

Ancient Astronauts

For this week's discussion forum you are required to watch the following video ("Chariots of the Gods: the mysteries continue"; Video link: <https://www.youtube.com/watch?v=r5VMtJp996c>) describing the evidence for the 'Ancient Astronaut Theory' and alien-human interactions in past cultures. To help stimulate your discussion I'd like for you to focus on the following questions from the Feder text (2018:247):

"Test the following hypothesis: Pyramid building was introduced into Egypt by bearers of an alien, non-Egyptian culture. What should the archaeological record in Egypt look like if this hypothesis is an accurate description of Egyptian history? What does the archaeological record actually show regarding the history of pyramid construction in Egypt?"

Be sure to relate and use the information given in this week's mini-lecture and readings, as well as material from previous weeks in your discussion posts.

Arbitration Assignment

This assignment requires you to take on the role of the union representative. You will write an argument appropriate for your role of union rep. that is to be read by the arbitrator as part of his/her decision concerning the arbitration. This assignment is based on: (1) independent research of arbitration jurisprudence (see below); (2) online course material; (3) the textbook; and (4) the assigned case.

For this assignment, we will be using the Emma Williams case in Appendix C of the text. **Make sure to use version 1 of the case on page 400 of the text. Other versions of the case will not be accepted.**

In order to understand the principles involved in the case it will be necessary to review relevant arbitral jurisprudence. Specifically, go to the library website and search for Labour Arbitration Cases (LACs). You must cite at least 2 of these cases as part of your arguments.

To access online library resources if outside the Memorial campus, you must first identify yourself as a Memorial user by using the [Off-campus login](#). You will be prompted to enter your User ID or Alt ID as well as either your password or your 4 digit PIN number before you can access the articles. If you are having problems logging in, visit [How to Access Library Resources from Home](#) and follow the instructions.

The completed assignment should require a maximum of 10 typewritten, double-spaced pages (excluding references). To do well on this assignment, you will need to:

1. Demonstrate a sound knowledge of the elements of just cause.
2. Clearly present arguments appropriate for your assigned role of union rep.
3. Cite relevant jurisprudence (LACs) to support your argument.
4. Present your ideas in a clear manner (i.e., grammar, punctuation, style).
5. Use APA formatting for citations in the text and in the reference section at the end of the document.

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ARBITRATION ARGUMENT, EMMA WILLIAMS'S CASE STUDY

Student Name

Institution Affiliation

Date

Grievance arbitration refers to the legal procedure which is followed whenever there are disputes which arise from the breach of collective agreements between employers and trade unions arise (Curran, 2017). The arbitrator, who is either collectively chosen by the two parties involved or through the appointment by a third party, is expected to act independently in the course of investigations and hearing of the tabled evidence in order to settle the differences between the two parties. For the purposes of effective examination of Emma Williams's case and reach a conclusion on whether his job termination was fair or not, this paper will start by examining the concept of just cause in collective agreements. The case of Williams Emma will then be scrutinized in line with the just cause arguments in order to determine the validity of ruling in the case. This paper presents an argument to be read by an arbitrator in a decision-making process. The main parts of this paper will apply the arbitral principles of "Just Cause" for discipline and discharge.

Emma Williams's case in the scenario revolves around the causes and what transpired in the University General Hospital leading to her job termination when she failed to report for the job and her excessive absenteeism. According to the case scenario, Emma has been presented as a registered nurse who had been working in the oncology (cancer) unit since March 1996 but met her unexpected job termination on December 2013 (approximately 17 years later). Also, she had acquired the title "meets expectations" in most of the years she had spent on her job and then an "exceeds expectations" in her last three years before being fired, in accordance to three-point rating University General Hospital system. In fact, in her entire working period at University General Hospital, she had never been confronted with regards to poor performance. Emma had been obtaining her certifications as a cancer specialist as required before being fired. Among many duties she was undertaking in her line of duty, the main ones were: monitoring patient conditions, administering potentially lethal drugs, counselling both patients and their families on care options, and monitoring her patient regimes. However, Emma's

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excellent performance began to decline after losing her son in a tragic accident.

