

FROM A TO ARBITRATION

EPISODE 12- ARTICLE 35-DEFENDING AGAINST ALCOHOL AND DRUG ADDICTION



ARTICLE 35 OF THE JCAM

- **EMPLOYEE ASSISTANCE PROGRAM**
- **ARTICLE 35.1 STATES IN PART:**
 - **THE EMPLOYER AND THE UNION EXPRESS STRONG SUPPORT FOR PROGRAMS OF SELF-HELP. THE EMPLOYER SHALL PROVIDE AND MAINTAIN A PROGRAM WHICH SHALL ENCOMPASS THE EDUCATION, IDENTIFICATION, REFERRAL, GUIDANCE AND FOLLOW-UP OF THOSE EMPLOYEES AFFLICTED BY THE DISEASE OF ALCOHOLISM AND/OR DRUG ABUSE.**
 - **NOTICE THAT THE CONTRACT CALLS THIS A DISEASE. NOT A CHOICE.**

EAP, DISCIPLINE AND THE CONTRACT

- **WHENEVER DEALING WITH A CARRIER WHO HAS EITHER ALCOHOL OR DRUG PROBLEMS STRONGLY URGE THEM TO CONTACT THE EAP PROGRAM IMMEDIATELY**
- **ARTICLE 35.1 OF THE JCAM GOES ON TO STATE:**
 - **AN EMPLOYEE'S VOLUNTARY PARTICIPATION IN THE EAP FOR ASSISTANCE WITH ALCOHOL AND/OR DRUG ABUSE WILL BE CONSIDERED FAVORABLY IN DISCIPLINARY ACTION PROCEEDINGS.**
 - **35.2 STATES THE EMPLOYER AND THE UNION AGREE THAT THEY WILL COOPERATE FULLY AT ALL LEVELS TOWARDS ACHIEVING THE OBJECTIVES OF THE EAP**
- **EAP PROVIDES FREE CONFIDENTIAL COUNSELING TO ALL POSTAL EMPLOYEES AND THEIR FAMILY MEMBERS BY TRAINED OUTSIDE PROFESSIONALS. IT HAS CONFIDENTIALITY WITH A STRICT CODE OF ETHICS AND EASILY ACCESSIBLE BY CALLING 1-800-EAP-4YOU**

THE RATTLESNAKE

- **WHEN YOU KEEP A RATTLESNAKE AS A PET. LOVE HIM, FEED HIM FOR YEARS AND ONE DAY WHILE YOU ARE FEEDING AND LOVING HIM YOU DECIDE YOU WANT TO PET HIM. THE RATTLESNAKE WILL BITE YOU. AS YOU LAY DYING YOU WONDER WHY WOULD THIS SNAKE TREAT ME LIKE THAT AFTER I LOVED AND FED HIM FOR YEARS? THE SNAKE IS ACTING LIKE A SNAKE, WHY ARE YOU SURPRISED?**
- **WHAT DO YOU EXPECT AN ADDICT TO ACT LIKE? DO NOT BE SURPRISED THAT THIS PERSON IS ACTING LIKE AN ADDICT**
- **WHAT DO YOU THINK AN ALCOHOLIC SHOULD ACT LIKE?**
- **ADDICTS WILL DO WHATEVER THEY HAVE TO TO FEED THEIR ADDICTIONS**

DEFENSES TO DISCIPLINE

- **SECTION 3-MITIGATION 7) DRUGS AND ALCOHOL IMPAIRED**
- **C-01928 STATES IN PART:**
- **WHAT THEN ARE THE FACTORS WHICH WOULD ALLOW AN ARBITRATOR TO MITIGATE THE OFFENSE COMMITTED BY THE ALCOHOLIC WHICH LED TO HIS REMOVAL FROM THE POSTAL SERVICE TO ORDER THAT HE BE REINSTATED BY THE POSTAL SERVICE? THE DECIDED CASES RELY ON SEVERAL FACTORS: FIRST, THAT THE ACT WAS DONE WHILE THE GRIEVANT WAS AN ALCOHOLIC AND AT THE TIME THE ACT WAS COMMITTED HE WAS EITHER DRUNK OR UNDER THE INFLUENCE OF ALCOHOL; SECOND, THAT THE GRIEVANT'S PRIOR WORK RECORD IS EITHER RELATIVELY CLEAR OF DISCIPLINARY ACTION OR THAT ALL, OR MOST, OF THE PRIOR DISCIPLINARY ACTIONS OCCURRED AS THE RESULT OF THE GRIEVANT'S ALCOHOLISM; THIRD, THAT THE GRIEVANT IS SUCCESSFULLY PARTICIPATING IN (PAR) AND THAT PARTICIPATION HAS CAUSED BOTH HIS COUNSELOR AND THE OFFICER IN CHARGE OF THE P.A.R. PROGRAM TO INDICATE THAT HE IS LIKELY TO BE A SUCCESSFUL CANDIDATE FOR REHABILITATION; AND FOURTH, THAT THE GRIEVANT HAS HAD A SUBSTANTIAL LENGTH OF SERVICE WITH THE POST OFFICE GENERALLY FOR A PERIOD OF AT LEAST 10 YEARS, WITH THE LIKELIHOOD OF REINSTATEMENT INCREASING IF THE PERIOD OF PRIOR SERVICE IS 20 YEARS OR MORE.**

