

Issue: Was Mr. Babcock's Termination for Just Cause? If Not, What Is the Remedy?

Background

Golden Coin Casino Biloxi, MS and the United Servers have a Collective Bargaining Agreement. The origin of this matter of arbitration is an incident which occurred on December 6, 2014.

On Thursday 12/6/14 at approximately 7 P.M. two guests (two females) came into Buffet and asked Odel Martin, Assistant Manager to speak with Babcock (food server) and when Odel was doing rounds in dining room observed one of the females with a plate eating in Babcock's section. When Babcock was asked about ticket he didn't have a reply. After viewing video tapes of the meal, it was determined that the meals were not paid for.

Why this is important?

This is a violation of Collective Bargaining Agreement 6.02. Cause for Discharge-Willful Misconduct-Dishonesty-Babcock had guests in his section that he served who did not pay for meal.

Consequence of behavior:

Separation of Employment

On December 17, 2014, Union Steward Pamela Smith filed the following Grievance:

Describe briefly the issue/problem:

Wrongful termination.

What section(s) of the contract does this violate:

Article 6, 6.1 Just Cause

What action/adjustment does the grievant want:

To be made whole.

In a letter dated January 24, 2015, Nat Miller, Golden Coin's Labor Relations Manager, provided the Company's Third Step Grievance Response. Mr. Miller wrote:

Mr. Babcock admitted to serving a guest without proper payment being made for a meal which was partially consumed by the guest on Thursday, December 6, 2014. By his own admission, Mr. Babcock invited the guest to dine at the Buffet with payment to be made personally by Mr. Babcock. The evidence reveals that Mr. Babcock did indeed tender his personal debit card to Cashier, Inez Johnson, who was momentarily occupied with other guests and Ms. Johnson requested that Mr. Babcock wait as she tended to the other guests.

Mr. Babcock retreated to his duties, instructing Ms. Johnson to keep the card and advising that he would return later. Upon return to his assigned section, Mr. Babcock observed that one of his guests had decided to leave abruptly prior to completing her meal. He then returned to the Cashier stand to retrieve his debit card. According to Mr. Babcock, he then advised the Cashier that his guest had changed her mind about eating and he requested return of his debit card.

In his voluntary statement which Mr. Babcock submitted on or about December 17, 2014, he recounted all of the above facts. However, it was not until the 3rd step hearing that he made it clear that he insisted on a non-charge for the meal based on his understanding of Buffet operations.

Odel Martin testified that on December 6, 2014 at approximately 7:00 P.M., she was approached at the Host stand by two female employees of the Funny Bones Comedy Club who requested to speak with Babcock for a moment. Mrs. Martin granted permission and the two ladies proceeded past the Host station and into the main dining area of the Buffet. After remaining at the Host station for several minutes, Mrs. Martin next proceeded to the main dining area in the course of her normal duties as Assistant Manager. She immediately observed that Babcock had placed utensils, beverages and napkins on a table where the two ladies were seated. Mrs. Martin continued to observe as one of the ladies left out of the restaurant and the other headed toward the buffet line to prepare a plate for consumption.

Mrs. Martin approached Babcock to advise that the ladies had not tendered payment for the meals and inquired as to why they were being seated without a receipt. Babcock did not respond and continued about his duties. Mrs. Martin then went to the Funny Bones Comedy Club to discuss the matter with the manager on duty, Sue Reeves. Ms. Reeves advised that she had not given permission for the employees to leave their work area during working hours and considered them to be missing in action. Mrs. Martin learned that the

names of the Funny Bones employees are Lois Smith and Jane Byrd. Equipped with this information, Mrs. Martin returned to the Buffet.

Mrs. Martin conferred with Tom Hansen, Buffet Manager, about the events involving Babcock and his guests and on December 7, 2014, Babcock was suspended pending investigation. The matter was then referred to investigations. Babcock reported to investigations on December 12, 2014 and was interviewed by Lead Investigator, Sid McLeod. Babcock submitted a voluntary statement later.

Conclusion of the Investigation

The crucial facts in this case are clear, uncontested and indisputable. On December 6, 2014, Babcock seated two acquaintances, Smith and Byrd in the Casino Buffet at approximately 7:00 P.M. Babcock invited both Smith and Byrd to dine at his expense and one of the two ladies declined. He then invited the acquaintance who accepted his invitation to proceed to the buffet station to prepare her plate. Babcock was approached by Assistant Buffer Manager, Odel Martin, who inquired about payment of the meals. Babcock did not respond.

