

PANEL: PRESENTING and PREPARING GRIEVANCES in ARBITRATION

Hypo 2: PAR-TAY!

Prestige University's ("PU") administrative office employees are represented by United Front ("UF") union. PU and UF are parties to a CBA with provisions that govern discipline and discharge as well as grievance and arbitration.

In response to the COVID-19 pandemic, PU required its administrative office employees to work remotely. Employees were expected to work during usual business hours of 8:00 am to 5:00 pm, but occasionally deviating from that schedule was expected and permitted.

Jan is a member of the UF bargaining-unit who works in the University's communications office. On May 4, Supervisor reminded Jan that Jan and team member Aiden were expected to meet to plan the completion of a very important project on May 5th. On the morning of May 5th, Aiden and Jan traded emails and agreed to meet for a Zoom call at 5:00.

At 5:15 on May 5, Jan and Aiden met via Zoom. Aiden immediately noticed that Jan was holding what appeared to be an "umbrella drink" of some sort. "It's a little early for that don't you think," Aiden joked. "No way! It's Cinco De Mayo!" Jan cheered. Aiden noticed that Jan's speech was slurred, and Jan's eyes appeared glassy. Aiden asked Jan if Jan was okay and if would be better to do the call later. Jan insisted that everything was fine. They continued with the call which was a struggle given Jan's sudden foggy memory.

Finally, the planning session was over, and Aiden and Jan bid each other good night. Jan turned the camera off and reduced the Zoom screen, but mistakenly failed to disconnect the call. Jan's microphone was still active. Aiden overheard what sounded like Jan making racially and culturally insensitive remarks. Aiden was so offended that Aiden hung-up and immediately messaged Supervisor and reported Jan's conduct during the Zoom call as well as the comments that Aiden heard after the call.

Supervisor conducted an "internal investigation" via Zoom. Supervisor spoke to both Jan and Aiden separately. Jan requested a Union representative, which Supervisor denied on the grounds that Jan's request could not be accommodated under the unique circumstances of the virtual investigation. During the investigative interview, Jan denied using or being under the influence of alcohol during the planning session with Aiden. Jan asserted that Aiden violated Jan's privacy by eavesdropping on Jan's household conversation. Following the investigation, Supervisor terminated Jan for serious misconduct, namely:

1. Using and being under the influence of alcohol during operating hours and when working on behalf of the University; and
2. Violation of the University's Anti-Discrimination and Anti-Harassment policies.

Prior to the termination, Jan had no prior disciplinary history.

The Union filed a grievance concerning Jan's termination. The grievance advanced to arbitration. You are assigned to arbitrate the case. The week of the arbitration, the Union contacts you to propose a settlement. You believe a settlement would be worthwhile, but it has been hard for you to connect with the Union's representative to discuss settlement.

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CBA PROVISION: DISCHARGE AND DISCIPLINE

Progressive Discipline

The University shall generally follow the principle of progressive discipline directed toward the goal of correction. However, serious misconduct may result in termination or suspension without progressive discipline. The parties understand that serious misconduct includes, but is not limited to:

1. Threatening, intimidating, coercing or interfering with fellow employees.
2. Any act of fighting on University property
3. Insubordination
4. Theft, vandalism or any unauthorized use or removed of University property
5. Use, sale or being under the influence of alcohol, narcotics, barbiturates, hallucinogenic, amphetamines, marijuana or any other drug during operating hours and when working on behalf of the University.
6. Violation of the University's Anti-Discrimination and/or Anti-Harassment policies
7. Falsifying records or university documents.
8. Violence

(b) The University shall have the right either to dismiss, to suspend without pay to impose other disciplinary action for just cause provided, however, that the affected Employee shall have the right to defend himself/herself in connection with such action.

(c) Any disciplinary action must be taken within fourteen (15) business days of the University becoming aware of the conditions giving rise to the discipline.