

Arbitration Award Summary

05-545 - Discharge

Case Outline:

This grievance falls under the Collective Agreement expiring March 31, 2009.

The member was employed as a Senior Recreation Development Officer (Senior RDO) at the Department of Municipal and Community Affairs (MACA). Subsequent to an 8 day suspension in October 2004, the member received notice of a recommendation for dismissal on June 6, 2005. The discipline action taken in October 2004 was in response to two incidents of the member using his corporate credit card to purchase gas for his personal vehicle. An audit was done by the Audit Bureau spanning three years of the member's employment. The audit report was not completed until nearly nine months after the initial discipline and three weeks prior to the recommendation for dismissal.

April 20 – 23, 2005, the member attended a Mackenzie Recreation Association (MRA) meeting in Inuvik. Four complaints of the member's conduct at this meeting were received by the Employer between April 27 and May 10, 2005. An investigation was completed and a report submitted to the Deputy Minister two weeks after the audit report was finalized.

The member received his official letter of dismissal on June 14, 2005. The letter cited corporate credit card usage, itinerary changes, personal telephone calls and internet usage among the reasons for cause. The Union proceeded to file a grievance on the member's behalf arguing that the member had been wrongfully dismissed.

Employer's Argument:

The Employer's case for dismissal was not based on one incident but on the combination of a number of factors; the majority of which were captured in the Audit Bureau report and the MRA meeting investigation report.

The Audit Bureau report uncovered; nine transactions totaling \$422 which were charged to the grievor's enRoute card, 15 unapproved itinerary changes for business travel causing \$2000 in additional costs, 80 unauthorized telephone calls (personal and long distance) and evidence of considerable web-based electronic mail usage on his work computer. This audit was completed after the member used his corporate credit card to purchase gasoline while on vacation in August 2004. The member returned his charge card to the Employer and was disciplined in October 2004 for the misuse. He did not disclose any further charges at that time.

The MRA meeting report was completed after the member's supervisor interviewed the complainants as well as the member. His supervisor testified to the member's conduct at the meetings as he perceived it from the interviews.

In addition, the Employer submitted that the member had received a written reprimand in September 2004 for being quoted in the newspaper as a representative of MACA and that the member had not enrolled in anger management counseling as had been required as part of his discipline and suspension in October 2004.

The Employer assessed the evidence and considered the perceived lack of remorse in the member's response letter to the recommendation for termination. With everything taken into consideration, they argued that progressive discipline had been followed (as with the 8 day suspension) and that the actions of the member amounted to a breach of trust.

Union's Argument:

The Union argued that the member was not given a fair opportunity to correct his behavior. The member sought direction from the Employer regarding the procedures and processes of duty travel and credit card usage in September 2004 and was not completely successful. After the October suspension, the only misconduct was in his Internet usage and his behavior at the MRA meetings.

In regards to the Internet usage, there was no indication that the member was provided with clear rules or guidelines. The member testified that much of his msn.com usage was done for job related responsibilities as he was unable to check his government address when he was on the road. The member gave out his msn.com address on his business cards in order to make him more accessible and therefore needed to check it back at the office as well. The member also admitted allowing clients to use his work computer affecting the usage statistics. Finally, the Union argued that there was not adequate mention of the internet usage issue for it to form a distinct ground for discharge.

As to the MRA meeting report, the Union argued that it must be seen as hearsay. The contents were summarized as related to the member's supervisor and not as witnessed firsthand.

There were no additional travel charges after the August 2004 gasoline purchases.

Finally, the member did try to arrange for anger management counseling. It took time for the member make the arrangements in an appropriate program and then he had difficulty in getting confirmation from the Employer that payment would be made to the Counseling Centre.

Arbitrator's Decision:

The arbitrator dismissed the grievance.

The arbitrator found that the case for discharge hinged on two main factors the first being, the allegations concerning the member's conduct at the April 2005 MRA meeting. The arbitrator allowed the investigation report of the meetings into evidence, however, deemed the third party report of actions as hearsay. He did give credence to the interview portions with the member. From this evidence and the member's testimony, he concluded that there was insufficient evidence for disciplinary action on two of the complaints, but that a third was substantiated by the member's own admission.

The second factor in the case is the Audit bureau report. The arbitrator found that the member's explanations for the "irregularities" as given to the auditor were unsatisfactory. The member claimed in testimony that he either did not know he was doing anything improper or was assisting his community based clients. In regards to travel itinerary changes, he claimed that he never had any full instructions or orientation. Prior to the August 2004 suspension, the member had heard no mention of problems with his card usage.

A question of the timeliness of the discipline was raised by the Union; however, the arbitrator was unable to conclude that there was an issue of delay. The Deputy Minister, sent notice of the recommendation for termination 3 weeks after the audit report was completed and 1 week after the MRA meeting investigation report.

Based on the evidence presented, the arbitrator concluded that "the grievor's employment relationship has been profoundly damaged through his wrongful activities and his superiors rightfully having lost their confidence in his being able to reestablish the integrity aspects crucial to his employment".