

Union Wins for Safeway Employee

LD was a long term employee for Canada Safeway. He was a very good employee and had never been disciplined in the twelve (12) years he worked for the Company.

During those years the LD had on occasion requested and received a leave of absence to attend a pre-seminary program.

This case related to another request the member made to Canada Safeway for a leave of absence to allow him to attend a seminary as his next step toward training to be a priest. LD was accepted into this training program and made a request of his Manager for a personal leave to attend this seminary. Unfortunately, his course of study did not permit him to leave the seminary except over the Christmas period which was the reason for the requested leave. Canada Safeway denied LD's request, if you can believe it, and they argued that it exceeded four (4) months, it was during prime time, and because of the operational needs of the store, they simply could not allow it.

The Collective Agreement allowed leaves of absence of more than four (4) months on compassionate grounds and required the Employer to adjudicate any such requests based on merit, compassion and the operational needs of the store. The Employer essentially provided no evidence as to exactly how such a leave of absence in this case would have affected them operationally. The Union argued that Canada Safeway had an obligation to act reasonably in adjudicating requests like this. Canada Safeway on the other hand argued quite vigorously that they had absolutely no obligation to act reasonably. It should be clear from their behaviour that they were more than prepared to act "unreasonably".

The Employer also argued that the reference to "compassionate grounds" in the Collective Agreement only included circumstances such as dying relatives, etc. The arbitrator quite correctly determined that "compassionate reasons" must be viewed as permitting something more than the traditional view of compassion". Again, the Employer's view of what compassion is, is pretty narrow and I think most will agree, disappointing.

In finding that the Union won this arbitration, Arbitrator Smith had the following to say:

"I am satisfied that the Employer breached the Collective Agreement in refusing the grievor's request because it failed to engage in the process prescribed by the Agreement and as a consequence, its decision to deny the grievor's application for leave breached the Collective Agreement. Furthermore, there was no evidence upon which the Employer could have relied in its adjudicative function which supported the exercise of its discretion to deny the leave. Its discretion was not unfettered. In the circumstances the grievance is allowed and a remedy requested by the Union, mainly the grievor's reinstatement and restoration of his seniority is granted."

More and more arbitrators are saying that Employer's have an obligation to act fairly, reasonably and in good faith in the exercise of discretion that is granted to them under the Collective Agreement. This really comes down to basic fairness and many employers are having an extremely difficult time wrapping their heads around a requirement that they act fairly. I am sure most readers will agree that it boggles the mind that any Employer would refuse a leave of absence to allow someone to go to school to become a priest.