Employer's Decision To Fire Employee After Reinstatement Upheld

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Court Finds Second Termination For "Independent Grounds" Was Permitted

A federal appellate court recently held that an employer did not violate an arbitration award by paying an employee back wages and then firing the employee a second time for conduct unrelated to the first termination. The court found that the employer was "free to terminate the employee a second time based on independent grounds." UFCW Local 1776 v. Excel Corp., No. 05-2091, Third Circuit Court of Appeals (December 1, 2006).

Jose Diaz and Sandra Diaz were employed by Excel Corp. Both employees were represented by the United Food and Commercial Workers, Local 1776. On November 1, 2002, Excel discharged both Jose and Sandra for "attempting to steal Excel Company meat on the night of October 29th." The employees allegedly attempted to use a stolen receipt to claim the meat.

The union grieved the terminations, and an arbitrator was assigned to hear the dispute. On May 20, 2004, the arbitrator issued his award, finding that the company did not establish just cause to support the workers' termination. Based on this conclusion, the arbitrator ordered that Jose and Sandra be reinstated to their positions with back pay and full seniority and benefits.

The arbitrator acknowledged that evidence was submitted to show post-termination misconduct, including an allegation that Jose Diaz had assaulted a guard. The arbitrator concluded, however, that "the Grievants' post-termination conduct is not considered herein as a basis for determining whether the Company had just cause to terminate Jose and Sandra Diaz."

By letter dated June 2, 2004, Excel reinstated Sandra Diaz with back pay. By a separate letter written that same day, the company informed Jose that he would receive back pay from the date of suspension until November 1, 2002, when he was alleged to have engaged in "abusive and violent conduct." Further, the company stated that his employment was terminated effective November 1, 2002 based on this misconduct.

The union filed a lawsuit to enforce the arbitrator's reinstatement award. The trial judge declined, and the union appealed. The Third Circuit held that while this is a "novel issue," the trial judge's decision should be upheld. Since the arbitrator refused to consider Excel's evidence of Jose Diaz's post-discharge misconduct, the court wrote, the company never surrendered the freedom to "terminate [Diaz] a second time based on independent grounds, pending a second arbitration."
Practical Impact: According to Patrick Stanton, a shareholder in Ogletree Deakins' Morristown office: “This is a positive ruling because the court upheld the employer’s decision to terminate the employee for post-termination misconduct. It should also be noted that the court rejected the union’s contention that this decision will encourage employers to hold reasons for a second discharge in reserve to undermine an adverse arbitration award.”

As noted by the court, “[w]hereas this concern may be valid in some situations, it is inapplicable here in that Excel attempted to place the issue of Jose’s attack on the security guard before the arbitrator, who declined to consider it.” Moreover, the court added that a second arbitrator will have the opportunity to rule with respect to whether there was good cause for the second termination.

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