

THE ARBITRATION OF DISCIPLINE CASES INVOLVING CUSTOMER COMPLAINTS

DONALD J. PETERSEN

Loyola University Chicago, Illinois

ABSTRACT

Employee behavior which may jeopardize customer goodwill is viewed dimly by employers and arbitrators alike. Given that employee misbehavior toward customers is serious, is it always necessary for an employer to promulgate rules forbidding discourtesy, assaults, sexual harassment, etc., toward customers? Should an employer compel a customer through a subpoena to testify against an accused employee in arbitration? Must the customer be present to testify in order to avoid a hearsay objection, or can the customer's testimony be received through another witness? Will a customer's barring of an employee from its premises constitute a valid reason to discharge the employee? These and other issues in customer complaint cases are explored in this article.

Customers are, of course, the lifeblood of any business. Employers, therefore, are naturally concerned regarding any employee misconduct that might serve to jeopardize their goodwill with customers. Many bargaining unit employees have limited or no exposure to customers. This is particularly true in industries such as manufacturing and mining. However, in other industries such as mass transit, transportation, retail foods, public utilities, and health care, to name some, there is often a great deal of contact between bargaining unit employees and the customers of the business; e.g., bus drivers, clerks in grocery stores, telephone repair persons. When employees engage in misconduct that may have an adverse effect on the business-customer relationship, discipline or discharge may be imposed, depending on the severity of the behavior in question. Such misconduct may range from simple discourtesy to physical assault or sexual harassment of customers. The imposition of discipline may in turn, trigger a protest by the involved employee in

the form of a grievance. If the parties are unable to resolve the dispute in the lower steps of the grievance procedure, a demand may be made for arbitration.

It is the purpose of this article to review arbitral parameters in dealing with discipline/discharge imposed as a result of customer complaints. A review was made of all published arbitration cases dealing with this important issue, covering the years 1982 to 1994, which appeared in the Commerce Clearing House's *Labor Arbitration Awards* and the Bureau of National Affairs' *Labor Arbitration Reports*. A total of fifty published arbitration awards is included in this study.

THE IMPORTANCE OF RULES IN CUSTOMER COMPLAINT DISPUTES

Arbitrators have long recognized the importance of employer concern with protecting its relationship with customers as well as its right to discipline/discharge employees whose actions threaten to destroy that goodwill [1]. Indeed, the preservation of customer goodwill is deemed so important that some arbitrators have held that employee misbehavior which drives away customers is subject to discipline, even in the absence of a rule. Employee misbehavior such as rudeness, assault of a customer, stealing from a customer, etc., may thus be considered *malum in se*. For example, in *Grey Eagle Distributors, Inc.*, an arbitrator upheld the discharge of a union steward who had parked a company truck in a public parking lot so close to a car occupied by three women as to hinder their departure [2]. When the women complained to the driver, he cursed them. While the parties' collective agreement was silent regarding abusive language, the arbitrator nevertheless concluded that the driver's conduct adversely affected the company's public image and he consequently upheld the steward's dismissal.

It is, however, preferred that an employer establish rules regarding customer relationships as well as the penalties associated with the various rule violations. The existence of the rule/penalty relationship may be crucial in some situations. For example, in one case, arbitrator Ross found just cause to dismiss an employee who sold a sixpack of beer to an eighteen-year-old police cadet [3]. The latter was accompanied by two other police officers. That the employee believed that the cadet was twenty-three years old was an unavailing defense. The store had a "no-fault" discharge rule forbidding sale of liquor to minors. He (grievant) had been told to verify the age of everyone who appeared to be under the age of thirty. Under California law, the employee was guilty of a misdemeanor and the store was subject to fines, not to mention the possible loss of its liquor license. While the rule seemed harsh, it was consistent with public policy, and the arbitrator noted twelve other arbitration awards upholding such a rule in southern California.

