

Discourtesy and Discipline

It sometimes seems that we're surrounded by discourteous people. Drivers who cut us off, for example, flashing a rude gesture as they go by. Or people who stand next to us, cursing loudly into their cell phones. These can be irritating situations, but we live with them. Discourtesy is a problem, but ultimately not a hugely serious one — until it becomes a workplace issue.

When discourtesy — using profanity, harassing or verbally abusing someone else — involves a worker and the way he or she deals with customers or the general public, serious discipline or even the job itself could be on the line.

In fact, in half the cases reviewed for this article, arbitrators upheld terminations of workers fired for offensive behavior. The terminations were more likely to be upheld when the target was a customer or member of the public, not just a co-worker.

In the other half of cases reviewed, however, termination was found to be unjust or too harsh, given the circumstances of the case.

It's the wise steward who pays attention to this growing problem and is prepared to defend members who are accused of mistreating the public.

Here are some key basics to keep in mind when trying to help co-workers who are being disciplined over matters of courtesy.

What's the Evidence?

Arbitrators say that employees are entitled to confront their accusers, or at least have a written complaint or other evidence of misbehavior to respond to. Using hearsay evidence to penalize a worker is insufficient. So that it can challenge the evidence, the union is entitled to know what

was said, who said it, and who the complaining party is. And as in all other discipline cases, the employer must conduct a proper, objective investigation of the incident before taking action.

The Contract and Workplace Rules

There must be clear-cut rules, procedures or contract clauses that set out the nature of improper behavior, and set out the

penalty that will be inflicted should the rule be violated. Arbitrators have reinstated employees because the charge of "verbal abuse" was not specifically prohibited in the contract, or was referred to in such a vague way that it was capable of meaning more than one thing. And unless discharge is specifically prescribed for a first offense, then arbitrators may say that something less should be assessed against the employee.

Is the Offense Serious?

Obviously, the more serious the verbal abuse or harassment, the more likely that termination will be upheld for the person committing the act. The actual incident still has to be confirmed, however, and not just by assertions from the employer representative. Understand that an arbitrator is likely to treat racial slurs, foul language or gender-based harassment as more serious than someone simply being rude.

Check Past Practices

The employer must be consistent in assessing penalties. If other employees were let off or received lesser penalties, then it is hard to justify discharge for *another* worker's first offense of the same type.

Were There Prior Warnings?

If an employee is being accused of repeated incidents of discourtesy to oth-

ers, management should be able to produce a record of documentable warnings or lesser disciplines for previous incidents. Additionally, the principle of progressive discipline also applies to discourtesy cases, unless the contract or rules clearly call for discharge for the first offense. Remember that the employee is entitled to be told what he or she has done wrong and to have a union representative present when being told about the discipline.

The Employer's Public Image

Arbitrators are likely to listen to employer concerns about how the public views a firm. In one case an arbitrator upheld the discharge of a union steward who cursed three women who complained that he parked his beer truck too near their car. The arbitrator said that the beer company had spent millions trying to create a public image that was damaged by the employee's behavior.

Check Past Behavior

Arbitrators hearing discourtesy cases usually look at an employee's overall record. A telephone operator's dismissal was overturned by an arbitrator because the operator's past history of improper treatment of customers was separated by a long period of good behavior. The company raised offenses that should have long since been erased from the personnel file according to the contract, so the arbitrator reduced the penalty to a 30-day suspension.

Ultimately, when dealing with discourtesy cases, a steward has to judge each one on its merits, do a proper investigation, check to see how similar cases were handled in the past, and be sure to withhold judgement until all the facts are in. Employers may be quick to take action in cases where employees are the subject of complaints by the public or customers, so the steward must be on his or her toes to make sure that justice is served.

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Assess the merits, investigate, check past practices and don't rush to judgement