An analysis of absenteeism cases taken to arbitration: 1975-1981

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An Analysis of Absenteeism Cases Taken to Arbitration: 1975–1981

K. DOW SCOTT AND G. STEPHEN TAYLOR

An old axiom states that only two things in life are certain: death and taxes. Yet a third truism could be added—namely, that from time to time, employees will be absent from work. Although few employers would deny employees the right to be absent for legitimate reasons, labor costs require that managers attempt to keep absenteeism to the lowest possible level. Such efforts are certainly understandable, because rough calculations indicate that each percentage point of absenteeism in an organization employing 1,000 individuals and having a paid absence program represents an annual cost of more than $200,000 for direct wages, loss of productivity, and administrative expenses. Indeed, R. M. Steers and S. R. Rhodes rather conservatively estimated that a 3 percent national absenteeism rate costs the country's economy over $26.4 billion annually.¹

A national survey of 959 organizations conducted by K. D. Scott and S. E. Markham revealed that discipline programs are the most frequently used method of controlling absenteeism.² More than 90 percent of the organizations surveyed indicated that employees would be disciplined for abusing attendance policies and for excessive absenteeism. In fact, 97 percent of the respondents stated that they would terminate employees for excessive absenteeism.

Scott and Markham also found, however, that far fewer organizations actually monitor absenteeism rates or have consistent absence policies. As a result, one suspects that discharge decisions made under these circumstances could be perceived as unfair and might present difficulties if brought before arbitrators or judges.

While managerial efforts to control absenteeism are never "simple," such attempts become increasingly complex in organizations with unionized work forces. Even though the


The use of absence control programs has long been considered a management right, unions are legally obligated to make every effort to ensure that employees receive fair treatment under such policies. Thus, it is not surprising to find that numerous management actions to control absenteeism have been grieved by unions, and that these cases have frequently gone to arbitration.

Given the gravity with which arbitrators view discharge—the industrial equivalent of capital punishment—an analysis of those cases actually taken to arbitration should help elucidate the “do’s” and “don’ts” of employer discharge for attendance problems. Indeed, a number of these types of analyses have been done in the past.

Most recently, Rhoda Rosenthal analyzed 29 absentee discharge cases decided in 1978. In this study, she concluded that a habitual absentee may be discharged for just cause primarily when: progressive discipline has been properly applied; the progressive discipline/absence rules are known to employees; and the employer has generally been consistent in the application of these rules.

Although arbitrators do tend to follow past case findings, they are not bound by earlier decisions and may often base their rulings on the merits of the particular situation. As a result, it is necessary to review decisions over a substantial period of time in order to determine if these rulings are predictable and can be used as the bases for developing policies that arbitrators will be more likely to uphold.

Furthermore, the previous case studies, with the exception of Rosenthal, are more than eight years old. Yet, in recent years, many studies have been published on the causes of and solutions for absenteeism, which may affect the type of cases that are now being taken to arbitration. There have also been substantial political and economic changes that could well influence how an employee is treated in arbitrated discharge cases.

In this study, a content analysis was done of 146 absentee discharge cases taken to arbitration between 1975 to 1981. Next, statistical techniques were used to provide a more thorough and exact interpretation of these cases. Finally, recommendations were designed that increase the likelihood that an attendance control policy will be upheld when subjected to arbitral scrutiny.

Some caution must be taken, however, in interpreting our results, because arbitrators consider grievances on their individual merits, and the circumstances surrounding certain cases may differ significantly. Furthermore, because not all grievances go to arbitration and not all arbitration cases are published, there is a very real possibility that the published decisions may not be representative of all attendance-related grievances.

**THE STUDY**

Analysis of cases published in Labor Arbitration Reports (Bureau of National Affairs) and Labor Arbitration Awards (Commerce Clearing House) from 1975 to 1981 revealed that 146 absentee discharge cases had been published (86 reported in Labor Arbitration Reports and 60 in Labor Arbitration Awards). No statistically significant difference was found between the arbitrator’s decision and the publication in which it appeared.