Care obviously needs to be taken, when a rule or contract language exists, that the wording of the rule is precisely followed. In one case, the collective agreement read in pertinent part that: "no complaint shall be entered in an employee's record unless written and signed by the complainant" [4]. A male bus driver struck a

female passenger in response to being struck, following a confrontation over a transfer. The passenger, however, did not sign a written complaint. Nevertheless, the arbitrator found the driver's conduct to be both "unprofessional and improper." While the driver admitted the offense, he argued his response was in self-defense. Arbitrator Gentile believed the response was motivated by revenge and upheld a ten-day suspension because the driver admitted the offense, even in the absence of a written complaint by the passenger [4]. Similarly, a nursing center had a work rule providing discharge for "abusing or attempting to injure residents or other persons" [5]. A nurse's aide told an aged and infirm resident: "If you continue to give me problems, I will gladly kick your a__." Arbitrator Kossoff found the rule did not clearly cover verbal abuse. However, he did find the aide's behavior to be "degrading" and "highly offensive," and therefore, denied her back pay [5].

THE IMPORTANCE OF CUSTOMER ATTENDANCE AT THE ARBITRATION HEARING

Adding more difficulty for the resolution of customer complaint cases is the fact that sometimes the customer who has made allegations regarding an employee fails to appear at the arbitration hearing. It is, of course, fundamental in the law that the accused should be able to face the accuser through cross-examination. In the absence of customer testimony, all statements, verbal or written, can properly be considered hearsay evidence [6]. While a customer may sometimes be unwilling to attend a hearing, the employer may be reluctant to risk further customer ill-will by compelling the customer's attendance at the hearing through a means of a subpoena. Even if the involved customer comes to the hearing, the arbitrator must nevertheless make credibility determinations regarding the customer's testimony versus the accused employee's testimony. How these problems are resolved is a matter of an arbitrator's predilections toward the rules of evidence, the circumstances of the case, and witness credibility determination.

A customer's absence at a hearing was a major factor in one case [7]. Following the complaint by a major customer regarding a route salesman's alleged failure to follow pricing rules, the salesman was discharged. The customer threatened to withdraw its business if the salesman was not removed, but refused to discuss the case and failed to attend the arbitration hearing. Arbitrator Ellmann observed:

I find that the grievant was deprived of basic due process and that although he sought to confront his accuser, those efforts aborted for whatever reasons we do not know. His accuser after the act was performed declined to indicate any desire for any further involvement, including testifying at the hearing. By this reaction, unfortunately he has served to deprive management and the grievant of their day in court [7, at 680; 8].

Similarly, another arbitrator considered the placement of a passenger's telephone complaint in a bus driver's personnel folder to be hearsay evidence [9]. While no disciplinary action was taken against the driver, the arbitrator ordered that the customer's complaint be attached to the grievance along with a copy of the arbitration award. Only written customer complaints were allowed to be placed in an employee's personnel file by the terms of the parties' collective agreement [10].

On the other hand, arbitrators have upheld discipline or even discharge in the absence of customer testimony at the hearing. In one such case, a grocery store clerk was properly dismissed after making inappropriate remarks to female customers on three occasions [11]. He had previously been warned and suspended for these acts. The clerk had initiated the customer contacts and continued his remarks in the face of negative responses. Two customers were moved to shop elsewhere and were upset and afraid of the grievant. Thus, there was no testimony from them at the hearing. Nevertheless, the arbitrator accepted much of the hearsay evidence on the basis that:

1. he (arbitrator) did not doubt the reliability of the witnesses who reported what the customers had told members of store management;
2. the grievant acknowledged he had made certain statements and committed various actions toward the customers; and
3. the arbitrator believed the clerk was motivated by sexual considerations instead of "just being friendly," based on the circumstances in which the acts occurred [11].

