

IN THE MATTER OF AN ARBITRATION HELD PURSUANT TO S. 50 OF THE *LABOUR RELATIONS ACT, 1995*:

BETWEEN:

TEAMSTERS LOCAL 847 (the Union)

AND

MAPLE LEAF SPORTS AND ENTERTAINMENT (the Employer)

RE: GRIEVANCE OF RICKY GONZALES (the grievor)

Appearing for the Union: Fernanda Santos

Appearing for the Employer: Les Fisher

Sole arbitrator: Norm Jesin

Hearing Date: October 21, 2016

AWARD:

The grievance in this case alleges that the grievor was discharged without just cause, contrary to the collective agreement between the parties. The facts giving rise to the grievance are as follows:

The grievor was employed as a warehouse porter at the Air Canada Centre in Toronto. In his position he was required to deliver product and supplies to various locations throughout the Centre. The grievor had approximately five years seniority at the time of his discharge.

The incident giving rise to the grievor's discharge consisted of the grievor taking soda fountain pop from one of the Employer's soda fountain machines without authorization. The Employer learned of the incident when it noticed that the inventory of cups used to sell poutine had not been matching the amount that should have been left over given the level of sales. The Employer explained that inventory for soda pop and poutine is kept by counting the number of cups sold. Soda cups are not generally left available during the shifts that the porters work. However poutine cups are left available as there is no poutine available when the porters are working. When the Employer learned that there were discrepancies in the counts for poutine cups it surmised that employees were taking soda pop in poutine cups. During an investigation it was discovered that the grievor had taken a drink of pop in a poutine cup and he was terminated for theft.

The grievor has never denied taking the pop. Rather he asserted that at the time he did not think that he was doing anything wrong. The Employer asserts that the grievors actions

amount to theft and that his discharge is justified. The Employer further asserts that since the grievor was discharged there have been no further discrepancies in the count for cups. The Union concedes that Employees are not allowed to take pop or any other of the Employer's product without authorization. However, the Union asserts that the discharge is too harsh in the circumstances. The Union instead submits that the grievor should be reinstated "with time served".

I agree with the Employer that taking pop or any other product belonging to the Employer without authorization constitutes theft and that discipline is warranted for such conduct. In most cases, discharge is an appropriate penalty for theft. However there are circumstances in which reinstatement of an employee who has committed theft is appropriate. I agree with the Union that given the amount of product taken in this case and given that the grievor never denied his wrong doing and now understands that such conduct is prohibited, that it is appropriate to substitute a lesser penalty in the circumstances. I agree therefore that it is appropriate to reinstate the grievor without compensation for lost wages. I would note that the grievor was discharged in January, 2016 and even with reinstatement, he will still suffer a significant penalty and loss of compensation for his actions. This penalty and this decision should be taken as a clear warning to other employees that they may not take food or refreshment (or any other items) belonging to the Employer without authorization.

Having regard to the foregoing therefore, I hereby direct the Employer to reinstate the grievor into his employment. No compensation is ordered and the period from his discharge to this award shall be treated as a suspension.

I remain seized to deal with any difficulty in implementing this award.

Dated at Toronto, this 24th day of October, 2016.



Norm Jesin