In these cases, company dis-
charge action was upheld in 77 instances (52.7 percent); in 30 cases (20.5 percent), the arbitrator found for the employee; and a “split decision” (grievant reinstated, but without back pay) was reached in the remaining 39 cases (26.8 percent). Thus, management’s decisions were overturned 47.3 percent of the time, which was substantially less than the 62.1 percent reported in Rosenthal’s analysis of 1978 cases. This change in management success rate may indicate that employers have learned from past mistakes in handling discharge cases. Conversely, Rosenthal’s rather high percentage of union/employee “victories” could be a sampling artifact resulting from the use of too restricted a sample (n = 29).

In the cases examined, 74 of the arbitrators were selected from lists provided by the Federal Mediation and Conciliation Service (FMCS), and 35 of the third-party neutrals were supplied by the American Arbitration Association (AAA). (The remaining arbitrators were either members of standing arbitral panels, such as those found in many steel plants, or the source from which the arbitrator was supplied could not be determined.) Although there was a difference in the percentage of reinstatement orders issued by the arbitrators chosen from the FMCS (56.8 percent) and those chosen from the AAA (54.3 percent), this difference was not statistically significant. There is substantial overlap of the arbitrators on both lists, so it is not surprising that significant differences in judgments were not found.

Back pay was ordered in 62 cases. The period for which the employer was financially liable averaged 64.1 days and ranged from 0 to 335 days. In 13 instances, the grievant was suspended after being reinstated; and in six cases, probation followed the return to work. The cases were heard in 30 different states and involved 133 employers and 47 unions.

The majority of grievants were male (84.3 percent), which reflects the predominance of men in labor unions. Indeed, data from the Bureau of Labor Statistics (1976) indicate that, at that time, only 25 percent of union and association membership were women. While this relatively small number of female grievants may be due to sexual discrimination ear-

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* Rosenthal, op. cit.

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be noted, however, that arbitrators need not cite the precedent upon which they rely.

To determine what factors might influence an arbitrator’s decision in absenteeism-related cases, the contents of each of the 146 cases were examined. Factor identification was accomplished by reviewing the studies cited earlier and by a preliminary sampling of published cases (1979–1981). The most common and seemingly the most influential factors (in terms of case outcome) will be examined below and can be grouped into three categories.

First, there is the reason given by the employer for the discharge of the grievant (for example, excessive absenteeism, failure to call in, etc.).

Second, there are “procedural” factors, which include: (1) existence of an established absence control policy; (2) the consistent application of this policy; (3) rules clearly communicated; (4) company adherence to its own policies; (5) the use of progressive discipline; (6) an impartial investigation into the cause of the absences; and (7) having an improvement factor as an explicit part of the attendance policies.

Each case was examined to determine which factors were considered by the arbitrator in reaching a decision. For example, “the use of progressive discipline” was expressed as “1” if progressive discipline was not used, “0” if the company did have and use a progressive discipline policy, or “blank” if this issue was not mentioned. The information is broken down in terms of how each factor was considered by the arbitrator (positively or negatively) and the decision rendered (discharge upheld, employee reinstated, or split decision).

These factors were first examined in terms of the frequency with which each was mentioned in the cases. They were then analyzed in terms of their influence on awards rendered by the arbitrators. The arbitrators’ decisions were viewed in terms of three possible case outcomes: the discharge was upheld, the employee was reinstated, or a split decision was rendered.

Finally, employee attributes were also examined. They were (1) length...
of service (company seniority); and (2) employee gender.

After completion of this content analysis, statistical procedures were employed. The dichotomized variables form nonparametric, categorical (nominal scale) data. To analyze this type of information, the contingency coefficient $C$ was calculated. This statistic, which may be interpreted as the nonparametric counterpart of the Pearson's product-moment correlation ($r$), is a measure of the strength of association or relation between the two attributes in question. In these tests, it is assumed that the attributes are independent of one another (that is, no relationship exists between them). The value of the test statistic—in this case $C$—is to determine the correctness of this assumption. If it proves to be false, then one can assume that the two variables are related.

**REASON FOR DISCHARGE**

In Table 1, the employers' reasons for discharging the employees and the decisions of the arbitrators are given. As indicated, grievances are much more likely to be denied (77 cases, 52.7 percent) than either being upheld (30 cases, 20.5 percent) or resulting in a split decision (39 cases, 26.8 percent). Of the reasons given for discharge, "excessive absenteeism" is by far the most frequently cited justification for discharging an employee (77 cases, 53 percent). "Failure to call in" (29 cases, 20 percent) and "failure to report for work" (13 cases, 9 percent) were also common.

