

On January 2, 2007, Neal Goldstein and Lisa Leshinski won an arbitration case on behalf of Teamsters Local 623 against Greyhound Lines, Inc. involving the termination of a member of the bargaining unit. The arbitrator sustained the Union's grievance and directed the Employer to reinstate the individual involved with full back pay. At issue in the case was the Employer's termination of an employee for an alleged violation of cash handling procedures and other allegations.

Freedman and Lorry, P.C. argued on behalf of the grievant that Greyhound's termination action contradicted the progressive discipline provisions of the collective bargaining agreement and the parties' past practice with respect to not disciplining bargaining unit members for cash overages.

In endorsing F&L's argument on behalf of the Union, the arbitrator noted the following:

Even if there had been an overage, the evidence is that employees have never been disciplined for having overages. No Company witness was able to testify that employees had even been disciplined for overages and [the Union representative] said the same thing. He also described an understanding he had come to with... the prior City Manager. While not reduced to writing and while this decision does not depend of the existence of such an understanding, [the Union representative's] testimony is consistent with the conduct of the Company in handling overages.

The arbitrator embraced the arguments advanced by F&L on behalf of the grievant and Greyhound's failure to adhere to recognized principles of due process:

The necessary elements of a binding past practice were established by the Union. The practice was unequivocal, it was clearly enunciated and acted upon, and it was readily ascertainable over a period of time as a fixed and established practice. It is undisputed that prior to this case, no employee had ever been disciplined for having an overage. Thus, argues, the Union, even though their collective bargaining agreement is silent on the subject, there still is a past practice which is binding on the parties.

Additionally, ... it would be unfair to discipline employees on the basis of a policy which had not been communicated to them. If there is to be a change, the employees must be notified. Such notice is a necessary and fundamental component of just cause. Employees cannot be expected to abide by rules of which they are unaware and discipline for violating such a rule should not be upheld by an arbitrator...

For a more comprehensive explanation of the award and arguments advanced by F&L attorneys, feel free to contact our firm for further details.