

ARBITRATION AWARD SUMMARY

OCB Award Number: 284

OCB Grievance Number: 21-07-880800-0033- Gerald Rable

Union: UFCW

Department: ODLIC

Arbitrator: Rhonda Rivera

Management Advocate: Rachel Livengood

Union Advocate: Joan Torzewski

Arbitration Date: 4-27-89

Decision Date: 5-30-89

Decision: Denied

In the Matter of the  
Arbitration Between

Ohio Department of  
Liquor Control,

Employer

and

United Food and Commercial  
Workers Union, AFL-CIO,

Union

Grievance No. 21-07(08-00-88)  
033-03-88

Grievant: G. Rable

Hearing Date: April 27, 1989

Opinion Date: May 30, 1989

For the Employer: Rachel L. Livengood

For the Union: Joan Torzewski, Esq.

Present at the hearing in addition to the two advocates named above and the Grievant were Michael P. Duco, OCB, Ronald R. Goodman, Stores Supervisor Department of Liquor Control (witness), Barbara Hensley, Clerk, D.O.L.C. (witness), Bob Gilbert, UFCW Local 954 Representative.

Preliminary Matters

Both parties agreed that the Arbitrator was permitted to tape record the session solely for the purpose of refreshing her memory and on the condition that the tape(s) be destroyed on the day the opinion is rendered. Furthermore, both parties agreed that the Arbitrator could offer the written opinion for publication. The

parties agreed that the matter was properly before the Arbitrator. No witness sequestration was requested. All witnesses were sworn.

### Issue

The parties jointly stipulated to the following issue:

Was Gerald Rable removed from employment with the Ohio Department of Liquor Control for just cause? If not, what shall the remedy be?

### Exhibits

The parties jointly offered the following exhibits.

- J-1 Contract
- J-2 Grievance Trail
- J-3 Pre-Disciplinary Notice
- J-4 Letter of Removal
- J-5 Written Reprimand of 3/18/88
- J-6 Suspension Notice of 2/26/87
- J-7 Stores Operation Manual
- J-8 Management Guidelines for Employee Behavior
- J-9 Position Description

### Stipulated Facts

The parties jointly stipulated to these facts:

The Grievant was employed by D.O.L.C. as a Sales Clerk 2 at the time of the removal.

The Grievant's original date of hire was May 16, 1983.

### Facts

Ronald Goodman, District Stores Supervisor, for the D.O.L.C. stated that at the direction of his Supervisor, Barbara Collins, he went to Store #78. He was specifically directed to check the bins for opened bottles of liquor. Mr. Goodman testified that he did find three (3) opened bottles of liquor in the bins. A very small quantity of liquor was missing from each bottle. He questioned separately each employee on duty; none admitted tampering with the bottles; no explanation was offered as to the condition of the bottles by any employee. The Grievant was among the employees questioned, and denied all knowledge of the opened bottles.

Mr. Goodman said that subsequently he learned that a Ms. Hensley, a D.O.L.C. employee at Store #78, had reported the situation to Ms. Collins. After he found the bottles, Goodman said that he called Ms. Hensley into the District Office who made a written statement implicating the Grievant. Mr. Goodman also stated that Ms. Hensley indicated that a second witness existed. As a consequence, Mr. Winslick was also called into the District Office, and he also made a written statement. Mr. Goodman recommended discipline for the Grievant. On cross examination, Mr. Goodman stated that the Manager of Store #78 was demoted as a

consequence of these incidents. Also upon cross examination, Mr. Goodman reported that the demoted manager had received reports of the alleged tampering/shrinking of the bottles by the Grievant but had not reported the problem.

The main witness for the employer was Barbara Ann Hensley, currently a Clerk II, at the D.O.L.C., Store #78. Ms. Hensley stated that at the time of the incidents she was a part time worker, employed at Store #78. Ms. Hensley said that on two (2) separate occasions, the Grievant took drinks from two different bottles of liquor in her presence. On one occasion he offered her a drink. When she demurred and remonstrated with him, he said to her "Fuck Ron (Goodman), Fuck Barb (Collins) and Fuck the State." Ms. Hensley said she reported the incidents to Mr. Winslick and to Mr. Elmer, the manager; the latter, according to her, laughed off the report and said "Don't worry, that's just the way Jerry is." When neither man took action, she reported the instances to Supervisor Collins. Ms. Hensley was asked, "Why did you report these incidents, you were a part time employee, why rock the boat?" Ms. Hensley replied, "It was disgusting, sick, and wrong, I wouldn't want to buy those bottles." Ms. Hensley said that she had been a friend of the Grievant but "wrong was wrong". She denied being offered a promotion to testify.

The Grievant took the stand in his own behalf. He denied the incidents completely and could offer only one explanation for Ms. Hensley's testimony: she wanted his job.

## Discussion

The advocate for the Union succinctly stated the crux of this case: who is to be believed, the Grievant or Ms. Hensley? The Arbitrator finds that of the two, Ms. Hensley is the more credible witness. Her demeanor and character were straightforward and believable, and her words and descriptions "rang true". Her eye witness testimony is supported by the opened bottles found by Mr. Goodman. No other credible explanation has been offered for those bottles. The Arbitrator finds that the Grievant on two occasions, while on duty, drank from two bottles of state controlled liquor and placed those bottles in sale bins.

Did this behavior justly deserve dismissal. The Grievant is a 5-1/2 year employee. He has two prior disciplines within the permitted time (§ 10.04 of Joint Exhibit J-1) (Joint Exhibits J-5 and J-6). The Stores Operation Manual (Joint Exhibit J-7) clearly forbids drinking on the job (Regulation IV, E-8); the whole thrust of the Stores Operation Manual is the care and control of the liquor entrusted to the State for sale. The Departmental Management Guidelines, while perhaps open to challenge in other areas as to vagueness and appropriateness, is clear and appropriate that an employee shall not "show evidence of having consumed alcoholic beverages" on duty. (Article 11, Joint Exhibit J-8).

The main question is whether dismissal is warranted in this case. The contract requires progressive discipline for just cause (§ 10.02, 10.04, Joint Exhibit J-1). However, the contract

provides in § 10.04 that "more severe discipline may be imposed at any point if the infraction or violation merits the more severe action" (§ 10.04, Joint Exhibit J-1).

In a State liquor store which holds itself out to the taxpaying public as a safe and honest storekeeper and purveyor of liquor, the Grievant's behavior violates the central tenets of the D.O.L.C. The Grievant not only drank on the job, a serious disciplinary matter in any job, but he tampered with the material entrusted to the D.O.L.C. and allowed it to be placed at public disposal.

Wherever liquor consumption by an employee is at issue, no compassionate person can over look the potential for EAP. However, under oath, the Grievant denied a need for EAP and rejected such a solution.


The Arbitrator, therefore, has no choice but to uphold the discipline.

#### Decision

Grievance denied.

May 30, 1989

Date

  
Rhonda R. Rivera  
Arbitrator