In another case, an arbitrator found just cause to suspend a telephone operator for three days after she had addressed a customer in a rude manner and had failed to provide her name when asked [12]. The customer failed to appear at the arbitration hearing, but the company based its case on the statements of other employees who had heard the grievant's comments to the customer. Arbitrator Byars noted:

However, there is obviously a very sound business reason for this decision [i.e., the failure by the company to compel the customer to attend the hearing]. To inconvenience a customer and subject a customer to examination and cross-examination could certainly further alienate him or her [12, at 104].

Moreover, the customer's alleged rudeness to the grievant did not excuse rudeness on the part of the operator [13].

There is no doubt, however, that an employer stands on firmer evidentiary grounds when the involved customer is on hand to testify at the hearing. In one case, a customer wrote a letter to store management stating she believed she had been ignored and delayed at the checkstand on three occasions because of the grievant's antics [14]. She decided to remove her business to another store. The grievant had been verbally warned on numerous occasions to stop joking, doing

magic tricks, chatting with coworkers, and singing. After the customer appeared at the hearing, the arbitrator upheld a one-week suspension for the grievant/clerk, observing that:

Because of the competitive nature of its business, the Company has a right to expect that its employees will be attentive to its customers and not give the impression of torpor or disregard. The appearance of efficiency and interest in the customer is as significant as the employee's actual proficiency and performance [14, at 5592].

In another case, discipline was upheld after a citizen testified without contradiction that the grievant drove a tractor-trailer in an erratic and unsafe manner [15]. The grievant claimed he did not recall the incident. Nevertheless, the discipline was sustained only to the extent of a written warning, instead of the driver also being disqualified from driving company trucks, because two previous rule violators had not been disqualified by the company [i.e., disparate treatment] [15]. Similarly, a three-day suspension imposed on a nurse's aide who used profanity toward a patient in disgust of that patient's eating behavior, was sustained. An eyewitness's testimony confirmed that grievant's verbal abuse of the patient [16].

DISCOURTESY TO CUSTOMERS IN THE FORM OF LANGUAGE

It has been said that words can be as hurtful as a physical blow. While this old saying may contain much truth, arbitrators are less likely to sustain discharge for an occasion of verbal discourtesy toward a customer than one of physical assault (see next section). The range of unacceptable verbal communication can run the gamut from simple rudeness to foul or abusive language and even racial slurs.

Rudeness or discourtesy is difficult to define with precision. To some extent, it is in the mind of the person hearing the comments. While discourtesy is seldom grounds for discharge for a single offense, the cumulative effect of several warnings may justify termination. For example, the dismissal of a waiter was upheld after he told a distasteful, offensive joke to a club member and her lunch guests [17]. The joke was unsolicited, and the waiter had been disciplined for similar behavior on two prior occasions within a year. Similarly, a utility meter reader was properly terminated for rudeness to customers [18]. He had previously been involved in several documented incidents in which he had been arrogant and sarcastic [19].

A fine line may be drawn between foul language and abusive language. The latter must be directed toward someone with the obvious intent to belittle or berate another person or threaten bodily harm [20]. On the other hand, one may curse or use foul language directed to no one in particular [21]. Naturally, when foul language, or a curse, is directed to a customer, it may become abusive as well. An

employer was found to have improperly discharged an LPN (licensed practical nurse) despite the fact that the parties' collective agreement listed abusive language as grounds for discharge [20]. The LPN was approached by a visitor who asked where she could obtain a walker or cane for a friend who was a resident. To this query, the LPN replied: "Oh, hell, I'm busy." Arbitrator Cohen found that the LPN had been "impolite," but not abusive. On the other hand, the discharge of a bus driver was upheld when, after evicting a passenger with whom he had an argument, the driver continued to demonstrate hostility by threatening bodily harm while the passenger was making a complaint at the dispatch office [22]. The arbitrator pointed out that the driver's conduct could result in potential liability to the employer, as well as possible loss of business and reputation [23].

Termination was also upheld for a sales clerk who made racial and ethnic slurs in the presence of customers [24]. He (the clerk) had been previously warned and counseled for inappropriate conduct in the past, such as racial slurs directed toward Asians, touching the breast of a cashier in the cafeteria, and ignoring black and other minority customers.