**TABLE 1**

<table>
<thead>
<tr>
<th>Reason</th>
<th>Discharge Uprheld</th>
<th>Employee Reinstated</th>
<th>Split Decision</th>
<th>Total Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>Failure to Call In</td>
<td>18 (58.6%)</td>
<td>5 (17.2%)</td>
<td>7 (24.1%)</td>
<td>30</td>
</tr>
<tr>
<td>Failure to Follow Procedures</td>
<td>3 (60.0%)</td>
<td>2 (40.0%)</td>
<td>0 (—)</td>
<td>5</td>
</tr>
<tr>
<td>Insubordination (Refusal to</td>
<td>1 (—)</td>
<td>2 (—)</td>
<td>1 (—)</td>
<td>4</td>
</tr>
<tr>
<td>Come to Work)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dishonesty (Lying about Reason</td>
<td>2 (28.6%)</td>
<td>1 (14.3%)</td>
<td>1 (25.0%)</td>
<td>4</td>
</tr>
<tr>
<td>for Absence)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Identifiable Pattern of Absences</td>
<td>2 (100%)</td>
<td>0 (0%)</td>
<td>0 (0%)</td>
<td>2</td>
</tr>
<tr>
<td>Incarcerated</td>
<td>3 (100%)</td>
<td>0 (0%)</td>
<td>0 (0%)</td>
<td>3</td>
</tr>
<tr>
<td>Excessive Absenteeism</td>
<td>42 (53.9%)</td>
<td>16 (20.5%)</td>
<td>20 (25.6%)</td>
<td>78</td>
</tr>
<tr>
<td>Irresponsible and Unreliable</td>
<td>1 (50.0%)</td>
<td>1 (50.0%)</td>
<td>0 (—)</td>
<td>2</td>
</tr>
<tr>
<td>Failure to Report For Work</td>
<td>5 (38.5%)</td>
<td>2 (15.4%)</td>
<td>6 (46.2%)</td>
<td>13</td>
</tr>
<tr>
<td>Other</td>
<td>0 (—)</td>
<td>1 (50.0%)</td>
<td>1 (50.0%)</td>
<td>2</td>
</tr>
<tr>
<td>Total</td>
<td>77 (52.7%)</td>
<td>30 (20.5%)</td>
<td>39 (26.8%)</td>
<td>146</td>
</tr>
</tbody>
</table>

Management's decision to discharge was most likely to be upheld when the employee was discharged for "incarceration" (100 percent), "failure to call in" (59 percent), "failure to follow procedures" (60 percent), and "excessive absenteeism" (53.9 percent). The grievant was most likely to be reinstated when the charge was "insubordination" (refusing to come to work upon request) (50 percent), being "irresponsible and unreliable" (50 percent), or "failure to follow procedures" (40 percent). Finally, a split decision was most likely for "dishonesty" (lying about the reason for the absence) (4 cases, 57 percent) and "failure to report for work" (6 cases, 46 percent).

**PROCEDURAL FACTORS AFFECTING ABSENTEEISM: ESTABLISHED ATTENDANCE POLICY**

This factor refers to the existence of a written policy on absenteeism, specifying what constitutes excused and unexcused absences, what actions will be taken in response to violations of the rules thereof, how often an excused absentee must call in (for example, on every second day of the absence), and so forth.

Although the existence of such a policy is not related to either the denial or sustaining of the grievance, an established policy is statistically related to cases involving a split decision. Of the 38 split decisions, the employer had such a policy in 29
cases (76.3 percent), which is a statistically significant relationship (C = .163, p < .05).

Even though the employer had either violated its own policy or been inconsistent in application, the existence of such a policy places a degree of responsibility on the employee. As a result, the employee suffers the penalty of pay loss. Thus, while the presence of the policy cannot be said to increase the employer’s chances of being completely upheld in arbitration, an established attendance policy appears to decrease the chances of a back-pay award following a reinstatement order. Avoiding a back-pay decision has considerable value, because the average settlement was slightly more than 64 days.