ARBITRATOR ROBERTS LANGUAGE

- **ARBITRATOR L. ROBERTS IN C-33598 A&B PAGE 19 STATES:**
- **AS I'VE STATED MANY TIMES THERE ARE CERTAIN DEEDS THAT CERTAINLY DESERVE REMOVAL ACTION EVEN ON THE FIRST OCCURRENCE. ACTS SUCH AS THEFT OR INVOLVING PHYSICAL VIOLENCE PROVIDE ONLY A FEW EXAMPLES. AND BASED ON THE LANGUAGE OF THE PARTIES AGREEMENT I'M OF THE CONSIDERED OPINION THAT NOT EVERY CASE INVOLVING DRUG OR ALCOHOL ABUSE NECESSARILY FIT IN THE SAME CATEGORY. AT FIRST BLUST ACTS OF THE GRIEVANT APPEAR HEINOUS AND REPREHENSIBLE IN THIS PARTICULAR WORK ENVIRONMENT. AND MANAGEMENT'S REACTION WAS IMMEDIATE REMOVAL. HOWEVER, IN MY VIEW THE CHIEF NEGOTIATORS WOULD HAVE CONSIDERED THIS PARTICULAR CASE JUST A LITTLE DIFFERENTLY. THE VERY FIRST SENTENCE IN THAT ARTICLE 16 LANGUAGE DEFINES THE BASIC PRINCIPLES OF DISCIPLINE TO BE CORRECTIVE IN NATURE. AND AS A MORE DETAILED REINFORCEMENT OF THAT LANGUAGE IS THE ENTIRE CONTENT OF ARTICLE 35. SPECIFICALLY THOSE SAME CHEF NEGOTIATORS INCLUDED THIS VERY SPECIFIC LANGUAGE STATING THAT THE EMPLOYER AND THE UNION EXPRESS STRONG SUPPORT FOR HIMSELF OF SELF HELP.**

ROBERTS CONTINUED

- **THE EMPLOYER SHALL PROVIDE AND MAINTAIN A PROGRAM WHICH SHALL ENCOMPASS THE EDUCATION, IDENTIFICATION, REFERRAL, GUIDANCE AND THE FOLLOW-UP OF THOSE EMPLOYEES AFFLICTED BY THE DISEASE OF ALCOHOLISM AND/OR DRUG ABUSE. WHEN AN EMPLOYEE IS REFERRED TO THE EAP BY THE EMPLOYER THE EAP STAFF WILL HAVE A REASONABLE PERIOD OF TIME TO EVALUATE THE EMPLOYEES PROGRESS IN THE PROGRAM. THIS PROGRAM OF LABOR MANAGEMENT COOPERATION SHALL SUPPORT THE CONTINUATION OF EAP FOR ALCOHOL, DRUG ABUSE AND OTHER FAMILY AND OR PERSONAL PROBLEMS AT THE CURRENT LEVEL. AN EMPLOYEES VOLUNTARY PARTICIPATION IN THE EAP PROGRAM FOR ASSISTANCE WITH ALCOHOL AND OR DRUG ABUSE WILL BE CONSIDERED FAVORABLY IN DISCIPLINARY ACTION PROCEEDINGS. THE ABOVE LANGUAGE IS PARAMOUNT IN CONTROLLING MY DECISION IN THIS MATTER. MANAGEMENT IN THIS CASE CONSIDER THE ACTIONS OF THE GRIEVANT ATROCIOUS AND COMPARABLE TO EITHER THEFT OR VIOLENCE. IN THE ACTION OF REMOVAL WAS IMMEDIATELY APPLIED. HOWEVER, THE UNAMBIGUOUS LANGUAGE OF ARTICLE 35 CLEARLY DEFINES IN NO UNCERTAIN TERMS DRUG ABUSE AS BEING A DISEASE RATHER THAN A CRIME. AND THAT CERTAINLY CHANGES THE WHOLE PERSPECTIVE IN THIS MATTER. SPECIFICALLY TO THIS CASE ARTICLE 35 DIRECTS THAT A REASONABLE PERIOD OF TIME TO EVALUATE THE EMPLOYEE'S PROGRESS IN THE PROGRAM BE PROVIDED.**

