

Background

This is a case in which a short-term employee has been discharged for coming to work under the influence of alcohol and for his overall unsatisfactory work record. The Grievant, E. Medina, was hired by the Company on January 13, 2003. At the time of discharge he was working as a Furnaceman Helper, a Utilityman in the Pugh Ladle Repair sequence.

The Grievant's former Manager, Mr. J. Grattan, testified that he supervises about 350 employees split among four shifts. According to the Manager there is a potential for grave injury or death if an employee is working under the influence of alcohol in the area where the Grievant was employed. The area is near the furnace and there are extreme temperatures, sparks and smoke. The Grievant was driving a forklift in this area. The Manager said that there is a lot of activity in the area and dangerous accidents can happen without warning. He recounted a past incident in which part of a heat of molten steel landed on the ground in the area where the forklifts drive.

The third step minutes state that on July 1, 2005 the Grievant reported late for work for his 6:00 a.m. to 2:00 p.m. shift, and he did not swipe in. The Grievant's supervisor, Mr. Tom Freshette, discovered the Grievant asleep in the pulpit at about 7:00 a.m. He woke the Grievant, turned away from him to assign work to other employees and when he turned back, the Grievant was asleep again. Mr. Freshette found the Grievant asleep a third time a few minutes later and had a difficult time waking the Grievant. Once awakened, the Grievant did not seem to know where he was, according to the minutes. At that point Mr. Freshette sent the Grievant for a fitness-to-work evaluation. The Grievant stated during the exam that he had been drinking alcohol until

2:00 a.m. that morning. He was tested for alcohol and registered a blood alcohol level of .106.

The Grievant was suspended pending discharge on July 1, 2005. A suspension hearing was held on July 7, 2005. The minutes state that during that hearing the Grievant admitted that he was out drinking until 3:30 a.m. before coming to work on July 1st. He also admitted to an alcohol problem at that time. His suspension was converted to a discharge, effective July 8, 2005.

The Manager presented the Grievant's past disciplinary record, which is as follows:

<u>Date</u>	<u>Infraction</u>	<u>Action</u>
8/22/03	Failure to Report Off	Final Warning
11/05/03	Absenteeism	Final Warning
06/02/04	Absenteeism	Reprimand
06/20/04	Failure to Report Off	1-Day Discipline
07/01/04	Safety Infraction	Reprimand
07/22/04	Absenteeism	1-Day Discipline
07/22/04	Rule 2-D – Under Influence of Alcohol at Work	3-Day Discipline
7/23/04		Record Review
10/20/04	Absenteeism	2-Day Discipline
12/23/04	Rule 2-N Out of Work Area	1-Day Discipline
01/18/04	Rule 2-N Out of Work Area	2-Day Discipline
01/28/05	Absenteeism	3-Day Discipline

The Manager testified that when the Grievant received discipline for coming to work under the influence of alcohol in July 2004 he agreed that alcohol was a problem for him and that he would seek help with that problem. A record review was held at that time with the Grievant to impress upon him the serious nature of his disciplinary record and to make sure that he knew what programs were available to help him. The Manager

testified that even after the record review the Grievant's behavior did not improve. He left work before his relief arrived, and he failed to work as scheduled.

Mr. D. Reed, Vice Chairman of the Grievance Committee, testified that employees who acknowledge that they have a drug or alcohol problem become candidates for last chance agreements. He said that the Union's Drug and Alcohol Committee told him that the Grievant was very diligent in pursuing treatment for alcoholism after his discharge. He said that the Committee would not tell him that the Grievant was ready for a last chance agreement if he were not in fact ready, and that the Committee has impeccable credibility. He acknowledged on cross examination that the Grievant did not display diligence in seeking treatment for alcoholism after his initial suspension for coming to work under the influence of alcohol. He also acknowledged that there is no evidence that the Company has offered a last chance agreement to an employee with 30 months of service, and that many employees on last chance agreements for alcohol and drugs do not complete the terms of their agreements. Mr. Reed stated that just because the Grievant has only 2-3 years of service does not mean that he should not be offered a last chance agreement and argued that short-term employees should not be discriminated against.

Mr. D. Lommelin, 4 BOG Griever and Steward, and Vice Chairman of the Union Alcohol and Drug Committee, testified that there is a history of employees first becoming serious about rehabilitation only after they have "bottomed out" and have lost their jobs and realize that their lives are a mess. He presented evidence of the many Alcoholics Anonymous meetings that the Grievant has attended since his discharge. As someone who has been sober himself for 8.5 years, Mr. Lommelin testified that he believes that the

Grievant has taken the necessary steps to remain sober. He also acknowledged that employees on last chance agreements do sometimes fail, and that there was no evidence that the Grievant came to the Union Committee to seek help after his 3-day suspension for coming to work under the influence.