PHYSICAL ASSAULTS OR ABUSE DIRECTED AGAINST CUSTOMERS

Surprisingly, most of the reported arbitration cases over the past twelve years dealing with physical abuse or assault involving customers emanated from the health care industry. Nothing is implied in this statement to suggest that health care has an extraordinary number of such cases relative to other industries. In health care, the "customers" are referred to as patients. Unlike other "customers" who can take their business elsewhere if offended or threatened, a patient is often at the mercy of the caregivers. Patients may be too old or infirm to effectively defend themselves from abuse by staff. Arbitrator Borland has observed in this regard:

. . . patients are sick people and cannot be expected to meet standards of behavior convenient to [an employee's] schedule or desires [16, at 1166]. Patients, all patients, deserve respect, possibly even *especially* if they are mentally unaware of their surrounding environment [16, at 1169].

Frequently, when physical abuse is alleged by a patient, only the patient and the accused employee are involved, rendering the case one of credibility and circumstance. For example, a nursing home aide was properly suspended after she was observed roughly wiping the nose of one patient and speaking harshly to two others [25]. Patient abuse was defined in the personnel handbook as including rough physical treatment and abusive, disrespectful language. There was an unbiased eyewitness to the aide's behavior in this case, instead of the more typical situation involving the patients' word versus the accused employee's. In another

interesting case, the discharge of a male orderly who struck a patient was upheld [26]. The patient told his sister he had been struck that morning. This statement was made in the presence of several nurses and other relatives of the patient. The patient also identified the orderly who had hit him in the eye [27]. Prior to the arbitration hearing, the patient died. While the witnesses who testified to the patient's statements were accused by the defense as giving hearsay testimony, arbitrator Lipson noted an exception to the hearsay rule, namely, "excited utterance." The latter involves a statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition [26, at 46-47]. Lipson also observed that the witnesses' statements were supported by the evidence and surrounding circumstances. He concluded by noting the following:

It is obvious that patient abuse can not be tolerated in a health care facility. This is the case, not only because the law and humanitarian considerations make such behavior unacceptable, but because proper treatment of patients is the heart of the Employer's business [26, at 47; 28].

The above notwithstanding, arbitrator Concepcion had little difficulty reversing a discharge of a nursing assistant for patient abuse [29]. The patient who made the charges did not testify, and her written declaration submitted at the arbitration hearing contained assertions that contradicted other facts educed at the hearing. Arbitrator Concepcion stated: "The declaration cannot bear any weight without testimony from the person to whom the declaration is attributed" [29, at 3369]. In another case, physical abuse was not proven [30]. When a resident was observed putting an object into her pants, she was ordered by a male resident care aide to remove it. She refused and struck out at him. He then physically restrained her by standing behind her and lifted up her arms by placing his arms under her arms. There was no evidence he had kicked her or had used unreasonable force. One of the two witnesses who testified against the grievant recanted her testimony, and there were no marks or bruises found on the resident [31].

OTHER EMPLOYEE ACTIONS AFFECTING CUSTOMER RELATIONS

Some of the reported cases provided situations involving customer goodwill that were so unique as to defy categorization. A few of these are reported below.

Discharge was too severe a penalty for a delicatessen manager who removed a discarded ham from the garbage and attempted to salvage it in full view of customers [32]. One customer made a complaint at the store or at corporate headquarters. The grievant subsequently admitted taking the ham from the garbage, but contended that the ham was properly wrapped at the time of removal. However, arbitrator Pittocco found the fact that the ham was in the garbage was

sufficient to cause contamination whether properly wrapped or not. The delicatessen manager had also received prior written warnings for sanitation and food preparation violations. Her discharge was, however, reduced to a thirty-day suspension. Arbitrator Pittocco described the possible detrimental effects of the grievant's actions:

Since New Fairfield is a small town and since news of an incident involving the removal of a ham from a garbage can is something that could be the subject of gossip amongst the Company's customers, the arbitrators [there was a panel of three arbitrators] have taken this publicity into effect in rendering this Award [32, at 3911].

