

Another lesson learned the hard way



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It had been a long, two-day hearing on the grievant's removal, but we were nearing the end. Things had gone pretty well for the home team, and I felt confident that we had a good chance of winning the case and getting the grievant, who had been out of work for more than a year, back to work with all back pay. Management was finishing up its cross-examination of the grievant, my final witness, and had done little damage. If this were a baseball game, I'd say it was the bottom of the ninth, the winning run was rounding third base and being fervently waved home. Then it happened. But first, some background.

The grievant, a 15-year carrier whom I'll call Brad, was accused of stopping out on another carrier's route on his way home from work and threatening him. The incident was investigated by two postal inspectors as well as local management. Brad claimed that he had gone straight home and had not stopped on the accuser's route and had not threatened him. But managers believed the other carrier, so they issued Brad a notice of removal. There was some circumstantial evidence supporting both sides, but it was basically a "he said, he said" kind of case and the outcome would ultimately depend on which person the arbitrator believed was more credible: Brad, or his accuser. In a disciplinary case, management has the burden to prove the grievant's guilt, so I felt we had an even chance of prevailing at arbitration. However, there was one element about the case that bothered me.

When interviewed by the postal inspectors, Brad was asked two questions that seemed out of place: Had he ever been arrested? And, did he drink alcohol? To these, Brad replied that he'd been arrested just once, about seven years before in a domestic dispute involving his wife in which the charges were eventually dropped. He also told them that he didn't drink alcohol. These questions and Brad's answers were documented in the inspectors' investigative report, which was in the file.

The questions seemed to come out of nowhere and to have nothing to do with the incident, but I suspected they asked them for a reason, so I discussed them with Brad. He insisted that he told them the truth: That was his only arrest, and he didn't drink. But I wasn't entirely convinced, so I asked the steward who filed the grievance to go to the county courthouse and search records to see whether Brad had had any other arrests. The steward could only find the one arrest record for domestic violence and confirmed that the charges had been dismissed.

There would have been another way to handle this issue much earlier had the steward interviewed the postal inspectors and asked them these two questions: Did you run any background checks on the grievant? What did you find?

In most cases, prior to investigating a postal employee, post-

al inspectors and OIG agents run background checks to determine whether the person has a criminal record, owns guns, has concealed weapons or open-carry permits—things like that.

There are several reasons why they do this. One is that they want to have an idea of the situation they may be walking into. Another is that if they find the employee has a criminal conviction that occurred prior to employment, they can check the employee's application form to see whether it was disclosed when asked the question, "Have you ever been convicted of a crime?" If not disclosed, they've got a strong case to remove the employee for lying on the application form. So when postal inspectors or OIG agents are involved in a case, stewards should always ask them those questions. If they are not asked these questions, they don't have to reveal what they find out. And, as I was about to find out, that can be fatal to your case later on. But at this point, I had nothing other than my gut feeling to indicate Brad was not being truthful about his record, so I accepted his story.

I asked Brad about the alcohol question. At first he said he didn't drink at all; his father was an alcoholic and he saw what it did to his family, so he didn't touch the stuff. So I pressed him further: If he were at a wedding and there was a toast, would he drink champagne? "Probably." If he were at a buddy's house and handed an open beer, would he drink it? "Yeah, sure." Gradually, Brad admitted that he did drink on occasion but did not do so regularly. So that's how we planned to handle that question should it come up: "I don't consider myself a drinker, but I have on rare occasions had a beer."

So there we were. Things were looking good. Management's witnesses had not done well, and we had been able to poke some holes in their case. Brad had held his own on the stand, and I felt he had convinced the arbitrator he was as believable as his accuser, and in a removal case, a tie goes to the union. Then, almost as an afterthought, management's advocate asked Brad the two questions I was most worried about: "You stated to the postal inspectors that you do not drink alcohol. Is that your testimony today?" Brad answered: "Yes. My father was an alcoholic, I don't ever touch the stuff." (I wanted to strangle him.) Then he was asked: "You told the postal inspectors that that your only arrest was for a domestic dispute. Is that your testimony here today?" Brad replied: "Yes." Here it comes, I thought, and watched as the management advocate reached into his file and pulled out a piece of paper. After pausing for effect, he asked, "Isn't it true that on September 21, 1993, you were arrested and convicted of third-degree assault for a fight that happened in Joe's Tavern in Auburn, Washington?"

Brad's face said it all. His jaw dropped, his eyes widened in disbelief and he began to stammer. It was a classic Perry Mason moment for management. Had we known about this early on, we could have been prepared to deal with it. The union's failure to interview the postal inspectors at the time the grievance was filed had a devastating impact. The runner was thrown out at the plate.

Fortunately for Brad, the arbitrator did not uphold the removal and he was returned to work. But he received no back pay for the more than 18 months he was out.