**CONSISTENT POLICY APPLICATION**

The consistent application of a firm’s attendance policy is a major factor influencing the outcome of all cases examined in this study. Of the 75 cases in which the discharge was upheld, a consistently applied policy was characteristic of 73 (97.3 percent). Similarly, of the 30 cases where the employee was reinstated with back pay, the employer failed in 20 of those cases (66.7 percent) to apply the attendance control policies/procedures in an even-handed manner. Finally, in 23 of the 39 split decisions (59 percent), a consistently applied policy was lacking.

Examples of cases in which the grievant was reinstated despite the use of a consistently applied policy on absenteeism provides additional insight. In Hobart Corporation (Kan- sas City Plant) and United Steelworkers and Monroe, County of Monroe and Civil Service Employees Assn. women were discharged for excessive absenteeism caused by their need to stay home to care for seriously ill children. While the respective firms administered the absenteeism control policies in exactly the same manner as in the past (that is, according to the agreed-upon contractual stipulations), in both cases it was ruled that discharge was unjustified because “some consideration of basic human nature was called for in assessing discipline for such absences” (Hobart, Arbitrator Goetz).

Although this indicates that some flexibility in cases that involve exceptional circumstances should be given, it does not mean that exceptions can be made on such regular bases that the policy is not consistently applied. In fact, it seems more prudent to err on the side of inflexibility, given the importance arbitrators place on consistency.

Of the 45 cases in which the company lacked a consistent policy/practice, in only one was the dismissal upheld. In this particular case, General Electric and International Union of Electrical, Radio and Machine Workers, Arbitrator Clark found that the company did not err in placing more stringent reporting requirements on an employee who received prior warning notices about poor attendance than on those with good attendance records. Perhaps it speaks for itself that out of 45 cases in which this issue arose, General Electric was the only case upholding such a “dual” practice. Indeed, in all other cases where attendance control policies were inconsistently administered, reinstatement was invariably ordered.

As might be expected, the statistical analysis also supports the presumed importance of the consistent application of the attendance control policy (C = .541, p < .0001, where the grievance was denied; C = .365, p < .0001, when upheld; and C = .342, p < .0001, for split decisions).

**RULES CLEARLY COMMUNICATED**

While ignorance of the law is not an admissible defense in the courtroom, it is accepted in the arbitral system. It appears that management is aware of this. Of the 146 cases in this study, employees were found to lack knowledge of the specific rule(s) which they were accused of violating.

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10 80-1 ARB 8316 (1980).
11 72 LA 541 (1979).
in only 27 cases (18.5 percent). The employee was reinstated in 23 of these 27 cases (85.2 percent).

When this question is viewed from the other side—for example, in those cases characterized by employee knowledge of the rules—an opposite relationship is found. In the 119 cases (81.5 percent) in which the grievant had explicit knowledge of the policies he was accused of violating, the discharge was upheld 73 times (61.3 percent). In these decisions, acceptable methods for publication of rules included having employees sign a statement verifying receipt of the company rules (usually at the time of hire), posting copies of company absence rules at various prominent points throughout the facility, and a specifically negotiated union-management agreement on absenteeism policies and methods of control.

The above observations were also supported statistically ($C = .344, p < .0001$, when the grievance was denied; $C = .271, p < .001$, when the grievance was upheld). Interestingly, this variable was not statistically significant in the split-decision outcome.

It should be noted, however, that a well-communicated formal policy may not be enough. For instance, in Shell Chemical Company and Oil, Chemical, and Atomic Workers International Union, the grievant admitted knowledge of the rules she had broken. Yet, she was ordered reinstated, because the employer suddenly began vigorous enforcement of his long-dormant absence policies without communicating this new emphasis to the work force.

**COMPANY ADHERENCE TO OWN POLICIES**

There are few actions on the part of management that can so directly lead to the overturning of a discharge as a company violating its own rules and policies pertaining to absenteeism. In all 41 cases where such a violation was found by either the union or arbitrator, the discharge was overturned.

Perhaps equally significant is that of the 102 cases in which the company did not violate its own rules/policies pertaining to the handling of employee absences, only 27 of these discharges were overturned. In two of these—Hobart Corporation (Kansas City Plant) and United Steelworkers, and County of Monroe and Civil Service Employees Assn., both of which were discussed earlier—the grievance was upheld because of mitigating circumstances, specifically the need of a mother to care for a sick child. The dismissal in a third case, Niagara Machine and Tool Works and UAW, was overturned because of the failure of the company to apply progressive discipline.