Babcock approached the cashiering station and left his debit card for Cashier, Inez Johnson, and returned to his section. While it was unknown at the time of his termination, Babcock admitted that he advised Cashier, Inez Johnson that his guest decided against eating and Babcock insisted that no charges be assessed against his debit card.

Babcock admitted that he was the only Server for the guest and he bussed the table when his guest left the area abruptly without fully completing the meal. At no point did Babcock seek approval from any member of management to confirm the non-charge although he had full knowledge that his guest did indeed fill a plate from the Buffet line.

Babcock is keenly aware of operating procedures for the venue. As a Food Server he fully understands that one of the major responsibilities is to ensure that prior to taking any beverage orders, he is to observe for evidence of payment by the guest. He fully understands the universal operating tenet of buffets pay first, eat later. In cases involving customer satisfaction issues, management should be notified immediately to address any problems/concerns. Babcock made no attempt to notify management of any problem and sought no approval of a non-charge.

The Grievance was appealed to arbitration.

Relevant Provisions of the Collective Bargaining Agreement

Article 6: Discharge

6.01. Just Cause

No employee shall be disciplined or discharged except for "Just Cause." Disciplinary actions shall be progressive and corrective in nature. Disciplinary notices shall include at a minimum; a documented coaching, a written warning, a final warning, and discharge. The parties agree that progressive discipline normally requires, prior to suspension or discharge that an employee be given an opportunity to correct the deficiency through advance notice, additional training or adequate time to correct the deficiency. Notwithstanding the above, certain conduct as set forth 6.02(a) will result in immediate discharge without resort to progressive discipline.

6.02. Cause for Discharge.

(a) No regular employee, after having completed the probationary period as defined under Article 1 shall be discharged except for just cause.

Article 22: Management Rights

22.01. Management Rights

(a) The management of the Employer shall have the exclusive right to manage and operate the Employer, including all of its operations, activities and the direction of the work force, with the right to hire; or to suspend, discipline or discharge for just cause

22.03. Rules and Regulations

The Employer shall have the right to establish, amend, modify and post Rules governing and regulating the conduct of employees. ... Employee failure to abide by said Rules will constitute grounds for discipline consistent with the terms of the Agreement.

Relevant Provisions of the Employee Handbook

What Golden Coin Casino Expects From You

Rules of the Road

Conduct Standards: Out of respect for our guests and each other, you are expected to maintain certain behavior and performance standards. The following provides examples of behavior that can result in disciplinary action; it is not intended to be an exhaustive list. You are expected to use good judgment at all times in behaving appropriately at work.

Although the violations noted below may result in immediate Separation of Employment or immediate Final Written Warning upon first offense, less severe offenses are viewed cumulatively and will normally be handled on a four-step basis of progressive discipline:

- *First Step*—Document Coaching
- *Second Step*—Written Warning
- *Third Step*—Final Written Warning
- *Fourth Step*—Separation of Employment

Discipline will be separated into three categories: Attendance, Performance/Policy, and Variances (money-handling).

Management may, based on the severity and the specific facts of the incident, accelerate the disciplinary process to include any of the four steps up to and including immediate Separation of Employment. Also, violations of more than one Conduct Standard in a single act will result in increased or multiple disciplinary steps up to and including immediate Separation of Employment. Investigative suspension may be used to suspend an employee while an investigation is conducted. The following list is not all-inclusive and may be revised periodically

3. Employees will be honest and forthcoming in all communication, verbal and written; this includes any Company documents, communication, and participation in investigations. Employees will not knowingly make false statements or omit pertinent information, particularly regarding investigations or reports. Employees must report any known acts or plans of dishonesty

6. Employees will not participate in theft, misappropriation, misuse or willful destruction of a co-worker's, guest's or Company property, or unauthorized removal of such, including lost and found items; this includes removing items from Company dumpsters or any other property disposal facility and includes unauthorized removal of food and beverages

16. Employees will obey all Company rules, department policies and procedures, supervisor's instructions, regulations and/or statutes of local, state and federal governmental agencies including those prescribed by the Mississippi Gaming Commission. Employees will follow all posted, stated or commonly known rules, policies, and procedures.