In an interesting case, an employee of a telephone company, while on company time, removed air conditioner ducts in the apartment complex of customers so he could observe female residents [33]. After discovery he was discharged for his repeated acts of voyeurism. The employee sought professional help after his dismissal. Nevertheless, arbitrator Goldstein upheld the discharge and indicated that the serious impact on the employer in terms of potential liability and the "extreme potential harm inflicted on its customers" precluded any postdischarge consideration for the employee [33].

In another public utility case, a meter reader was accused of theft of a customer's property [34]. The customer complained that the grievant, on five different occasions, took soft drinks from a refrigerator located in the customer's basement near the meter. The grievant admitted taking drinks "a couple of times." Arbitrator Katz, in reducing the discharge to a suspension without back pay, noted that there was no intent to steal in this case. The grievant had not acted surreptitiously and returned the partially consumed cans of soda into the refrigerator. However, arbitrator Katz ordered that the grievant be reinstated into a job with no customer contact [34].

SEXUAL HARASSMENT OF CUSTOMERS

As a normal rule bargaining unit employees are not perpetrators of *quid pro quo* harassment [35], but may be involved with hostile environment harassment. This latter type harassment includes behavior ranging from sexual innuendo to touching a victim. Naturally, such behavior must be unwelcomed and have the impact of creating an offensive work environment for the victim. This section of the article deals with hostile environment sexual harassment when committed by an employee of one business against an employee of a customer, rather than against a coworker.

Arbitrators appear to be especially strict in sexual harassment cases involving customers and their employees. For example, arbitrator Allen noted:

Many arbitrators consider sexual harassment charges even more serious where the offense is directed toward a female customer [36].

A telephone equipment installer was discharged for just cause [37]. He had removed a customer's shoulder strap and squeezed her buttocks. His defense was that he interpreted the customer's initial friendliness as encouragement to touch and fondle her. This defense was unavailing. Arbitrator Eisele observed that:

The burden was on [the grievant] to maintain professional behavior even if he viewed her friendliness as encouragement [37, at 4254].

Moreover, Eisele found there was no reason for the customer to fabricate her story.

Similarly, arbitrator Lipson found an employer had properly discharged an employee for sexually harassing a female customer while on a service call at her home [38]. Discharge was specified as the penalty in the parties' collective bargaining agreement when an employee's behavior harms the employer's business. The grievant denied he had sexually harassed the customer. Arbitrator Lipson was thus forced to resolve the credibility issue. He made the following observation in this regard:

Nevertheless, it can not be accepted that guilt can never be determined when there is only one eyewitness to alleged misconduct. Where the charge is grave, every effort must be made to establish the truth, and this must be basically done by deciding the credibility of the two conflicting witnesses. Fortunately, surrounding circumstances or indirect evidence, and the demeanor of the witnesses often made a choice possible [38, at 4549].

The union also argued that another arbitrator, in a prior case, had reinstated an employee following a discharge for sexual misconduct. Arbitrator Lipson commented that the prior award was not binding because the clear language in the parties' collective agreement demanded discharge. Lipson noted the circumstances under which arbitral precedent need not be observed:

An arbitrator is not obligated to follow the contract interpretation of a prior arbitrator. An arbitrator's award is valid if it draws 'its essence from the collective bargaining agreement' [cited omitted] [38, at 4550].

In *Nabisco Foods*, it was found the company had just cause to discharge a black deliveryman with seven years of service, for making sexual propositions and committing other forms of customer abuse [36]. The deliveryman's route included seven different store locations in Texas and Oklahoma, and at least three of these barred the grievant from making deliveries at their stores [39]. In upholding the discharge, arbitrator Allen made the two following poignant observations:

'Sexual abuse' is a form of 'customer abuse' [in this case] since all of the incidents of 'sexual propositions' herein involved employees of customer outlets [3, at 1191].