The statistical evidence also supports these contentions. For example, the second strongest association (in a statistical sense) in this analysis is between company adherence to its own policies and the denial of the employee’s grievance: $C = .554, p < .001$. A statistically significant relationship also existed for the “grievance upheld” outcome: $C = .397$ and was significant at $p < .0001$. Significance was also found in cases in which a split decision was reached: $C = .333, p < .0001$.

14 80-1 ARB 8316 (1980).
15 72 LA 541 (1979).
USE OF PROGRESSIVE DISCIPLINE

Surprisingly, progressive discipline was related to case outcome only when the discharge was upheld. Of the 91 cases where a series of progressively harsher disciplinary steps were taken against the employee, the discharge was upheld 56 times (61.5 percent). Thus, even though progressive discipline is an important and necessary element of a fair industrial justice system, it does not appear to be strongly related to the arbitrator's final decision. This might be because of the number of situations where progressive discipline was improperly handled or where other factors were weighed more heavily by the arbitrator.

For example, in Shell Chemical Company and Oil, Chemical, and Atomic Workers International Union, Arbitrator Nutt ruled that a chronic absentee was not properly subject to dismissal because her employer had for several years taken a relaxed approach to her poor attendance. Indeed, the grievant was found to have been so misled by the employer's willingness to deviate from the progressive discipline procedure that she had good reason to believe she would not be fired, notwithstanding several earlier warnings. Similarly, in Southwestern Portland Cement and United Cement, Lime, and Gypsum Workers International Union, Arbitrator Jones ruled that pregnancy-related absences could not be used as a basis for progressive disciplinary measures.

Moreover, an arbitrator may decide that a progressive discipline system does in fact exist, even if it is not in writing. Such a finding makes the "system" as binding as if it had been included in the collective bargaining agreement. Specifically, in General Mills and Allied Industrial Workers of America, Arbitrator Martin adjudged that the company had been unofficially using a progressive discipline system for many years. Thus, discharge as a first (and last) step in the disciplinary procedure was rejected despite the fact that the company and union had never agreed in writing to the use of a progressive discipline system.

Finally, application of statistical procedures again resulted in additional support for the above discussion. Here, $C$ equalled .214, which was...
significant at \( p < .05 \). This rather low value of \( C \) was somewhat surprising. It was expected that a stronger relationship would be found between case outcome and the use of a progressive discipline system.

**IMPARTIAL INVESTIGATION**

From a statistical standpoint, the strongest association discovered in this research was between the “grievance denied” outcome and management’s conducting an impartial investigation into the reasons for the employee’s absences. Although it would seem that discharges based on substantiated excessive absenteeism alleviates the need for such an investigation, of the 29 instances in which the employer did not follow this practice, the grievant was returned to work in 27 cases (93.1 percent) (\( C = 0.592, p < .0001 \)). This indicates that, almost without exception, an employer who fails to investigate the reasons for an employee’s absences or conducts an investigation in a biased manner can expect to lose the grievance. Similarly, the \( C \) value for the “grievance upheld” outcome was 0.350, which is significant at \( p < .05 \).

Thus, a policy of discharging an employee for excessive absenteeism (even though considered proper by arbitrators) does not exempt an employer from the responsibility of investigating the circumstances of the absence. It must be noted, however, that merely conducting a proper investigation will not guarantee protection from a reinstatement order. For example, in *Southern California Rapid Transit and United Transportation Union*, the employer’s rather thorough investigation into the aggrieved employee’s absences did not compensate for the fact that the company also violated its own policies. Consequently, the employee was reinstated.

**IMPROVEMENT FACTOR**

Contrary to initial expectations, it was found that a provision in a company’s absence control policy allowing an employee to make up for previous poor attendance by subsequent excellent attendance was not related to case outcome. (A typical improvement policy would allow an employee to cleanse his or her absence record by, for example, six months of perfect attendance.) This employee would then “start over,” so to speak, with a fresh record, or, more commonly, move to a less severe step along the progressive discipline scale.