Positions of the Parties

The Employer:

The Employer stated that, on December 15, 2014, Babcock was terminated from his employment as a

server at Golden Coin. The Employer claimed that the essential facts that led to Mr. Babcock's termination are straight-forward.

On December 6, 2014, Mr. Babcock was working his part-time, evening shift as a server in the Golden Coin. All servers are required to greet guests who come into their assigned area and to take very specific, required steps to ensure that guests are seated, served their requested beverages and directed to buffet food areas to begin their buffet meals. Before any of that happens, servers must insure that guests have physical proof they have paid for their buffet meals. This required step is that every guest must have a receipt or ticket before he or she can be seated and served. The requirement that a receipt be produced is mandated in step-by-step instructions included in a buffet training manual called *The Sequence of Service*.

The buffet provides several separate serving lines and a wide variety of food in an all-you-can-eat setting. In order to prevent individuals who have not paid from getting free meals in the buffet, the Employer constantly monitors and enforces the *Sequence of Service* guidelines. From the moment that customers approach the buffet reception area until the point when a server confirms that his or her customers have paid for the right to be seated and eat in the buffet, the *Sequence of Service* mandates required steps to be followed by all employees.

On December 6, 2014, two women came to the buffet and asked if they could visit with Babcock. It was learned that the two, Jane Byrd and Lois Smith, were employees of the *Funny Bones* night club, located directly across from the entrance to the buffet. The women first asked a cashier in the buffet reception area if they could go inside the buffet to "say hello" to Babcock. They asked Assistant Buffet Manager, Odel Martin, if it was okay to go see Babcock. The women pointedly told the cashier that they were not going to eat.

Once they walked inside the buffet service area, another waiter directed the two women to Babcock's section. Assistant Manager Martin observed Babcock as he greeted the women, sat them at one of his tables, got iced tea drinks for them and invited them to go to the buffet lines to eat. Ms. Martin did not see a written receipt on the women's table. It did not appear that Babcock asked either woman for a receipt, to verify they had properly paid the \$21.95 per guest price for a buffet meal.

Ms. Martin continued to observe as one of the women proceeded to the buffet lines to fill her plate with food, returned to her table, and began to eat. Assistant Manager Martin tried to question Babcock about why the women did not appear to have a buffet receipt; but Babcock refused to answer her questions and walked away from her.

After receiving a drink from Babcock, Ms. Byrd left the buffet. However, Ms. Smith remained in the buffet for approximately 15 minutes and continued to eat after her co-worker had left. Babcock consistently claimed that he did not know either woman prior to the December 6 encounter nor had he ever served them before.

After Ms. Martin tried to question Babcock, she called the Buffet Manager, Tom Hansen, to ask if it was possible that some arrangement had been worked out to permit Funny Bones employees to eat in the buffet without showing paper receipts. Mr. Hansen was not aware of any reasons why Funny Bones employees would be allowed to eat in the buffet. He instructed Ms. Martin to speak with someone in Funny Bones management. Ms. Martin met with a Funny Bones Manager who said she had no idea why her employees were at the buffet. Ms. Martin returned to the buffet a few minutes later and observed that Ms. Smith was still at a table in Babcock's section and still eating. Ms. Smith was observed exiting the buffet at 7:15 P.M.

It appeared to Ms. Martin that Babcock had permitted one Funny Bones employee Ms. Smith to eat in the buffet without paying for the meal and had also served Ms. Byrd a drink without getting payment for it. After Ms. Martin called Mr. Hansen, they agreed that Babcock's actions appeared to be a potentially serious violation of required procedures.

Babcock refused to write a statement, but told the managers that he had "attempted to pay" for one woman's meal and had left his debit card with a cashier.

Babcock was suspended on December 7, 2014.

The Employer explained that there are a number of unrefuted facts that underpin the Employer's decisions on Babcock's guilt. First, Babcock has consistently claimed that he did not know either Funny Bones employee when they came into the buffet and asked for him by name. When Babcock met the "strangers," he never questioned how they knew him or why they came into the buffet, asking for him by his name. Instead, he immediately greeted them, sat them at

one of his assigned tables, "invited" them to eat, and offered to pay the buffet tabs for two "strangers." Smith remained in the buffet for approximately fifteen minutes and was observed eating from her plate of food before 7:05 P.M. and after 7:11 P.M.

