

IN THE MATTER OF AN ARBITRATION

BETWEEN

CATALENT ONTARIO LIMITED

("Company")

and

UNIFOR LOCAL 27

("Union")

Re: Grievance of Brenda Brown

SOLE ARBITRATOR: James Hayes

APPEARANCES

For the Union

Jim Kennedy, Vice President, Local 27
Tony Azevedo, Unit Chair
Kelsey Sitzes
Brenda Brown

For the Company

Ron LeClair, Counsel
Karen Lincoln, Director, Human Resources

A hearing was held in London on October 16, 2019.

AWARD

1. The Union grieves the termination of the Grievor on June 28, 2019.
2. Following a Company Opening Statement, the parties agreed to proceed pursuant to Section 50 of the *Labour Relations Act*. The Company had anticipated calling between 7 and 10 witnesses. They were available to testify, immediately, as to the relevant manufacturing process and a complex investigation conducted into following an incident that had occurred on the May 14-15, 2019 overnight shift.
3. With the consent of the parties and the Grievor, I met separately with the Union and the Company to receive their respective versions of the relevant events. The Grievor provided information supported by her Unit Chair and an experienced fellow employee. When meeting with the Company, I was assisted in particular by Mike Day with supplementary comments from his colleagues. They carefully explained how the internal Company documents should be interpreted to reconstruct what had occurred.
4. Mr. Kennedy and Mr. LeClair expressed the view that it would be desirable to issue a decision in summary form, without detailed reasons, as soon as possible.
5. The Grievor was a lead hand with just under 20 years service. The Company raises no prior record. The Grievor rejects any suggestion that she engaged in wrongdoing or any personal performance failure. While acknowledging that there was a problem with product on the relevant shift, she suggests that this may be explained in ways that had nothing to do with her conduct.
6. The Company insists that the termination of the Grievor had little to do with any mistakes made on the shift in question. It concedes that employees will make errors from time to time and that it has not imposed discipline in similar situations where product issues have arisen in the past. However, the Grievor's conduct here

was egregious in that she engaged in a cover up at the time and has never accepted any responsibility for what occurred. The Company has since been required to dedicate significant resources and incurred significant expense as a result. The Company emphasizes that misconduct of the type that occurred here could have led to serious risk to public safety and put the employment of others at risk if customer confidence had been undermined. The affected customer was Procter and Gamble, a major corporation with other choices as to suppliers. An investigation was also required having regard to Health Canada and the Food and Drug Administration (USA). Employees must be trusted. There must be an expectation of candour.

7. For purposes of this Award, there is no need to describe details of the manufacturing process or the documents that were examined during the investigation. Suffice it to say that I have been satisfied that the only plausible explanation for the issues that arose is that the wrong tank was hooked up leading to the production of gel capsules that were orange in colour. As recorded in the Non-Conformance Report: "The majority of lot AS2448 was impacted due to the incorrect gel tank that was installed during the production of stack 11."

8. Reconstruction of what occurred, through the documents, leads back directly to the participation in one way or another to the Grievor as lead hand together with her son, a probationary employee. I have struggled to identify any other possibility. The Company has satisfied me that the Grievor's alternative suggestions are, on close review, simply not tenable. In the result, I was left with the Grievor's unsupported hypotheses standing in contrast to the unanimous conclusion of several Company witnesses supported by a rational review of documents that recorded the Grievor's involvement.

9. In these circumstances I am unable to conclude that the Company has not established just cause for discharge. This is most regrettable. I accept that, if the Grievor had come forward immediately, there may have been no penalty at all. Or, if not, there may have been a convincing argument to reduce the discharge to a

suspension given the Grievor's seniority and past record. However, I am persuaded by the Company's submission that a continuing breach of trust occurred here that may not be tolerated. The product at issue here was Dayquil Severe Liquicaps. It should be clear to employees that they must come forward truthfully when errors are made. There is nothing to be gained by flat denials.

10. During the course of discussions, Company counsel expressed the willingness of his client to cover the Union's costs associated with this arbitration. The Company was prepared to do so on a without prejudice or precedent basis recognizing that this matter would have required many days of hearing had the parties and the Grievor not agreed to proceed by way of Section 50. I am encouraged by the parties' demonstrated willingness to have this grievance dealt with efficiently - with a view to continuing to move forward sensibly and constructively as labour relations issues arise in the future.

11. The Grievance is dismissed.

Dated at Toronto, Ontario this 18th day of October, 2019.


James Hayes