

Absenteeism by Arbitrator Lawrence

Absenteeism is a serious problem in all industries and as an arbitrator, I have spent a good deal of time on this unpopular subject. Therefore, for the benefit of the parties, I feel that it is important to share my thoughts in dealing with the subject in general.

It is a well recognized principle that an employer has the right to expect regular, punctual attendance on the part of its employees. This is true even though it may not be expressly stated in the contract and the reasons for it are obvious. Absences disrupt work schedules, necessitate replacements, cause loss of time and money and when excessive, seriously affect the relationship of the employer and the employees. No employer can operate properly without the assurance that the employees will, within reason, report regularly for work and on time. It should also be mentioned here that tardiness is a form of absenteeism. Therefore, as part of management's rights to manage the business and direct the workforce in order to conduct its operations efficiently, it has the right to discipline or terminate an employee who fails to be regular in attendance.

There is, however, a general misconception on the part of employees to the effect that the foregoing principle applies only to unexcused (unscheduled) absences. Of course, it is mainly directed to that type of absence but it does apply to excused absences as well. Excused absences cause many of the same difficulties to an employer as do unexcused ones. The only real difference is that in the former situation the employer knows, in many cases, that the absences are coming where in the latter he does not.

Other misconceptions are that absences covered by sick leave insulates the employer from taking corrective action and that the employer must place the employee on Restricted Sick Leave prior to taking such action. Restrictive Sick Leave is an option of Management. Its purpose is to safeguard the business against employees who claim to be incapacitated because of illness but, instead, tend to absent themselves for other reasons.

Absenteeism can be placed into two categories: The first category is the absentee problem that can be and should be addressed through the use of discipline. For instance, the unexcused absences where the employee fails to be regular in attendance for invalid reasons clearly falls into the realm of discipline. However, most cases of irregular attendance do not rest solely on the employees misconduct per se but is for a combination of reasons. Some of the employees absenteeism,

which is usually short term, is due to bona fide illness or other reasons of which the employee had little or no control. In this type of case, the use of disciplinary techniques are imposed even when there is no showing of wrong doing in the instance that triggered the action. This is so because it is not that absence, alone, which caused the discipline to be taken, but is a group of absences which were not previously scheduled and for which the employee was culpable to some degree.

The progressive disciplinary procedure is exacted in these types of cases for the purpose of changing the employees conduct. Under this general attendance philosophy, discipline is warranted on a determination by the employer that the employees absences are largely within his/her control and his/her past attendance record is unacceptable due to his/her failure to conform to the minimal reasonable requirements which the employer is privileged to make as a condition of the employees continued employment.

The second category is different from the first, in as much as, there is no showing of wrong doing. Some employees are chronically ill, others are sickly and prone to catch every illness that comes down the pike. It is the frequency of absence, many of which are short term, which becomes excessive and renders the employee of no value to the employer. When the absences are, in large part, solely due to illness, the progressive disciplinary procedure cannot correct the situation. This Arbitrator is sympathetic to those employees whose absenteeism is due to illness, however, when such absenteeism results in unacceptable levels of work attendance over a reasonably long period of time, an employer has the right to remove such an employee from employment.

Where excused absences are involved, the company must not only decide that the employees past attendance is unacceptable but also that the future holds no hope of improvement. In this type of case, severing the employment relationship may be warranted but, as previously mentioned, the separation would not be a result of any wrong doing on the part of the employee and, therefore, the action taken would not be considered a disciplinary measure. For a company to successfully take such action, all of the following conditions must exist:

1. The absence rate must be excessive over a reasonably long period of time.
2. The number of occurrences must be above the norm.
3. The prognosis must indicate the likelihood that the employees attendance will not appreciably improve.

When these conditions exist, management should first consider a Fitness for Duty examination. Even in such cases, before the ultimate consequence of employment termination is imposed, some measure of disciplinary action should be applied if there is reason to consider that the employee may be malingering or that psychological factors may have colored the absence pattern.

There are certain work related hazards that may cause a health condition to persist. Nevertheless, employees are expected to perform under the normal work environmental hazards and accept them as part of the job and if they can't management is not required to oblige them. It should be noted, however, that no company expects its employees to work when they are too sick to do so.

Unless the parties have negotiated a "no fault" policy, each case must be judged on its own merits. However, there must be a central monitoring procedure to review selected absence data and ensure that proper action is taken by supervisors to correct employee deficiencies relative to attendance. There must also be a pro forma procedure or methodology by which progressive discipline can be judged in an objective and unbiased manner, e.g., excessive absenteeism occurs when an employees attendance record during any quarter falls below 95% of his/her base hours and/or the number of occasions are in excess of 5. In other words while progressive discipline is an acceptable and preferred form of discipline, it none the less cannot be applied indiscriminately unless some definitive guidelines or standards are promulgated and/or some consistency in practice is manifested or demonstrated by the record.

It goes without saying, that the supervisor has a responsibility to keep abreast of the attendance records of his/her subordinate employees and confront the employee who is excessively absent within a timely fashion (usually the day of his/her return or the following workday) to determine if disciplinary action is warranted.

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