Babcock misled Mr. Hansen and Ms. Martin when he claimed he had done nothing wrong because he had "attempted to pay" for one stranger's meal. While video surveillance does show that Babcock took his debit card to a cashier, supposedly to pay for a buffet meal, Babcock failed to mention that he retrieved his card and instructed a cashier that it not be charged. His change of mind occurred only four minutes later. Babcock does not deny that he told a cashier he did not want his debit card charged because the woman (Ms. Smith) had "changed her mind" and "did not eat."

The evidence showed that Ms. Smith did, indeed, "fix" herself a plate of food, began to eat, and continued to eat the buffet food. Babcock's claim that she changed her mind and did not eat is simply not true. Ms. Smith provided a written statement wherein she admitted eating from the plate of food that Babcock offered to pay for. Babcock admitted that he did not stay and watch Ms. Smith so he did not know if she ate or not. He had no reason to refuse to pay for the food that Ms. Smith consumed. Certainly there is no dispute that payment for Ms. Smith's buffet meal was never received by the Employer.

Babcock continued to claim that he has done nothing wrong, and throughout the process, he has never offered an apology or to pay for the meal.

Babcock's claim of innocence does not change the fact that Ms. Smith was provided with a free buffet meal because Babcock was dishonest when he told a cashier the woman "did not eat." The CBA clearly lists dishonestly and willful misconduct as violations which call for a penalty of termination. The Handbook rules, agreed to by the Union, call for termination in such situations.

The Employer argued that, if individuals tell a cashier they want to eat at the buffet, they are required to first pay. Once they pay, they are handed a paper receipt before they can be seated. Without a paper receipt, no one is allowed to eat in the buffet. Obviously, neither Funny Bones employee was asked to present a receipt to Ms. Martin because they had already told Ms. Johnson they were not going to eat. Ms. Johnson testified that she followed standard protocol and directed the women to the hostess stand, located at the entryway to the buffet serving areas.

When the women approached Assistant Manager Martin, they asked if it was okay to "go see Babcock." Ms. Martin testified that it is not unusual for people to stop to say "hello" to buffet employees so she told the women they could proceed into the buffet area to see Babcock. Ms. Martin did not escort the women into the buffet to meet Babcock.

The Employer claimed that Babcock's violation is not that he offered to pay for meals for total strangers. His offense is that he refused to pay for a buffet meal that he served and agreed to pay for. Babcock did deliver his debit card to a cashier at 7:04 P.M. However, at 7:08 P.M., he went to retrieve his card and to instruct the cashier not to charge him. At that point, he lied to the cashier because he told her that his guest had "changed her mind" and had "left and did not eat."

Another "excuse" attempted by the Union is that Ms. Smith only ate a small portion ("a bite") of food. However, Ms. Martin testified that she watched Ms. Smith eating before she left the buffet area between 7:04 and 7:05 P.M. and again, when she returned to the buffet at 7:11 P.M. At 7:11 P.M. Ms. Martin said, Ms. Smith was still at the table and "still eating." Ms. Martin's testimony is consistent with the surveillance timeline which also directly refutes Babcock's story. Babcock testified that, when he returned to Ms. Smith's table, he saw she was "gone," he rushed back to the cashier to retrieve his debit card because he claimed: "because she didn't eat." The timeline shows that Babcock returned to the cashier at 7:08 P.M., even though Ms. Smith did not leave the buffet until 7:15 P.M.

The amount of food that Ms. Smith consumed is not relevant. The way the buffet works is simple. A guest pays one price to be entitled to a wide variety of food offerings. Once the established amount is paid and a guest is given access to the available food choices, it does not matter if he or she makes multiple trips to the food line, or if he or she takes a few bites of food and decides to eat nothing else.

The Employer concluded:

On December 6, 2014, Mr. Babcock invited two complete strangers to sit at one of his assigned tables in the Golden Coin Buffet. He admittedly greeted them, asked them if they wanted to take a meal on the buffet line and then offered to pay for their meals. He began the process of serving the two strangers without doing what he absolutely knew he was required to do to ensure that they had paid for their meals before they were permitted to stay and eat.

