



STEWARDS CORNER

Monthly Newsletter for Union Stewards

Discipline & Discharge: Damaging Employer Property

Imagine two employees working in the same location, using the same machine, and causing virtually identical damage to the company's equipment:

Joe H., is working on the #1 mixer at Z-tire, has a jam in the mixer door, and is frantically working at the operator's panel with a bailing hook in his hand. Incidentally, the hook catches the LCD screen and damages it... shutting down the mixer.

Sammy G. performs the same job as Joe and tries to repair the same problem, but in a fit of frustration, swings the hook at the machine and does the same damage (\$900) with the same consequences to production.

Or consider an employee that uses spray paint to write "Peace, Love, and Brotherhood!" Or a union sibling that scribbles in a bathroom that the plant manager is an A%#Hole and should be fired. Graffiti pops up in our workspaces sometimes, right?

And our members sometimes get disciplined for impacting company property whether it is damaging property, tagging a wall, or vandalizing a vending machine. So how might an arbitrator look at these events?

Was there deliberate or malicious intent?

The cases of Joe and Sammy were similar in all but one way—the employee's intent. Arbitrators generally distinguish "accidental acts" from those which involve "deliberate or malicious intent." The employer's case against Sammy differs from Joe's in that Sammy swung the bailing hook at the machine in anger and frustration. The damage Joe did could be labeled as carelessness and negligence. This nuance will weigh heavily in these cases.

Arbitrators will typically have some compassion for employees whose damages resulted from carelessness and negligence; however, in cases where an employee damaged the equipment willingly and knowingly, arbitrators have generally upheld the right of management to impose discipline as they see fit.

Listen y'all, is it sabotage?

Sabotage may have been one of the Beastie Boys' biggest hits, but arbitrators find such acts particularly distasteful. By its nature, an act of sabotage subverts Management's operations. In short, arbitrators have generally ruled any disciplinary action given to the offending employee and their conspirators is justified. This assumes, however, that Management can show evidence that the employees are guilty of the sabotage.

So, what about Sammy G?

As stewards, we should investigate by asking the following questions:

- Does Sammy have a good work history?
- Has something similar happened in the past? What did Management do?
- Was Sammy honest, and did he show remorse when reporting the incident or when he was questioned?

- Has there been an ongoing problem with the machine causing such frustration that Management is aware of but has failed to address (underlying motive)?

Ideally, we can show that Sammy's behavior is out of character, and this is an unfortunate incident (he is not intentionally sabotaging the machine). Thus, we can show that he is an overall good employee worth saving, and Sammy is deeply apologetic for the incident.

If all of the above is true, then we are more likely to mitigate the disciplinary action that Management considers. After all, stewards are problem solvers, and Sammy has a problem that needs to be diplomatically solved.

Graffiti and Vandalism

Humans have been leaving their artwork on walls since someone discovered that a burnt stick or pointy rock works on a cave wall. In one case, an arbitrator found discharge too severe of a punishment for an employee who painted "Peace, Love, and Brotherhood" on a door frame when the Union showed that Management failed to warn employees about graffiti and did not remove scrawls and drawings from walls and company property. The arbitrator's logic in this case speaks to one of the [Seven Tests of Just Cause](#): inconsistent enforcement. However, in another case, an arbitrator upheld a suspension when the Company showed it had clearly communicated its prohibition on graffiti and vandalism.

So, what are arbitrators likely to look at regarding vandalism and graffiti?

1. Has the Company clearly communicated its prohibition on vandalizing or painting graffiti on Company property? Arbitrators are less likely to reduce disciplinary action when Management communicates and enforces rules consistently.
2. Has the Company gone out of its way to remove graffiti? This strengthens the previous point.
3. Does the Company have sufficient evidence to prove the employee's guilt?
4. Was the employee honest and apologetic about their behavior, and do they have a good work history? This speaks to extenuating and mitigating factors.
5. How serious is the vandalism or graffiti? Is it harassment, sexually explicit, or racist in nature? If so, then the arbitrator is likely to uphold the discipline.

While damaging company property is never a good a look, it is not always grounds for termination or other severe discipline. Whereas an employer may not care why or how the property was damaged, an arbitrator does care. Remember to ask: Was the damage intentional? Was the company responsible for the conditions that led to the damage? How severe or offensive was the damage/graffiti? Was just cause met? And as always, reach out to your Grievance Chair or Staff Rep if you are unclear how to approach a particular issue.

The Union Bah Humbug: The Case Of The Missing Thank You

Here at the Steward Corner, we have a good friend named Don. To be fair, most people call him Ivan. At 6'4", he is a towering man with a long gray ponytail down his back. His tattooed arms reflect the different phases of his life and journeys. He is the kind of man that takes no nonsense, and always fights the good fight. Ivan has long been a shop steward in his plant, and never really expects thanks, but he shared the following story:

He had a woman (we will call Mary) who worked on his shift but that he barely knew in his sprawling facility. She came to him one day and said that the company was going to fire her for attendance. She had surpassed the "occurrences" under their contract. Ivan began his typical investigation, walking through the Five W's, but quickly discovered that she had been late and missed work because her 10-year old daughter suffered from severe migraines. He asked if the company knew about her daughter and if they had ever offered FMLA (under the law, they are required to offer if you indicate a possible need); Mary responded that it had not. Quickly, he was on the job. After about a week of collecting documentation and working with the company, she was reinstated and her "occurrences" reduced to only two. He was feeling pretty smug. A couple days later, Ivan was on the shop floor and saw Mary walking toward him. As he tells the story, he stood a little taller, proud of all he had done. As Mary walked over, Ivan said a smile spread across his face; he had so beautifully done what he had trained to do and made a real difference for Mary. As she approached, he stuck out his hand ready for the handshake and thank you. Mary sneered at the hand and said, "why do I still have occurrences on my record!"

Dang! Where did that thank you go?

As a steward, you have probably had this happen to you as well. So, we wanted to take a minute as the holiday season approaches to say "thank you" for all you do for our members. We know that people become stewards for a host of reasons—volunTOLD, need to advocate for others, your own personal experience of being treated inappropriately.... But what is true of each of you is that you give our members a voice in the workplace that they would not otherwise have. Everyday, you are making history by standing up for your co-workers and fighting to enforce the contract.

So as the end of the year approaches, thank you for helping make 2023 better for those you work with and we hope you have a joyous holiday season. Because as Philip Murray, our first President said, "What do we want? Food on the table, a rug on the floor, a picture on the wall, music in the home." Let's remember what we are fighting for. Bread and Roses.

A Poem for Stewards

When shop stewards knock at the heavenly gate,
 Their faces scared and old,
 They stand before the decider of fate for admission to the fold.
 What have you done, Saint Peter asks, To gain admission here?
 We've been shop stewards, Sir, for many and many a year.
 The pearly gate swings open wide,
 St. Peter touches the bell,
 Come in and choose your harp, he says
 You've had your share of hell!

--Author Unknown (content revised)



<http://usw.org/ngconference>

TEACHING TUESDAYS

All classes are held at 11 AM (EST) and 8 PM (EST)

- ▶ 12/12: **The History of Right to Work** (11 AM — 8 PM)
- ▶ 1/9: **Roles of Union Stewards** (11 AM — 8 PM)
- ▶ 1/16: **Crossing Language Boundaries: How to Bring Immigrant Co-Workers into the Union** (11 AM — 8 PM)
- ▶ 1/23: **Talking with Local Schools about Unions & Work** (11 AM — 8 PM)



<http://usw.to/teachingtuesdays>