ROBERTS CONTINUED

- **THE 27 FEBRUARY 2018 PRE-ARBITRATION SETTLEMENT THAT REQUIRES THE GRIEVANT TO CONTACT THE EMPLOYEE ASSISTANCE PROGRAM. TO ME THAT INDICATES TO ME THAT PRIOR TO THE DATE THE SETTLEMENT AGREEMENT THE GRIEVANT HAD NO CONTACT WITH EAP. AND WITH THAT BEING SAID I WAS NOT CONVINCED THAT A REASONABLE PERIOD OF TIME TO EVALUATE THE GRIEVANT'S PROGRESS WAS PROVIDED. IN MY VIEW THE EMPLOYER SIMPLY IGNORED THE LANGUAGE OF ARTICLE 35. THIS AGREEMENT IS NOT PRIORITIZED. ARTICLE 16 AND 35 ARE OF EQUAL WEIGHT. AND IN THIS CASE, I WAS NOT CONVINCING. THE PROVEN GUILT AND THE SUBSEQUENT PENALTY METED OUT BY THE AGENCY OUTWEIGHED THE UNEQUIVOCAL LANGUAGE OF ARTICLE 35. BASED ON THE CONVINCING EVIDENCE INTRODUCED IN THIS CASE I AM OF THE CONSIDERABLE OPINION THAT WHILE POSITIVE TEST RESULTS WERE SEEMINGLY EGREGIOUS, HIS EXEMPLARY LONG TERM SERVICE IS DESERVING OF A FINAL OPPORTUNITY AND LAST CHANCE TO SALVAGE HIS POSTAL CAREER. MY FINDINGS CERTAINLY DEFINE TO OVERLOOK THAT POSITIVE DRUG TEST. HOWEVER, THE ARTICLE 35 LANGUAGE AS APPLIES TO ALL LANGUAGE CURRENTLY APPLICABLE TO THE GRIEVANT.**

WHAT WE NEED TO DO

- **IN THE INVESTIGATIVE INTERVIEW IF ANYTHING PERTAINING TO DRUG ABUSE OR ALCOHOLISM IS MENTIONED WE NEED TO TELL THE CARRIER TO CALL EAP IMMEDIATELY AND GET HELP**
- **GET A DETAILED STATEMENT FROM THE CARRIER OF HOW THIS HAS EFFECTED THEIR WORK LIFE , THEIR FAMILY, JOB AND PERSONAL LIFE**
- **MAKE SURE THE CARRIER GOES INTO DEPTH WITH WHAT IS GOING ON AND HOW IT HAS CRIPPLED THEIR LIVES AND HOW THEY NEED HELP**

CITES TO USE FOR YOUR CASE

- **ARBITRATOR RENFRO- C-02371 IN PART STATES:**
- **THE POSTAL SERVICE INSISTS THAT THE CASE MUST BE DECIDED ON THE FACTS KNOWN AS THEY EXISTED AT THE TIME OF THE GRIEVANT'S DISCHARGE, AND THAT EVIDENCE OF SUBSEQUENT REHABILITATION IS IRRELEVANT. FINALLY, IT IS ARGUED THAT THE GRIEVANT'S CURTAILMENT OF MAIL ON APRIL 18 AND 19, 1977, IS UNRELATED TO HIS ALCOHOLISM. THE REMAINING INQUIRY IS WHETHER DISCHARGE FOR THIS MISCONDUCT IS JUSTIFIED. THE UNION CONTENDS THAT THE GRIEVANT'S BEHAVIOR IS ATTRIBUTABLE TO HIS ALCOHOLISM AND THAT LESSER PUNISHMENT IS THEREFORE REQUIRED. THE POSTAL SERVICE HAS TAKEN THE POSITION THAT THE GRIEVANT'S DRINKING PROBLEMS HAD NOTHING TO DO WITH HIS ACTIONS ON APRIL 18 AND 19.**
- **A CAREFUL REVIEW OF THE EVIDENCE CONVINCES THIS ARBITRATOR THAT THE GRIEVANT'S ALCOHOLISM WAS PRIMARILY RESPONSIBLE FOR THE MISCONDUCT GIVING RISE TO HIS DISCHARGE. THAT THE GRIEVANT IS AN ALCOHOLIC AND HAS BEEN ONE FOR SOMETIME IS UNDISPUTED. THE GRIEVANT'S SUPERVISOR WAS AWARE OF THIS ILLNESS AND IT'S EFFECT ON MR. WATKINS' WORK PERFORMANCE FOR 20 YEARS. HIS RECORD OVERALL WAS A GOOD ONE, WITH NO SUGGESTION BUT FOR THIS INCIDENT OF MISTREATING MAIL THAT HE WAS ANYTHING OTHER THAN A RESPONSIBLE AND TRUSTWORTHY EMPLOYEE. THE ONLY BLEMISHES ON HIS RECORD WERE HIS ABSENCES OF THE PAST TWO YEARS, AND THESE WERE CLEARLY RELATED TO ALCOHOLISM.**