A deliveryman is the Company's representative when he is working an outlet. Thus, he has a special duty to be courteous and honorable in his dealings with customers [36, at 1192].

PERSONA NON GRATA CASES

There are a few cases reported when an employer is informed by one of its customers that a certain employee will be barred from entering the customer's premises [presumably for some good reason] and/or barred from performing services for the customer. Naturally, if the customer provides the bulk of business for the employer, the employer may have little choice other than to lay off or terminate the involved employee due to lack of work. Arbitrator Gentile provided a good working analysis of the doctrine of *persona non grata*:

To fully appreciate the complexity of *persona non grata* cases, a brief description is helpful: an important third party (usually a customer) dictates to an employer that certain actions be taken against the employer's employee and, if such actions are not taken, the third party indicates that certain measures could or will be taken which would have an adverse economic or financial impact on the employer [40, at 498].

Gentile also described the relevant factors for determining just cause in such cases:

1. Did the employer act in good faith when it complied with the third party's demands?
2. Was there a conspiracy or collusion to circumvent just cause?
3. Did the third party act in good faith in making its demands?
4. Was there other available work for the employee if the employer complied with its customer's demands? and
5. Was there a realistic possibility of adverse economic or financial loss? [40, at 498].

For example, in one case an arbitrator found the discharge of a route salesman was improper [41]. The salesman was not permitted to enter the customer's store because of the latter's irritation at what it perceived to be a lack of cooperation by the salesman. However, the collective agreement specified that two written warnings were required to be issued before a termination could be effected, except for certain egregious offenses [lack of cooperation was not listed as one of those exceptions]. The employer had argued that giving the salesman warnings would only be an "exercise in futility." Nevertheless, arbitrator Marlatt observed:

No party to a Contract may evade the express terms of the Contract on the grounds that such terms are impracticable, unreasonable, or even absurd [41, at 26].

Moreover, the arbitrator noted the company had failed to make any effort to persuade the customer to reconsider, nor did it switch part of the salesman's route so as to avoid the particular customer in question [see Gentile's factors number 1 and 4]. Thus, the salesman was reinstated with back pay and the company ordered to partially switch his route [42].

DISCUSSION

Arbitrators take a common sense approach when dealing with discipline matters involving employees whose misconduct jeopardizes customer relations. While some aspects of misconduct are so obviously wrong as to not require a rule, e.g., stealing from a customer, there is no doubt an employer will stand on firmer ground by promulgating a rule relative to the importance of preserving customer goodwill. Such a rule may deal with some specific form of misbehavior toward a customer such as rudeness, discourtesy, or physical assault, or may generally state that any behavior serving to jeopardize the business-customer relationship is forbidden. As important as the rule itself is the penalty attached to the rule violation. While certain misconduct may be obvious to employees, even in the absence of a rule, penalties for such offenses may not be obvious. Of course, the penalty should be in harmony with the seriousness of the offense.

A special difficulty in customer complaint cases is that they often develop a one-on-one situation, i.e., the customer's word versus the employee's. While arbitrators routinely make credibility determinations when both parties are present to testify at the hearing, cases can become problematical when the customer fails to appear at the arbitration—either by design or default. Some arbitrators require customer attendance, or their testimony repeated by someone else becomes impermissible hearsay. On the other hand, hearsay objections may be overcome if the grievant admits his/her statements or actions, if other employees hear or witness the exchange between customer and grievant, and/or other evidence of the misconduct is available.

As a general rule, simple discourtesy toward customers is not grounds for dismissal for a single offense. However, verbal abuse may be important enough to merit discharge. Such abusive language must serve to belittle or berate a customer. A curse directed toward a customer can also be considered abusive language, but an expletive directed at no one in particular might not be considered abusive in all of the circumstances. Naturally, physical assault toward a customer almost always results in dismissal if proven.