Mr. Babcock further violated terms of Golden Coin's rules and procedures, as well as the CBA, when he refused to allow his debit card to be charged for, at least, the one meal that was served to a guest in his section.

It is respectfully requested that Mr. Babcock's grievance be denied. Whether Mr. Babcock actually knew the women before December 6 or not is not relevant. He violated a known and reasonable rule that all servers must comply with. He tried to get away with doing something he knew he should not and, just like other employees before him, his violations resulted in loss of his job.

The Union:

The Union stated that Babcock has been employed at the Golden Coin since 2001. In 2005, he began working as a server at Golden Coin buffet. On December 6, 2014, Babcock was working as a server on the buffet when his Assistant Manager, Odel Martin, brought two women through the hostess section to Babcock. Although Martin was the Assistant Manager, she was working as a hostess on this day. According to Martin, the two women who were Funny Bones employees asked to speak to Babcock. Martin was aware the women did not have tickets to the buffet, but escorted them into the seating area anyhow. Martin did not give any instructions to Babcock or comment about the women except to say they had asked for him. Babcock greeted the women and asked them if they would like to eat. One of the women agreed to eat and the other declined. Babcock told the woman who wanted to eat to go fix her plate and he would pay for her meal. Babcock left the women to give his debit card to the cashier in the buffet. After giving his card to the cashier and asking her to charge him for one meal without his discount, Babcock returned to work and brought drinks to his guests. When Babcock returned to the Funny Bones employees' table to bring them drinks, he discovered the woman who was not eating had left.

Martin saw one of the Funny Bones employee getting a plate of food and proceeded to contact her manager, Tom Hansen, about the situation. Apparently, Martin was unaware whether the Funny Bones employees were allowed to eat for free at the buffet. Martin contacted Hansen to find out. Hansen was unaware if the women were allowed to eat for free. For some reason neither Hansen nor Martin deemed it appropriate to ask the women directly if they had paid or were entitled to free food. Martin and Hansen did not

know Babcock had proffered his debit card to pay for the meal. Martin was instructed by Hansen to speak to the Funny Bones Manager and ascertain whether the women were allowed to eat for free.

As a result of Martin speaking to the Funny Bones Manager, the two women were called back to work and left the buffet abruptly. Babcock went back to check on the women and discovered that they were both gone and what looked like an uneaten plate of food was left on the table. The woman did not tell Babcock why she was leaving, or even that she was leaving. When Babcock discovered that the woman was gone, he looked for Martin to request his money be credited back to his card. Martin was nowhere to be found so Babcock went to cashier and requested the charge be credited back to his card. The cashier informed him that no charge had been made to his card. Babcock let the matter drop. He thought that he no longer needed to speak to Martin because he did not need her to authorize a replacement of money to his card. Babcock finished his shift and left work with no concerns.

The next morning Babcock was called to the office and was informed that he was accused of bringing two people into the buffet without them paying. His immediate response was to tell Management to look at the surveillance video because he did not bring the women in and he did attempt to pay. He was sent home.

The Union argued that the termination of Babcock was contrary to the Collective Bargaining Agreement. There was no just cause for his termination. He was effectively terminated from his long-term employment at the Golden Coin for allegedly inviting and allowing one woman to eat for free in the buffet and then lying about the incident. The Collective Bargaining Agreement requires that "no employee shall be disciplined or discharged except for 'just cause.' Disciplinary actions shall be progressive and corrective in nature." The only exception to the progressive nature of the discipline occurs when an employee is dishonest, displays willful misconduct and assorted other breaches in acceptable behavior, which are listed in Section 6.02(a) of the Collective Bargaining Agreement. Babcock was not dishonest nor did he exhibit willful misconduct or any other act listed under Section 6.02(a).

The Union claimed that Babcock did not bring or invite the women into the buffet area.

Babcock's supervisor, Odel Martin, allowed the women into the buffet without a ticket. Martin sent the women back to Babcock and knew they had not

paid for food. Martin breached the standard and stated rules of procedure by allowing persons without a ticket into the buffet eating area. The host is responsible for ensuring guests have paid for their meal and present their ticket prior to being allowed into the buffet area. Martin was asked during the hearing:

Q: Isn't it against the rules to let them through without paying?

A: We have guests who come into the restaurant a lot just to observe the food before they make decisions to pay.

