

School Bus Driver's Alcohol-Laced Cupcakes Did Not Violate Employer's Rule Barring Intoxicating Beverages From Company Property, Arbitrator Rules

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A labor arbitrator has upheld the grievance of a school bus driver who was terminated from her job with a bus company after she brought alcohol-laced cupcakes to work, and offered them to other employees. He found that she was not fired for “just cause” under the collective bargaining agreement because the bus company’s policy barring the presence and use of “intoxicating beverages,” on which the employer relied, was inapplicable to the grievant’s alcohol-infused cupcakes. ***First Student, Inc. and Teamsters Local Union 957***, 134 LA (Bloomberg/BNA) 1699 (May 26, 2015) (Fullmer, J., Arb.).

Unit employees arranged on-site “potluck” social gatherings or “parties” from time to time, towards the end of the work day. Employees signed up to bring various food and drink. On two occasions in 2013, the grievant brought her “adult” cupcakes to work for these events. On Halloween 2014, she did so again. Her two dozen offerings included “Irish Car Bomb” and “Strawberry Margarita” cupcakes, which contained alcohol.

At about 4:30 p.m., after she had finished working, the grievant got the cupcakes out of her car and made her way to the bus barn. On the way, she offered a cupcake to some of the drivers on the parking lot; it is unclear how many accepted, whether they had runs left, or whether they ate the cupcakes. After she entered the barn, she offered the dispatcher one, too, who accepted the cupcake. The grievant proceeded down the hallway, announcing the availability of the cupcakes, explaining that they contained alcohol, and cautioning employees not to drive a bus after eating them.

The grievant then encountered the employer’s Location Manager, who told her to stop distributing the cupcakes. He retrieved the cupcake from the dispatcher and took it to his office for possible use as evidence. The grievant was later terminated for what the company called “gross misconduct.” It maintained she violated a Company rule prohibiting “possession, use or sale of any intoxicating beverage . . . on Company property or while in possession of a Company vehicle . . .,” and making such violation punishable by “immediate termination,” in the employer’s discretion. Her union grieved her dismissal and brought the issue to arbitration.

The arbitrator upheld the grievance. The rule in question, he reasoned, addressed an “intoxicating beverage,” and according to a dictionary definition, that meant a “drinkable liquid.” No drinkable

liquid was involved here, but only cupcakes, which are eaten. Accordingly, he found, the Company's rule was not broken by the grievant.

Recognizing, however, that "the simplicity of the preceding is beguiling and does not make for an erudite arbitration opinion," the arbitrator continued. First, he rejected an employer argument that it had consistently enforced its anti-alcohol rule by terminating violators. Those cases, he observed, all concerned drinkable beverages – the "most lurid" involving a bus driver who took a "selfie" in the cab of her bus with a capped bottle of malt liquor pressed to her lips, which appeared in the Cincinnati media.

Second, the arbitrator found the employer had never notified employees of its interpretation of the rule to apply to foodstuffs. (The grievant asserted she had brought such cupcakes to the worksite previously with the employer's knowledge and acquiescence.) Third, there was no evidence the cupcakes were of an "outlandish" kind that essentially was a beverage. Fourth, there was no evidence that "might be at least emotionally persuasive" that the cupcakes were in fact intoxicating. Although the Company had "sequestered" a cupcake, the arbitrator said, it apparently never tested it for alcohol. Neither was there evidence that any employee actually ate a cupcake that day. Finally, the arbitrator found there was disparate enforcement of the rule. Although it discharged the grievant, it did not identify or discipline other employees who accepted the cupcakes from the grievant and therefore "possessed" an intoxicating beverage in violation of the rule.

Although the arbitrator found that "[t]his rule is assuredly valid in the school transportation industry and indeed could almost be deemed as required by public policy," its application here, in his view, could not be relied upon to sustain the discharge.

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