Sexual harassment is a special type of abuse, and when customers or their employees are involved, it becomes an even more serious matter than if the

harassment were directed at coworkers. Arbitrators take a dim view of sexual harassment in general, and are particularly strict when the harassment involves a customer. Indeed, some arbitrators hold employees to a “special duty” of courtesy and honorable dealings with customers.

When a customer bars an employee from its premises for what it considers good cause, that employee may be termed a *persona non grata* and subject to discharge: 1) if the customer’s business constitutes a high percentage of the employer’s total revenues and, thus, there is no alternative work for the employee; 2) if the employer and customer have each acted in good faith; and 3) if there is a real possibility of economic loss by the employer if the customer withdraws its business because the employee is being retained in its [customer’s] service. In any event, the adage that “you don’t bite the hand that feeds you,” seems particularly apropos in customer-complaint cases.

* * *

Donald J. Petersen is Professor of Management at Loyola University Chicago. He is also a practicing labor arbitrator, listed on the national panels of the American Arbitration Association and Federal Mediation & Conciliation Service. Dr. Petersen is also a member of the National Academy of Arbitrators.

ENDNOTES

1. See e.g., *Butler Aviation-Boston Inc.*, 97 LA 477, 478 (Avins, arb.) (1991) (BNA).
2. *Grey Eagle Distributors, Inc.* 93 LA 24 (Canestraight, arb.) (1989) (BNA).
3. *Vons Companies, Inc.*, 100 LA 297 (Ross, arb.) (1992) (BNA).
4. *San Diego Transit Corporation*, 83 LA 224 (Gentile, arb.) (1984) (BNA).
5. *Palmer Terrace Nursing Center*, 82 LA 1179 (Kossoff, arb.) (1984) (BNA).
6. Hearsay may be defined as “an out of court statement made by a declarant the truth of which statement is offered to prove a fact in issue” [*Heritage Manor Health Care Center, Inc.*, 93-2 Arb. ¶ 3398 (Bard, arb.) (1993) at 5034] (CCH).
7. *Interstate Brands*, 97 LA 675 (Ellmann, arb.) (1991) (BNA).
8. It should also be noted that the rule violation for which the salesman was accused did not specify discharge for a first offense, but rather required progressive discipline including oral and written warnings, plus a suspension before discharge could be imposed.
9. *Knoxville Transit Division of ATC Management Corp., K-Trans*, 94 LA 649 (Cantor, arb.) (1990) (BNA).
10. See also *Weyerhaeuser Company*, 85-1 Arb. ¶ 8102 (Flagler, arb.) (1984) (CCH), for a case when a customer’s failure to testify was a major factor for the arbitrator to quash a two-week suspension and make the grievant whole.
11. *Cub Foods Inc.*, 95 LA 771 (Gallagher, arb.) (1990) (BNA).
12. *American Telephone and Telegraph Company*, 98 LA 102 (Byars, arb.) (1991) (BNA).
13. See also *Star Drug Distributors*, 84-1 Arb. ¶ 8281 (Pittocco, arb.) (1984), for an example of another case when the customer did not testify, yet discharge was upheld.