Q: Okay. But you knew they weren't going to observe the food. They told you they wanted to talk to someone.

A: Yes.

Martin did not do her job, but instead brought the two Funny Bones employees to Babcock when she knew they did not have a ticket. Martin explained that she actually thought the Funny Bones employees might have been entitled to eat for free due to some agreement between the two venues. Martin admitted to seeing the one Funny Bones employee filling a plate at the buffet, but did not approach the employee and question her about payment. It appears that Martin fully expected the women to eat, but perhaps became nervous about her participation in the event.

Babcock offered to buy the employee's meal and intended to do so. Babcock is originally from Senegal, a country in West Africa. Babcock's cultural heritage has direct bearing of the events in question and therefore a brief foray into Senegalese culture is warranted. The culture of Senegal is very different from Western culture. Hospitality and kindness toward others are key attributes in Senegal. Extensive and lengthy greetings are expected and foul language is not tolerated in public. People usually resort to communication or "dialogue" to diffuse hostility and aggressiveness. Hospitality is given such importance in Senegalese culture that it is widely considered to be part of the national identity.

When there is an understanding of Babcock's culture and his heritage, it is very understandable why Babcock would offer to pay for the meal of another employee who greeted him and specifically asked for him by name, even when he did not have a friendship with the employee. Babcock offered to pay for the Funny Bones employee's meal in an act of hospitality something of the upmost importance to the Senegalese

Babcock stated that it meant a lot to him when people came to say hello and ask how he was doing.

It is clear that Babcock presented his debit card to the cashier and requested that one meal be paid for. Martin believed Babcock had no intention of paying for the food of the employee. The problem arose for Babcock when the woman left unexpectedly and abruptly and he could not find Martin to discuss the matter with her. Babcock did not pay for the meal because he believed, based on past practice of the buffet, that the woman would not be charged since she essentially did not eat. It was not unusual for customers to be refunded money for the buffet when the food was not eaten for one reason or another.

Babcock came back to the Funny Bones employees' table to find both employees gone. The plate of food was on the table and none appeared to be eaten. When Babcock saw the woman had left without eating, he did not know why. The reason the woman had left the buffet so abruptly was due to the fact that Martin spoke to the Funny Bones employees' supervisor and their supervisor mandated their immediate return to Funny Bones.

The Union concluded that Babcock was terminated in violation of the Collective Bargaining Agreement and the grievance should be upheld and Babcock should be made whole in every way.

Questions

1. Apply the elements of employee discipline to this arbitration. Determine whether these elements are helpful in making the decision.
2. Evaluate whether or not Babcock's heritage makes a difference in the outcome.
3. What were Babcock's intentions in giving the credit card to the cashier? Was it part of the scheme to avoid paying for the meal?
4. The burden of proof rests with the Company. Did the Company prove that Babcock violated the CBA and Company policies? If so, what should be the penalty? If not, what should be the appropriate remedy?

Falsification of Application

Issue: Did the Company have just cause to terminate James Kane for falsifying employment records? If not, what shall be the appropriate remedy?

Background

The Company is a world-class integrated Pulp and Paper Mill which has approximately 1,050 hourly and salaried employees. The Grievant, James Kane, was employed on March 10, 2014 as a Reserve on No. 34 Paper Machine.

This arbitration stems from the following letter from Sam Gill, Human Resources Generalist, dated August 21, 2014, to James D. Kane, the Grievant.

Your employment is being terminated effective immediately. The reason for your termination is falsification of Company records, specifically failure to disclose all medical information on the "New Employee Health History" form provided to you during your pre-employment medical assessment. The information that you failed to disclose was

important not only to the initial determination of the most appropriate job assignment from a safety perspective, but also critical to ensure you received the most appropriate medical treatment in the event of an on-the-job medical emergency similar to the one you experienced. In fact, the medical personnel have indicated that they would have handled a previous medical situation differently had they been aware of the information you omitted from the pre-employment medical history. On the form dated 3/1/2014 you answered "No" to Section B: In the past 5 years have you ever been told that you had one of the following health problems, or have you been provided medical treatment for: (16) Liver, stomach, bowel disease and (26) Kidney or bladder disease.

The form that you signed includes the following statement:

I certify that all statement and answers provided by me are true, complete and correct to the best of my knowledge. I understand and agree that