The death of her son led to Emma's constant absenteeism without any permission. As recorded in the case scenario, she did not report to work on January, 2013, July, 2013, and then October, 2013, respectively. This resulted in being verbal counselled and getting a warning letter in the presence of a union representative. However, on December, 2013, her job was terminated following her three days leave without any permission from the employer. According to the discharge letter, Emma had been accused of excessive absenteeism and failing to call in sick. Emma had developed alcohol addiction which was affecting her job attendance as well as her drug dependency. Furthermore, she had recently been advised by her manager to visit the Employee Assistance Program in order to get a solution to her problem. Emma has since then been seeking help regarding her addiction to drugs and alcohol through counselling since 2014. The arbitration was then scheduled to take place in 2015 after her counsellor, Dr. Anderson, believed that her chances of becoming chemical free had increased. He also believed that Emma could maintain acceptable performance and attendance if restated in her job as a cancer nurse. Unfortunately, before she could be dismissed, the management team was not aware of her addiction treatments.

Emma Williams had been using the company resources since her employment in 1996. She earned an extraordinary rating during employment, rating which came as a result of exemplary performance and competency. But unfortunately, due to the death of her son at the age of 16 years, her rating was changed. She received first and last warning in 2013 but due to more absenteeism cases, she was terminated in the same year. Her previous record was cleared and she cannot be described as a liability to the company during the time. As such, this is notwithstanding the matters so alleged by her employer. She was an example of honesty. By not stealing drugs, which she needed to cope with her headaches she demonstrated a high level of honesty. Ms. Chang and The hospital's EAP department are privy to these facts. She has some other factors which are disturbing her. These factors can be evident

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from her psychological problems for the loss of her child in a tragic accident as well as her ongoing counseling sessions.

In the case of Emma Williams, the mitigating facts attached, in the hospital, she was automatically terminated after two counts of warnings. She was absenteeism which was wrong because she had not informed any of the administration personnel or her employer. A measure such as the one taken against the complainant is aimed at disciplining workers for the infraction of institutional laws and serves as a warning to potential culprits and increases working relations. This is because such issues are totally against the terms and conditions of the employment agreement. The absenteeism factor is however not contended in the Emma Williams case. As a union representative, these warnings were issued to her before being given an opportunity to defend herself.

According to the Ontario Court of Appeal definition of “Just Cause” which continuous to be used even today, whenever an employee has been proven guilty of either having some serious misconduct, having neglected her duties habitually, being incompetent in her duties, conducting his or her duties in an incompatible manner, being prejudicial in his line of duty, or having wilfully disobeyed the employer’s orders, the employer has been given the right to dismiss such a delinquent employee. (Jessome, 2015)

According to “just cause”, the employer is therefore supposed to prove the reason behind the dismissal of any employee in line with the violation of the stipulated standards of the clause. In a case where an employer cannot prove just cause on the balance of probabilities, the employee is then assumed to have been wrongfully dismissed and the employer is then obliged to pay monetary damages arising from the dismissal (Rose, 2016). The seven elements of a just cause that must be met in order for an employee to be rightfully terminated are a reasonable rule, notice, sufficient investigation, fair investigation, proof, equal treatment, and appropriate discipline. In the case of Emma Williams, the employer did not adhere to the just cause. Therefore, Emma's termination was unlawful. Although

some elements of just cause were met, not all were met. Outlined below are the seven elements of just cause.

The reasonable rule refers to the relevant work or requirements of the employee (Kawamura, 2015). The requirements of the employee must be related to the most efficient and safe way to conduct work. The employee must be instructed on what is expected in a clear and understandable manner in order to achieve consistency.

The appropriate notice must be given to an employee in order for the termination to be just. Employees who fail to meet company standards or requirements must be given appropriate notice about their ill behavior before termination. A notice must be given about failing to meet standards in various ways. Depending on the circumstances the call of action concerning notice varies. If an employee is habitually late, verbal and written warnings may be acceptable, whereas if an employee is caught stealing from the company there are grounds for immediate dismissal.