14. *Safeway Stores, Inc.*, 90-2 Arb ¶ 8515 (Knowlton, arb.) (1990) (CCH). (Same case reported at 94 LA 983 (1990) (BNA).
15. *Seaway Food Town*, 94 LA 389 (Braverman, arb.) (1990) (BNA).
16. *War Memorial Hospital*, 89 LA 1166 (Borland, arb.) (1987) (BNA).
17. *Pittsburgh Press Club*, 89 LA 826 (Stoltenberg, arb.) (1987) (BNA).
18. *Florida Power Corporation*, 86-1 Arb. ¶ 8283 (Haemmel, arb.) (1986) (CCH).
19. See also the following cases involving discourtesy to customers: *Southwest Airlines*, 80 LA 628 (King, arb.) (1983) (BNA); *Dyer's Chop House, Inc.*, 82 LA 198 (Ray, arb.) (1984) (BNA); *General Telephone Company of California*, 86 LA 654 (Adelson, arb.) (1986) (BNA); and *General Telephone Company of the Northwest*, 87 LA 989 (Armstrong, arb.) (1986) (BNA).
20. See *Foothills Care Center, Inc.*, 80 LA 1046 (G. Cohen, arb.) (1983) (BNA).
21. Yet, in one case, *H. E. Miller Oldsmobile*, 81 LA 112 (Westbrook, arb.) (1983) (BNA), a company rule dealing with cursing in the presence of a customer was interpreted to apply whether or not the employee intended the customer to hear him.
22. *Greyhound Lines, Inc.*, 79 LA 422 (Larkin, arb.) (1982) (BNA).
23. See also *Alumax Extrusions, Inc.*, 81 LA 722 (Miller, arb.) (1983) (BNA), for another abusive language case when discharge was sustained.
24. *Emporium-Capwell San Francisco*, 85-2 Arb. ¶ 8625 (Oestreich, arb.) (1985) (BNA).
25. *Hillhaven Corp. d/b/a Livingston Convalescent Center*, 91 LA 451 (McCurdy, arb.) (1989) (BNA)
26. *Ambassador Convalescent Center, Inc.*, 83 LA 44 (Lipson, arb.) (1984) (BNA).
27. The orderly struck the patient after he [the patient] had a bowel movement during his bath.
28. However, see *The Hillhaven Corporation*, 93-1 Arb. ¶ 3182 (Levy, arb.) (1992) (CCH), for a case when a patient died before the hearing, but previously had claimed physical abuse by an employee. Arbitrator Levy noted the fact that the patient had died did not preclude him from giving "some weight" to the evidence. The patient's recollections were inconsistent and no bruises were found on the resident. Moreover the patient's testimony lacked corroboration by coworkers who were in the area where the abuse allegedly occurred.
29. *Crestwood Hospitals, Inc., d/b/a Crestwood Convalescent Hospital*, 86-1 Arb. ¶ 8084 (Concepcion, arb.) (1985) (CCH).
30. *Mt. Pleasant Regional Center*, 94-1 Arb. ¶ 4106 (Lewis, arb.) (1993) (CCH).
31. See *Carat Company*, 94-1 Arb. ¶ 4274 (Feldman, arb.) (1994) (CCH), for a nonhealth care physical assault case.
32. *The Grand Union Company*, 90-1 Arb. ¶ 8189 (Pittocco, arb.) (1988) (CCH).
33. *General Telephone Company of Indiana, Inc.*, 90 LA 689 (Goldstein, arb.) (1988) (BNA).
34. *Cincinnati Gas & Electric Company*, 90 LA 841 (Katz, arb.) (1988) (BNA).
35. This is true because *quid pro quo* harassment requires that the perpetrator possesses the supervisory power to threaten the victim with the loss of economic benefits. As bargaining unit employees are not typically supervisors, they lack the required ability to provide or deny such benefits.
36. *Nabisco Foods Company*, 82 LA 1186, 1191 (Allen, arb.) (1984) (BNA).
37. *U.S. West Communications*, 93-1 Arb. ¶ 3237 (Eisele, arb.) (1992) (CCH).

38. *Michigan Consolidated Gas Company*, 92-2 Arb. ¶ 8328 (Lipson, arb.) (1991) (CCH).
39. See next section dealing with *persona non grata* cases.
40. *Harris Trucking Company*, 80 LA 496 (Gentile, arb.) (1983) (BNA).
41. *Wolf Baking Co., Inc.*, 83 LA 24 (Marlatt, arb.) (1984) (BNA).
42. *Nabisco Foods Company* [36] was not a *persona non grata* case as such, but it did involve the disbarment of a deliveryman from three store locations on his route.

Direct reprint requests to:

Donald J. Petersen
Professor of Management
Loyola University Chicago
820 N. Michigan Ave.
Chicago, IL 60611