As can be seen from Table 2, in the 56 cases in which the presence of this factor could be identified, the grievance was denied in 30 cases (53.6 percent), upheld in 9 (16.1 percent), and resulted in a split decision in the remaining 17 cases (30.4 percent). Thus, an empirical analysis seems to indicate that the existence of an improvement factor does not necessarily strengthen management’s position.

This conclusion is also supported by the statistical data. When the employee was not reinstated, \( C \) took on a value of 0.229, \( p < .07 \). Conversely, when the grievance was upheld, \( C \) equalled 0.10, where \( p < .44 \). Finally, in split-decision cases, \( C \) was 0.168, with \( p < .19 \).

**EMPLOYEE ATTRIBUTES: LENGTH OF SERVICE**

Two employee attributes, length of service and gender, were also examined to determine if they affected the final decision. The grievant’s length of service with the employer was reported in 104 of the cases (71.2 percent), and ranged from less than one year to 37 years, the average being 7.7 years. The frequent reference to grievant’s length of tenure differs from Rosenthal’s contention that little weight is given to seniority by arbitrators of absentee discharge cases.21 Indeed, it was found that the employee’s seniority was a statistically significant factor in those cases in which the decision was to discharge or reinstate the grievant.

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21 *Rosenthal, op. cit.*

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### TABLE 2

<table>
<thead>
<tr>
<th>Case Outcome as Related to Procedural Factors</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Factors</strong></td>
</tr>
<tr>
<td>------------------------------</td>
</tr>
<tr>
<td>Established Attendance Policy</td>
</tr>
<tr>
<td>No Definite Policy</td>
</tr>
<tr>
<td>Consistent Policy Application</td>
</tr>
<tr>
<td>No Consistent Policy Application</td>
</tr>
<tr>
<td>Rules Clearly Communicated</td>
</tr>
<tr>
<td>Without Employee Knowledge</td>
</tr>
<tr>
<td>No Company Violation of Policy</td>
</tr>
<tr>
<td>Company Violates Policy</td>
</tr>
<tr>
<td>Had Progressive Discipline</td>
</tr>
<tr>
<td>Without Progressive Discipline</td>
</tr>
<tr>
<td>Impartial Investigation</td>
</tr>
<tr>
<td>Without Impartial Investigation</td>
</tr>
<tr>
<td>Had Improvement Factor</td>
</tr>
<tr>
<td>Without Improvement Factor</td>
</tr>
</tbody>
</table>

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20-2 ARB 8625 (1980).
A classic example of seniority affecting case outcome can be found in General Electric Company and International Union of Electrical, Radio and Machine Workers. Here, management had a definite absence policy that was consistently applied, as well as a policy of progressive discipline that had long been in practice.

Under the terms of the labor agreement, the employee in question was guilty of excessive absenteeism and discharge was warranted. The arbitrator based his reinstatement order (but without back pay) on three grounds, however, one of which was that while no employee is entitled to a "free ride," the discharge of a 63-year-old employee for absenteeism after 37 years of service is not an "everyday event."

Once again, statistics confirm the above. In those cases in which the grievance was denied, $C = 0.287$ ($p < 0.001$). Conversely, when the grievant was successful, $C = 0.232$ ($p < 0.01$).

**EMPLOYEE GENDER**

Numerous empirical studies and court cases have determined that men and women do not receive equal treatment in employment. Indeed, the passage of the Equal Pay Act, the Civil Rights Act (Title VII), and the Equal Employment Opportunity Act are evidence of concern for the disparate treatment of men and women in the workplace. Because most arbitrators are men, and because unions in the past have been oriented to male work forces, the potential for unfair treatment should certainly be considered.

Gender was found to be unrelated to the arbitrator's decision, however. In 12 (52.2 percent) of the 23 instances in which the employee was female, the grievance was denied. Statistically, $C$ assumed a value of 0.005, with $p < 0.96$. On five occasions (21.7 percent), the grievance was upheld, and although $C$ took on a slightly higher value (0.013), the probability of this association being due to pure chance was 0.8776. In the remaining six decisions (26.1 percent) involving women employees, the arbitrator reinstated the grievant but refused to order back pay. Here, too, statistical analysis indicates the lack of bias in such decisions: $C = 0.006$, $p < 0.95$. In a society where unfair discrimination between men and women often exists, these findings speak well of the arbitral process.