The Grievant, Mr. E. Medina, testified that the majority of his failures to report off (FRO's) were as a result of drinking the night before he was scheduled to come to work. He explained the circumstances surrounding the first occasion when he came to work under the influence of alcohol. He said that he had been out drinking the night before, he got into an argument with his girlfriend in the parking lot, Security came and she told Security that he was under the influence. With regard to the incident that led to the Grievant's discharge, he said that he was drinking alcohol on the night before he came into work, he had no sleep and he fell asleep at work.

According to the Grievant he realized that he is an alcoholic a bit before the final incident but he thought he could handle the problem by limiting his drinking. The Grievant presented a written statement apologizing for his behavior and detailing positive changes he has made in his life in order to remain sober, including changing his attitude, setting up a support system, participating in local meetings of Alcoholics Anonymous, and eliminating negative influences, people and places, that might lure him into temptation. He stated that he has proven to himself that he is capable of change, and requested the opportunity to show the Company that he has changed.

Under questioning from the Company the Grievant admitted that during new employee orientation he was told that if he came to work under the influence he would be subject to discharge. He acknowledged that he was told about access to the Employee

Assistance Program at the same time. He also acknowledged that when he came to work under the influence the first time he said that he had an alcohol problem and he was told about access to rehabilitation programs at that time. He was told at that time that if he did not change his behavior he would lose his job, he admitted. The Grievant also acknowledged, under questioning from the Company, that at the time of his discharge he was scheduled to operate a fairly large forklift around molten steel and large equipment on multiple levels.

The Company also questioned the Grievant about the statement he made that he had eliminated negative influences in his life that might lure him into temptation. He acknowledged that since his discharge he had been picked up by the police with an open bottle of alcohol in the car. He stated that on that night he was woken up by a telephone call from his cousin who said that his friend had gotten into a fight and had broken ribs and they needed a ride. The Grievant went to the scene and said that they were speeding because of the friend's physical condition, when they were stopped by the police. The Grievant said that his cousin had showed him that he had a pint of alcohol in his pocket in the car, and he was upset with his cousin for getting him into trouble and told him so.

The Union presented a statement from the Grievant's sponsor from Alcoholics Anonymous, whom the Union says has been sober for 29 years. The sponsor was unable to attend the hearing, according to the Union. His statement says that the Grievant has changed his priorities, and that the writer feels that the Grievant has been sincere in working the AA program.

The Company's Position

The Company argues that the Grievant accumulated a very poor discipline record over only 30 months. He was put on notice time and again, the Company argues, that his behavior needed to change and yet he failed to change it. He violated attendance standards repeatedly. In addition the Company did not discharge the Grievant on the first instance that he came to work under the influence of alcohol. At that point he was given a three-day suspension and both the Company and the Union made him aware of resources to get help, but he failed to do so. One year later he appeared in the plant under the influence a second time. The Company argues that the Union and the Company did their jobs in terms of dealing fairly with the Grievant. The work in the mill is dangerous and no place for someone under the influence of alcohol, the Company asserts.

The Company argues further that discharge is the appropriate penalty because the Grievant is a short-term employee who was offered the opportunity to go through rehabilitation at the time of his three-day suspension and failed to do so. The Company argues that it does not typically offer last chance agreements in this situation. According to the Company, if long service is a factor that arbitrators consider, then the fact that an employee is a short-service employee also should be considered. The Company offers Inland Award No. 1013 in support of this position. The Company also notes that the awards cited by the Union involved employees with substantially more years of service than the Grievant here.

The Union's Position

According to the Union there is not just cause for the discharge of the Grievant, because of his serious post-discharge rehabilitation efforts. The Union argues that rather than being discharged the Grievant should be offered one final chance to prove that he can be a responsible employee.

The Union requests that the Arbitrator here consider the Grievant's alcoholism as a mitigating circumstance, arguing that his discharge was the wake-up call he needed to change his behavior. The Union relies upon Inland Award No. 864 for the principle that evidence of post-discharge rehabilitation is admissible and relevant. There was substantial evidence introduced at the hearing about the Grievant's efforts to address his problems with alcohol, the Union argues, and this evidence shows that the Grievant is sincerely dealing with his problem. The Union contends that he is like the grievant in Inland Award No. 888, arguing that in that case Arbitrator Bethel found that the grievant's chances for success in rehabilitation were good, even though he had had opportunities in the past to address his addiction and had not successfully done so. The Union also relies upon Inland Award 788 for the view that the most important consideration in such a case is the arbitrator's perception of the employee's efforts to obtain professional help for alcoholism.

The Union argues that the Grievant's record, in conjunction with his serious efforts at post-discharge rehabilitation, show that the Company has not met the standard of just cause for discharge. As a remedy the Union requests that he be reinstated under the terms of a last chance agreement.

