

## **Plopping Down on the Planet**

The human instinct is to believe that everyone has a similar view about normal, every day events. We have different lifestyles and different thoughts, but there are some things about work or ordinary life which everyone - or nearly everyone - shares.

The following case illustrates how this instinct kicks in.

A teacher was accused of hitting a student, by banging him against a table. The teacher's defense is that the student is lying, and that as a teacher, he is naive about such things and frankly, would never have done it. The teacher also relies on his years of experience and therefore, knows that corporal punishment is prohibited by state law and school regulation. There were no witnesses to the alleged hitting.

When the case reached arbitration, management's case looked very weak. The student's testimony was not persuasive. In addition, the student seemed to be more of a troublemaker than a victim. The teacher was mature in age and demeanor, and his defense seemed plausible. In fact, it appeared that he might have been set-up by the student.

During management's cross-examination of the grievant, the management advocate wanted to introduce a document from 4 years prior. The document was a letter in the file, involving the brother of the student. The arbitrator's first ruling was that the letter was irrelevant and inadmissible. The management advocate asked the arbitrator to reconsider his ruling on two grounds: First, the letter may tend to prove that the teacher had a vendetta against the family, because the brother had also accused this teacher of corporal punishment. Second, while the teacher was exonerated, the letter specifically advised the grievant in a side note that he could not put his hands on students.

The arbitrator admitted the letter, but was extremely doubtful that he would give it any weight. After all, the school did not discipline the teacher. Just the opposite, the school had backed up the teacher. In fact, the letter recounted the accusation by the brother and that the school district concluded that the incident did not happen. The side note was inserted just to remind the grievant that, like all teachers, he could not put his hands on students.

At this point in the hearing, the arbitrator was going to decide the case in favor of the union. But then, the management advocate asked the following questions of the grievant on cross-examination.

Q. Do you know the letter?

A. No.

Q. Have you seen the letter before?

A. No.

At this point, the arbitrator still feels that the union's case is strong, because maybe the grievant did not see the letter. That's possible.

But then, the management advocates goes further with his cross-examination questions:

Q. Do you remember the incident?

A. No.

Q. The letter states that there was a meeting, 4 years ago, about this incident, in the Labor Relations Director's office at 1:30 p.m. on January 5, 2000. And that you were there.

A. It never happened.

This was damaging to the union's case, so the union advocate tried to repair the damage. Here's an excerpt of the re-direct examination by the union advocate.

Q. Do you understand why it's potentially very reliable evidence that at 1:30 p.m. on a day certain, the arbitrator might tend to believe that the meeting took place and that you were there?

At this point, the arbitrator is thinking the grievant could not have gotten a bigger hint, but the grievant did not get the hint, because he replied,

A. No, it didn't happen.

Q. Do you have any theory why the Labor Relations Director would make this up?

A. Yes.

Q. And what is that theory?

A. Everyone knows that the Labor Relations Director lies. We call him Frank the Fabricator.

After this testimony, the union case had serious problems. The arbitrator was now faced with evidence from the grievant on both direct and cross. All the arbitrator had to do was add it up. First, the grievant says he doesn't remember the earlier incident, then he denies that the meeting took place, and then he testifies that essentially the document about the incident and the meeting is false.

In summary, it looked to the arbitrator (and to nearly everyone else in the room, including some union members) that this grievant had just plopped down on the planet.

Perhaps, the union advocate could have headed off this issue during witness preparation, but when it happens at the hearing, the credibility points go to the other side.

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