**DEVELOPING A COMPREHENSIVE POLICY**

In the previous section, we examined individual factors that we predicted would influence an arbitrator's decision in absenteeism-related discharge cases. Although it was important to examine each factor individually, most absence policies represent a more comprehensive treatment of these issues.

Thus, we have attempted to examine the effect that an ideal policy would have on the decision of arbitrators. This would include the presence of a definite policy on absenteeism, consistent application and adherence by management to the principles therein, publicizing the rules so employees are aware of them, the use of progressive discipline (with allowance for attendance improvement), and an impartial investigation of violators of the policy. In the 12 cases in which all of these factors existed, grievances were denied in 10 (83.3 percent).

**DISCUSSION AND CONCLUSION**

This study was designed to give both management and union leaders some insight into the factors that influence the decisions of arbitrators in attendance-related discharge cases. In this regard, two general observations seem warranted.

First, the interpretation of our data contradicts Rosenthal's conclusion that arbitrators will not find excessive absenteeism to be just cause for discharge. In fact, the majority of

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22 74 LA 847 (1980).

23 Rosenthal, op. cit.
the discharge cases brought before arbitrators involved excessive absenteeism. In more than half of these cases, the grievance was denied, and in most cases where it was not denied, the company had failed to correctly set up their policy (policy was not consistently applied, lack of flexibility for unusual circumstances, and so forth).

Finding that many excessive absenteeism policies in industry do not withstand arbitral scrutiny is congruent with the concerns expressed by Scott and Markham. Although such policies are often used, it is essential that they be properly designed.

Second, it appears that the use of a fairly and consistently applied policy for dealing with absent employees is a formidable defense against a discharge grievance. On the basis of our analysis, however, it should be evident that the mere existence of this practice will not invariably result in upholding an employee dismissal. Indeed, arbitrators can and will entertain considerations of such mitigating factors as family illness. This means that while a consistent policy is viewed by arbitrators as a "plus" for management, this should by no means imply impunity from a reinstatement order. On the other hand, the absence of such a consistent policy will almost certainly cause the dismissal to be overturned.

Although arbitrators are not bound by previous decisions and make their awards on the specific facts of the case, there appears to be considerable uniformity in how they decide. Thus, Rosenthal's contention that arbitrators follow no general patterns or rules is contradicted. Instead, the pattern here seems to be a consistent attempt to ensure fair treatment of the employee, balanced against management's right to demand a fair day's work for a fair day's pay.

Finally, such factors as source of arbitrators, the publication of the case, and even the grievant's gender do not significantly influence the final decision of the arbitrator. This is weighty support for the integrity of the arbitral process.

One must, however, be aware that there are several limitations as to what can be concluded from this analysis. First, most grievances are resolved prior to arbitration. Because arbitration may sometimes be expensive, unions and managers may be discouraged from backing a case that they are likely to lose. Thus, the cases examined are only those from which both sides were unwilling to back down. Furthermore, managers should examine all absence-related grievances within their own organizations to determine the efficacy of their attendance policies.

Second, even if the grievance is denied at arbitration, management loses because of the expense of the process and the ill will generated in such a confrontation with employees. It should be noted that union/employee grievances are generally unfruitful in absenteeism-related discharge cases, however; only 21 percent of such cases are decided in favor of the employee. In view of the high cost of going to arbitration, union leaders would certainly be advised to select their cases more carefully or to direct their arguments toward the factors that will influence the case.

Third, even though arbitrators seem to be fairly consistent in their decisions, the judicial practice of stare decisis is not always followed. As a result, even if a company has designed a policy based on past decisions, it may still lose. It would seem to be beneficial, or at least more predictable, to select an arbitrator who generally seeks guidance from past decisions.

These limitations, however, do not obscure the fact that arbitrators are quite consistent in their decisions in absentee discharge cases. In fact, if a just system is established, if it is made known to the employees, and if that system is consistently applied, arbitrators will uphold management's right to discharge employees who cannot or will not show up for work regularly.

Although the data are not available, we also suspect that with such a policy, far fewer cases will reach the final stage of the arbitration process. This will benefit all concerned. Management will gain a more productive work force, the union will have more resources available to assist its members in other facets of their work lives, and the employees will not be subjected to conflicting policies and procedures.