Findings and Award

This is a case in which the Company has discharged an employee with two and a half years' service for coming to work under the influence and for his overall poor work record. There is little dispute in this case over the facts that led to the Grievant's discharge. On the day that led to his discharge he registered .106 blood alcohol level after being tested at work. He kept falling asleep at work, even after being awakened by a supervisor. The Grievant does not dispute that he was under the influence of alcohol at work. Nor does the Grievant dispute that he also came to work under the influence about a year earlier, when he was issued a three-day suspension and a record review.

The Union argues that the Grievant should not be discharged, however, but should be reinstated under the terms of a last chance agreement. The Union argues that the Grievant "hit the bottom" when he lost his job and has since then been rehabilitated through his post-discharge participation in Alcoholics Anonymous. The Union introduced evidence of the Grievant attending many Alcoholics Anonymous meetings since his discharge. In addition, the Union produced a letter from his sponsor stating that the Grievant was working the AA program and making the life changes that are necessary to ensure that he remains sober.

It is reasonable for an arbitrator, when considering an employee's post-discharge rehabilitation, to look at evidence of any behavior of the employee that is relevant to rehabilitation. The Company points out that the Grievant's rehabilitation record is not entirely positive. The Company introduced evidence that the Grievant had the opportunity to undergo rehabilitation after the first incident in which he appeared for work under the influence. There is no evidence that he took any action at that time to

enter rehabilitation or to otherwise address his problems with alcohol, even though he acknowledged then that he had problems with alcohol. As stated in Inland Award No. 864, “[w]hen an employee begins serious rehabilitation efforts only after his discharge these efforts may indicate a genuine transformation brought on by the crisis of losing his job – or they may indicate simply an effort to try to keep his job.” Here the Grievant totally ignored a serious “wake up call” to face his alcohol problem and get help: his suspension and record review a year before his discharge, triggered by the same conduct that led to his discharge, coming to work under the influence.

The Company also points out that since his discharge and his entry into rehabilitation the Grievant has had an incident in which the police stopped a car in which he was riding and found an open bottle of alcohol. The Grievant testified that part of his rehabilitation efforts involve staying away from people and places that might lead him to drink. The Grievant’s conduct in the situation with his cousin showed a lack of commitment to staying away from situations involving alcohol and alcohol abuse.

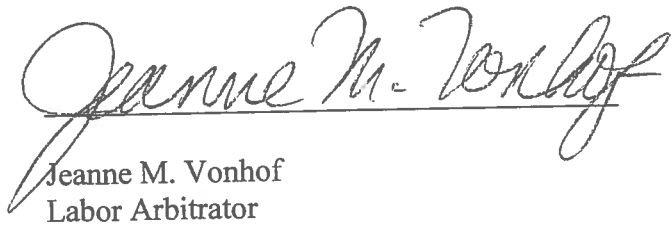
The Union argues that other employees have refused the opportunity to participate in or have failed at earlier rehabilitation efforts, and still have been reinstated in arbitration or under last chance agreements. Last chance agreements are not automatically granted by the Company, even to long-term employees with alcoholism. Last chance agreements normally are offered to employees who would otherwise be discharged, but are instead retained, because of their long good service to the Company, coupled with a record of diligent and effective efforts to change the behavior that triggered the discharge.

Here the Grievant is a relatively short-term employee, with only two and a half years of service. Each of the employees in the awards cited by the Union, Inland Award Nos. 788, 864 and 888, had many more years of service than the Grievant. The Grievant here is more like the grievant in Inland Award No. 1013. In that case this Arbitrator concluded that the grievant, with 40 months of service, had never established a substantial record of satisfactory attendance and therefore was in a very different position than a long-term employee who has established a satisfactory record and then has problems for a period of time. Similarly, the Grievant here never has established a satisfactory record with the Company for any substantial period of time, in the two and half years he worked for the Company. During that time he received final warnings and three-day disciplines for attendance matters, additional discipline for being out of his work area and a safety infraction, as well as a three-day discipline for the same conduct that led to his discharge, coming to work under the influence of alcohol. His coming to work under the influence of alcohol – on more than one occasion – and sleeping in the pulpit -- raises serious safety issues virtually anywhere in the mill, but especially in an area near a furnace.

The Union argues that the Grievant's problems at work were related to his alcoholism, which he has now addressed. However, the Union has not demonstrated that other employees in the Grievant's situation, with a similar past record, have been treated any differently. His efforts at rehabilitation will hopefully prove to be lasting and effective. However, they are "too little, too late" to save his job, when weighed against his record of service with the Company. The Company had just cause for the discharge.

AWARD

The grievance is denied.


Jeanne M. Vonhof
Labor Arbitrator

Dated this 18th day of July, 2006.