ARBITRATOR RENFRO CONTINUED

- **AS EXPLAINED ABOVE, THE ARBITRATOR IS CONVINCED IN THIS CASE THAT BUT FOR GRIEVANT'S DRINKING PROBLEM HE WOULD NOT HAVE COMMITTED THE VERY FOOLISH AND SERIOUS ACTS INVOLVED. THE EVIDENCE INDICATES THAT HE NOW FULLY APPRECIATES THE PROBLEM AND, THROUGH GREAT PERSONAL EFFORT, HAS COMPLIED WITH THE REQUIREMENTS OF THE REHABILITATION PROGRAM AND MAINTAINED SOBRIETY FOR A LOG PERIOD OF TIME. THE RECORD IN THIS CASE, INCLUDING GRIEVANT'S STRAIGHTFORWARD TESTIMONY, INDICATES THAT THE PROGNOSIS FOR THE FUTURE IS GOOD. THESE FACTORS ALONG WITH GRIEVANT'S TWENTY YEARS OF SERVICE PERSUADE THIS ARBITRATOR THAT DISCHARGE WAS TOO SEVERE IN THIS CASE.**
- **THIS DOES NOT MEAN THAT LIMITS TO WHICH ANY EMPLOYER CAN BE EXPECTED TO GO TO HELP AN ALCOHOLIC EMPLOYEE OVERCOME HIS PROBLEM. THE TIME DOES COME WHEN AN EMPLOYER MAY REASONABLY CONCLUDE THAT ITS EFFORTS TO ENCOURAGE REHABILITATION HAVE FAILED AND THAT PROSPECTS FOR SUBSTANDARD IMPROVEMENT ARE SO SLIM THAT THE EMPLOYMENT RELATIONSHIP MUST BE TERMINATED**

ARBITRATOR RENFRO CONTINUED

- **IT IS HOPED THAT REINSTATEMENT OF THE GRIEVANT WILL BE BENEFICIAL TO THE POSTAL SERVICE AND THE GRIEVANT; THAT MR. WATKINS WILL PROVE BY HIS ACTIONS AND HIS UNINTERRUPTED CONTINUATION IN THE REHABILITATION PROGRAM THAT THIS DECISION IS REASONABLE. SHOULD THIS NOT PROVE TO BE THE CASE, AND GRIEVANT AGAIN BECOMES UNABLE TO PROPERLY PERFORM HIS DUTIES BECAUSE OF INVOLVEMENT WITH ALCOHOL, HE SHOULD UNDERSTAND THAT HE HAS HAD HIS LAST CHANCE, AND TERMINATION WOULD BE WARRANTED.**

IN CONCLUSION

- **YOU HAVE NO IDEA WHERE PEOPLE ARE IN LIFE**
- **ADDICTION IS NOT A CHOICE, IT'S A DISEASE**
- **YOU FIGHT FOR THAT CARRIER BECAUSE THERE IS NO ONE ELSE WHO WILL. THAT IS YOUR BROTHER/SISTER AND DO NOT GIVE UP ON THEM**
- **WE HAVE THE CONTRACT LANGUAGE AND CITES TO HELP US TO FIGHT AND KEEP THAT CARRIER'S JOB**
- **ALWAYS GET HELP WHEN YOU ARE DEALING WITH SUCH A BIG ISSUE. CALL YOUR PRESIDENT, YOUR BUSINESS AGENT AND/OR OTHER TRUSTED STEWARDS**