Sufficient investigation must be completed before taking disciplinary action. The employer must consider why the issue has occurred, if the employee has been given proper training and if it a reoccurring issue. Evidence must be present for just cause to occur. The employer must be certain that an employee is doing wrong or not reaching company policies or goals. This evidence must be legitimate and not hearsay from other employees or persons.

The fair investigation is another factor in order to ensure just cause. The investigation must be fair to the company and the employee under investigation. If the superior examining the case has any conflict of interest regarding the issue, the investigation would be unfair. The investigation must happen in a timely manner and without any delays or outside noise or judgments. The employee under investigation must be given a fair opportunity to explain their side of the present issue.

Proof of the issue must be clear and accurate. Depending on the investigations and findings,

there must be supporting evidence in order to demonstrate “just cause”. Without sufficient proof of wrongdoing, just cause cannot be proven.

To ensure that just cause is present equal treatment must be given to all employees. If an employee is discriminated against or treated unlike other employees, equal treatment is not present, thus just cause is not likely. All employees must be treated alike concerning similar positions and expectations. Appropriate discipline must be demonstrated when proving just cause. The discipline must be appropriate for the level of infraction. An appropriate discipline heavily relies on the type of violation and the employees’ history. (Seven Tests of Just Cause, 2015).

After reviewing the Seven Tests of Just Cause and relating it to the case of Emma Williams, I can assert that the case does not hold significant evidence concerning her dismissal. Emma was unfairly terminated due to lack of fair warning prior to her discharge. According to Article 32, subsection 32.2 the normal progression of discipline has been articulated to start with a written warning followed by the second written warning, a suspension without any pay and then a termination can be executed. The clause continues to state that pending on the degree of seriousness of the committed offense; the succession of discipline may vary. (Brown & Hebdon, 2012)

Prior to the termination, Williams was given both verbal and two written warnings regarding his absenteeism. However, Emma was never given suspension without pay; therefore, just case was not present. As her misconducts were not alarming or an example of an extreme case, this step in the normal progression of discipline should have been included. During the time of her excessive absenteeism, Emma had lost her son and was grieving. The hospital and her manager were aware of his situation and had offered confidential help through the Employee Assistance Program. It shows that Emma was going through a devastating period of her life and her absence was valid and not sufficiently severe for termination. Moreover, Emma's case was lacking the correct order in the termination process, which was a significant factor to the unjust termination. Except not being given the just termination, Looking for Academic Writing Help Visit : <https://academicresearchexperts.net/>

Emma was not the only employee with an absenteeism rate greater than 10 percent. Another cancer nurse had an absenteeism rate of 15 percent and was not given any kind of warning. This creates a difference in treatment among nurses. The question is, was Emma being treated unfairly because of a personal motive or there was an issue related to something other than work? The inequality in the treatment of the two nurses showcases unfair treatment. Emma Williams was believed to have exhibited excessive unexcused absenteeism. Although she had personal issues related to her alcohol and drug addiction, Emma was unjustly terminated.

The management was unaware of her treatment of addiction. The reasonable ruling was present in the case. Emma was aware of the expectations required. As a prove of being aware, Emma had acquired “meets expectations” on the Hospital's ranking system. Attendance was important as she was working directly with patients; therefore being present at the workplace was crucial. The proof was also present in Emma's case, though not to terminate an employee without suspension without pay. Emma failed to maintain an average or below average absenteeism rate, thus causing her to jeopardize her reputation.

As a union representative, I trust it is clear that Emma has sufficient evidence to support reinstatement. With the use of preceding cases and her personal experience throughout her wrongful termination, Emma should be able to reverse the decision on her termination. The facts in Emma William's case are undeniable. The record shows that Emma was a satisfactory employee throughout most of her career and the last three years she improved to be superior. This shows that Emma was a proficient woman who was noticeably improving throughout her profession. Her lack of attendance was evidently due to her recent family tragedy and not a genuine representation of her abilities. Williams was not given the suitable warning leading up to her dismissal, thus she should be reinstated. She was also not the only employee with a high absenteeism rate but was the only employee punished. Thus, unfair treatment and decisions were made based on these facts. Due to the nature of her current

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situation, it would be beneficial for Williams to work with the EAP as well as her addiction counselor for further support. Using the facts within the case and presenting appropriate evidence, it is possible for Emma Williams to successfully return to work.

