

IN THE MATTER OF AN ARBITRATION

B E T W E E N:

VALU-MART TORONTO 2729 (BAYVIEW)
("the Employer")

-and-

UNIFOR LOCAL 414
("the Union")

**AND IN THE MATTER OF THE
GRIEVANCE OF ERIC GARDNER**

Arbitrator: **Randy L. Levinson**

For the Employer:	Adam Guy	-Counsel
	Adam Hunter	-Manager, Labour Relations
	Tammy Nivet	-Store Manager

For the Union:	Keith Osborne	-Consultant
	Christine Connor	-National Representative
	Corey Nilsson	-Chairperson Area #5
	Eric Gardner	-Grievor

Hearing on February 18, 2021

Introduction

1. This is a discharge case.
2. The parties have not yet made formal opening statements in support of their respective positions.
3. As I understand it, the Employer discharged Mr. Gardner for gross misconduct, breach of the Store's Alcohol Policy, breach of trust and insubordination. I further understand the Employer's decision to discharge Mr. Gardner is based, in part, on surveillance of his activities while he was on break during his scheduled shifts.
4. The parties have not yet called evidence about the circumstances leading to the surveillance.
5. The Union raises a preliminary motion to exclude the surveillance evidence. I understand this to include video, photographs and oral evidence.
6. The Union maintains the surveillance evidence violates Mr. Gardner's privacy rights. The Union submits a reasonableness approach should be applied. Further, the Union argues the Employer has failed to meet the necessary requirements of such approach.
7. The Employer maintains the Union's preliminary motion is premature and that evidence must be called before deciding any questions about the admissibility of the surveillance evidence. Alternatively, the Employer submits the surveillance evidence should be admitted using the relevance approach and that it will meet the reasonableness approach, in any event.

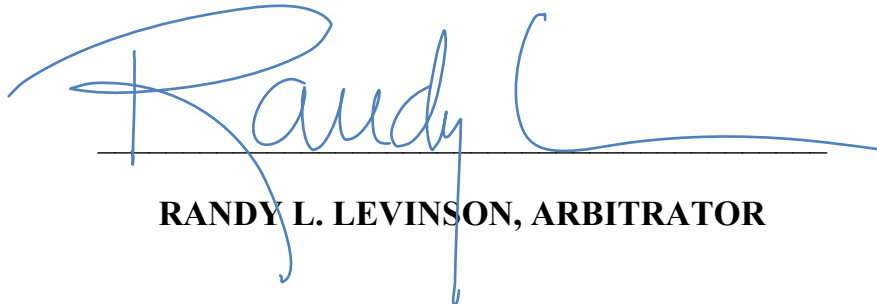
The decision

8. Having considered the parties' submissions, I must conclude that the Union's preliminary motion is premature.

9. Briefly, at this point, the question about whether the surveillance evidence is admissible cannot be answered abstractly or in a vacuum. Rather, there must be a factual context or evidentiary foundation against which to assess the parties' arguments on the Union's preliminary motion.

10. Consequently, I conclude the parties should be given the opportunity to call evidence in support of their respective positions on the admissibility of the surveillance evidence.

DATED at Ancaster, this 26th day of February, 2021.



RANDY L. LEVINSON, ARBITRATOR