounted for prior to leaving the store".

**OFFENSE 5 FAILING TO REPORT THE CASH SHORTAGE
TO THE DISTRICT SUPERVISOR UNTIL DECEMBER 2, 1985.**

In Paragraph 13 of her affidavit the Grievant indicates "From in or about November 1984, it was the established practice not to report

any cash shortage until such time we had the opportunity to verify the amount of the deposit with the bank. As a practical matter, we would not be able to do this until the next business day because the armored car service would not deliver our deposit to the bank until the next morning."

The only evidence by the Department concerning the Grievant's statement on the established practice is that in its pre-arbitration statement it disagrees among other things with Paragraph 13 of the Grievant's affidavit. Such a disagreement is hardly adequate to overcome the Grievant's sworn statement in her affidavit. Consequently, I cannot conclude that the Grievant violated Regulation 3, Subsection (b) of the store's Operations Manual that "he/she must be able to report store activities to Central Office in a timely and accurate manner".

**OFFENSE 6 RESPONSIBILITY FOR CASH ENTRUSTED
TO THE GRIEVANT IN THE COURSE OF HER DUTIES.**

In the statement dated January 15, 1986 the Grievant indicated that "on the business day of November 27, 1985 she ran the cash register, made deposits and closed and locked the safe at the close of the day. * *."

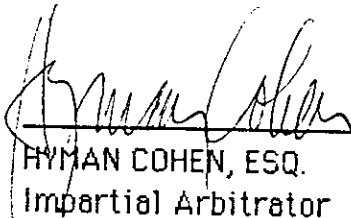
I have concluded that on November 27, 1985 the Grievant was the only person operating the cash register and also counted and prepared the drops prior to having them verified and placed in the safe. There is clear and convincing evidence in the record that the Grievant violated Paragraph (6) of the store's Operations Manual,

"Other Personnel" which provides "each employee will be responsible for the cash entrusted to him in the course of his duties".

DECISION

I have concluded that in light of the aforementioned considerations, the discipline imposed against the Grievant of ten (10) days suspension without pay is to be modified to six (6) days without pay.

Dated: February 18, 1986
Cuyahoga County
Cleveland, Ohio



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