As a union representative, I propose labor arbitrators be examining the evidence records thoroughly in order to come up with appropriate disciplinary measures, which should be progressive and increase gradually before the victim can be exposed under severe penalties. Through this approach, employees will have gotten adequate warnings about their improper behaviors as well as opportunities to defend themselves (Li, 2016). The paper has described progressive discipline, identified its elements, and presented some scenarios in which arbitrators have upheld and overturned the disciplinary measures of the hospital. Through this paper, nursing administrators can get the opportunity to discover progressive discipline guidelines that can help them to convince arbitrators that disciplinary measures adopted on them were appropriate or not and avoid unnecessary demands for arbitration.

In the history of Labor Arbitration Cases, incidences like the one presented in the case study of the paper have been witnessed. For instance, Texas courts have recorded several cases of biases in their efforts to enforce arbitration agreements, especially in nursing home cases. In the first case, they focused on a signatory issue to examine whether an arbitration agreement was due to be enforced. Also, among its arbitration cases, the court is said to have refused to enforce the arbitration agreements. Some of the cases which these courts refused to enforce arbitration agreements are Patterson v. Nexion Health case and Inc.77 Texas City view Care Ctr., L.P. v. Fryer (Shoppers Drug Mart Inc. No. 297 & U.F.C.W., Local 1815, 2004). In most of these cases, the arbitration agreements which were presented in the employee handbook were not valid because employers could change the handbooks as per their discretion.

In any case, when an order is reversed to deny the motion of employers in compelling arbitrations, courts are expected to imply the covenant of good faith and limit the employer's rights of

fair dealing in order to alter the agreements unilaterally; hence, the agreement becomes unconscionable and illusory because of the lack of mutuality on the side of as the plaintiff. The main conclusion which comes out clearly from all the arbitration cases including that of Emma Williams in the case study is that employers tend to use imbalanced powers against their employees. This is because when employees make wrong decisions, discipline violations, they risk getting high penalties from their employers. Employers are therefore supposed to change their ways of dealing with employees and become polite when dealing with their employees. This is because labor arbitration laws have given employees the power file cases in the court of law against their employers. As revealed from the case of Emma Williams, it is beyond any reasonable doubt that the employer used an imbalanced power to terminate her job contract.

References

Curran, B. J. (2017). Event History Analysis of Grievance Arbitration in Ontario: Labour Justice Delayed?. *Relations Industrielles*, 72(4), 621-657.

Hebdon R and Brown T. C. (2012) *Industrial Relations in Canada*

<https://hr.osu.edu/public/documents/hrpubs/laborrelations/JustCauseTest.pdf>

Kawamura, A. (2015). 'Japanese law allows not only commercial disputes but also labor disputes to be resolved by arbitral tribunals'. *Kutafin University Law Review*, 2(2), 374-376.

Laurie Jessome (2015). *Cassels Brock*. Retrieved From

http://employerlawblog.casselsbrock.com/People/ce/blogposts/Laurie_Jessome

Li, J. (2016). Labour Arbitration in Mainland China: Its Current State, Characteristics, and Tendencies.

Rose, J. B. (2016). BUDGETARY RESTRAINTS AND COMPULSORY ARBITRATION IN ONTARIO. *Dispute Resolution Journal*, 71(4), 91.

Seven Tests of Just Cause (2015) Retrieved from https://www.ueunion.org/stwd_jstcause.html

Shoppers Drug Mart Inc. No. 297 and U.F.C.W., Local 1815, (2004), B.C.C.A.A.A. No 242 (QL) (Steeves)

Wasaya Airways LP and A.L.P.A. (Wyndels) (2010), 195 L.A.C. (4th) 1 (Marcotte)